

07/00
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No....194/96.....

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High Court W.P.(C) 46271 & 2 and 3 of 1996

SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

CA No. 194/196

CA 2135787 P/B

Mr. K. M. Rathor

vs

Applicant(s)

Union of India & Ors.

Respondent(s)

Mr. B. Banerjee
Mr. Chanda

Advocates for the applicant(s)

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

Advocates for the Respondent(s)

Office Notes	Date	Courts' Orders
This application is in form and within time C. F. of Rs. 50/- deposited vide I.R.O./S.D. No 346.C/4 Dated 27.9.96.	6-9-96	Learned counsel Mr. B. Banerjee and Mr. M. Chanda for the applicant. Leave note of Mr. G. Sarma Addl. C.G.S.C. for the respondents. Adjourned for Admission to 13-9-96.
<i>G. Sarma D.P. Registrar, S.D.</i> 27.9.96	1m m 6/9	<i>6</i> Member
<i>Notices issued to the concerned parties D.No. 3245 dt. 25.9.96.</i>	18.9.96	Mr. M. Chanda for the applicant. Mr. G. Sarma, Addl. C.G.S.C. for the respondents.
<i>25.9.96</i>		Issue notice before admission.
<i>Notices issued to the concerned parties D.No. 3245 dt. 25.9.96.</i>		List for consideration of admission on 15.11.1996.
<i>25.9.96</i>		<i>6</i> Member
<i>Service reports are still awaited.</i>	15.11.96	Mr. B. Banerjee for the applicant. Mr. G. Sarma, Addl. C.G.S.C. for the respondents.
<i>Service reports are still awaited show cause is not been given.</i>		Service reports are awaited Mr. Sarma prays for further time to submit show cause. Allowed.
<i>6/11 25.11.96</i>		List on 13.12.96 for show cause and consideration of admission.
<i>Service reports are still awaited show cause is not been given.</i>		<i>6</i> Member

13.12.96 Mr M.Chanda for the applicant.

Mr G.Sarma, Addl.C.G.S.C seeks further time to file show cause.

List for show cause and consideration of admission on 17.1.97.

6 Member

pg

M
16/12

17.1.97

Leave note of Mr M.Chanda. Mr.

G.Sarma, Addl.C.G.S.C for the respondents. No show cause has been submitted.

List for show cause and consideration of admission on 10.2.1997.

6 Member

pg

M
17/1

13-2-97

1 Case is adjourned

10.2.97

Let this case be listed on 14.2.1997.

4 (four) times for show cause.

2 Notice duly served on Respondent No-3.

Service Report are still awaited from Respondent No-1&2.

nkm

14.2.97

Mr B. Banerjee, learned counsel for the applicant, and Mr G. Sarma, learned Addl. C.G.S.C., are present. On the request of Mr Banerjee the case is adjourned to 21.2.97.

Vice Chairman

19-2-97

Mr. G. Sarma, ACSSC filed memo of appearance.

nkm

M
19/2

Vice-Chairman

21-2-97 Heard Mr.B.Banerjee learned counsel for the applicant and Mr.G. Sarma Addl. C.G.S.C. for the respondents.

5.3.97

Notice of order
dtd. 21.2.97 is 88nd
to the Co-accr and
parties Roopali No-1-3
as R/Ad. vide D.No. 699
to 701.

By

Notice duly served 5/3
on R. No - 1 & 3. 2.
4-4-97

Perused the contents of the application and relief sought. Application is admitted.

Issue notice on the respondents by registered post. Returnable on 4-4-97.


Vice-Chairman

On the prayer of Mr.G.Sarma learned Addl.C.G.S.C. 10 days time is allowed for filing written statement as last chance.

List on 25-4-97 for written statement and further orders.


Vice-Chairman

25-4-97 There is no representation. Case is adjourned till 2-5-97.


Vice-Chairman

1m

28/4

2-5-97

Mr.G.Sarma demanded additional time again for further extension of time for filing written statement. Several adjournment have already been granted. No time has been granted for further adjournment.

Next hearing on 20-6-97. In the meantime, respondents may file written statement.


Vice-Chairman

1m

2-5-96

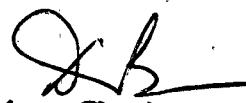
Mr.G.Sarma learned Addl.C.G.S.C.

19-6-97

- 1) Notice duly served on R. 1 to 3.
- 2) No written statement has been filed.
- 3) ✓ 19/6/97

prays for further extension of time to file written statement. Several adjournment have already been granted. I am not inclined to grant any further adjournment.

List for hearing on 20-6-97.

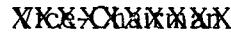

 Vice-Chairman

lm


 215

20.6.97

Place it before me for passing necessary administrative order.


 Vice-Chairman

xxix

20.6.97

Place it before me for passing necessary administrative order.


 Vice-Chairman

nkm

2-9-97

Pass on in day.

My order

3.9.97

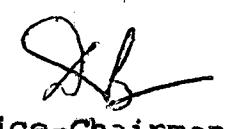
Seen the order passed by the Hon'ble Chairman.

Let the case be transmitted to Principal Bench immediately.

Registrar to transmit the case record to the Principal Bench.

Parties shall appear before Principal Bench on 3.11.97.


 Member


 Vice-Chairman

O.A.No.194/96

Ref:- F.NO.P.B./4/18/96-R dtd.22.8.97

As per order of the Hon'ble Chairman dtd.

16.7.97
22.8.97 (Flag 'X') the O.A.No.194/96 (Sri K.M.Rabha vrs. U.C.I.&ors) is to be transferred to the Principal Bench of Central Administrative Tribunal for hearing.

Laid for favour of necessary orders.


Dy. Registrar


B.R.A.
22.8


P.M. Talaq
Co.


Dy. Registrar


Lay before Standing Court
for Orders.

Ref. Order dtd. 20-6-97

In this case notices on the respondent Nos. 1 & 3 have been duly served. But written statement is yet to be submitted.

As directed by the court vide order above, this matter may kindly be placed before the Hon'ble Vice Chairman for passing necessary administrative orders.

S.Y. Regr.

26/6/97

This may be placed before the Hon'ble Vice Chairman for passing necessary administrative orders.

SL
26/6/97

Registers

SL
26/6/97

Hon'ble Vice Chairman

Let this case be taken up by a bench without me and the Hon'ble member(s) of this bench Register to take necessary steps.

J. B. Smith
30.6.97

Hon'ble Vice-Chairman has written a D.O. letter to the Hon'ble Chairman today.

SL
1/7/97

D.O.

To. letter sent vide
No. 866 dtd. 1.7.97

SL

0115 Lands - Alameda

10th Street - San Fran

194/56

On has been received
Transferred from Wm. H. C.
CAG Beach to P. B. Newells
for hearing as per Order
of the Hon. Chairman dated
(6/7/4).

These notes may be
Issued to Both Parties
→ in form of
Letter not filed

✓ 8/11

OA-2175/97

Item-31

03.11.1997

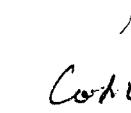
Present: None for the applicant.

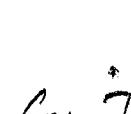
Sh.Rajeev Sharma, UDC, depttl. rep. on behalf of respondents.

This case has come on transfer from CAT, Guwahati Bench to Principal Bench, New Delhi. Let notice be issued to the applicant informing him that this case has come on transfer from Guwahati Bench to Principal Bench and shall be listed before Joint Registrar again on 15.12.1997 for scrutiny.


(DIWAKAR KUKRETI)
JOINT REGISTRAR

/Kant/


Copy of order at 3/11
sent to Applicant


Court not filed


15/12/97

Item-19

OA-2175/97

15.12.1997

Present: None.

On the previous date of hearing one Sh.Rajeev Sharma, UDC, depttl. representative had appeared, however, none appears today. Applicant is also not present. Therefore, list the matter before court for appropriate orders on 05.02.1998.

copy to be sent to
A copy of this order may again be sent to the applicant as well as respondents by ordinary post.

(DIWAKAR KUKRETI)
JOINT REGISTRAR

/Kant/

*list to be sent to
Kant*

5.2.1998

9

33.

OA-2175/97

Present: None for applicant
Shri N.S.Mehta for respondents

Shri Mehta prays for four weeks for
reply.

List on 11.3.1998

(Mrs. LAKSHMI SWAMINATHAN) (S.R. ADIGE)
Member (J) Vice Chairman (A)

/GK/

Replied to

Visiting CT
as per 3
and B.I.U. CT
1073

Item No. 16

O.A. No. 2175/97

-10-

Dt. 11.03.1998

Present: None for the applicant.

Sh. N.S. Mehta, learned counsel for the respondents.

Learned counsel for the respondents seeks and is allowed further three weeks time to file the counter.

List the case on 3.4.98.

Reply not filed

g
(S.P. BISWAS)
MEMBER (A)

hym
(T.N. BHAT)
MEMBER (J)

/PB/

Present: - None for applicant
Sh. N.S. Mehta, Counsel for the respondents

Learned counsel for the respondent seeks further two weeks time to file the reply. Allowed. Applicant will have one week time to file the rejoinder, if any.

Call on 15-5-98

g
(S.P. BISWAS)
MEMBER (A)

hym
(T.N. BHAT)
MEMBER (J)

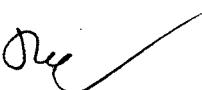
DR

Planching complete

15.5.1998

Present:- None for the applicant
Shri N.S.Mehta, counsel for respondents

We find that by the orders of the Hon'ble Chairman this O.A. stands transferred from Guwahati Bench to the Principal Bench of the Tribunal. However, after the transfer of the matter nobody has been appearing for the applicant. It is also noticed that the matter is already admitted by the Guwahati Bench. But since the matter has been transferred to this Bench, its turn for final hearing has not come. However, to enable the applicant to appear and make his submissions, we adjourn the case ~~for~~ ^{to} 24.7.1998. A copy of this order be sent to the applicant.



(R.K.Aahooja)
Member (A)



(T.N.Bhat)
Member (J)

na

Notes of the Registry	Date	Order of the Tribunal
Flag 'X' may kindly be seen. As per order of the Hon'ble Chairman, OA has been re-transferred to this Bench. On final hearing and disposal of the OA.	10.12.98	Seen the order passed by the Hon'ble Chairman, Central Administrative Tribunal, Principal Bench. Put up before me in the Vice-Chairman on 29.12.98.
This case is ready for hearing.		<i>6</i> Member
Earlier there was a letter at flag 'A' that this case will not be taken up by the present Hon'ble Member vice-chairman and Member (A) and was requested to the Principal Bench to constitute a Division Bench to hear the case.	28/12/98	<i>28/12/98</i> 29.12.98 further no command. By order .
Placed before the Hon'ble Court - Dr. S. S. orders.	30.12.98	Present: Hon'ble Mr Justice D.N. Baruah Vice-Chairman Seen the order dated 3.11.1998 passed by the Hon'ble Chairman as quoted in the letter sent by the Deputy Registrar, Principal Bench. Hon'ble Administrative Member of this Bench expressed his unwillingness to take up this case. Registrar to write to the Principal Bench for deputing an Administrative Member to constitute a Division Bench.
<i>8.12.98</i> <i>8/12/98</i> <i>8/12/98</i> <i>Registration</i>		<i>8/12/98</i> nkm Vice-Chairman
<i>11.2.99</i> for hearing objection to flag 'X' or in P.B. letter may kindly be seen.	12.2.99	Adjudged on 15.2.99. By order <i>b</i>
On view of an order passed in flag 'X', applicants have filed written objection in flag 'A'.	15.2.99	Seen the letter dated 27.1.99 addressed to the Deputy Registrar, Central, Administrative Tribunal, Guwahati Bench written by the Deputy Registrar (JA) of the Principal Bench. The applicants have filed

The applicant has submitted
an addressed envelope on
11-12-2000 pl.

A. W. Frazee
11/12

100000000

9. **Характеристикъ съчиненията**,
които са създадени във времето на
авторът иматъ характеръ на
исторически документи.

Notes of the Registry	Date	Order of the Tribunal
	2.12.00	Records has not been produced to-day. List it again for records on 15.12.00 and for hearing. Member
	15.12.00	Heard learned counsel for the parties. Hearing concluded. Judgment reserved. Member
	22.12.00	Judgment pronounced in open Court, kept in separate sheets. Application is allowed. Return the records. Member (A)
<u>27.12.2000</u> Copy of the Judgment has been sent to the Office for issuing the Same to the applicant as well as to the Recipient. Hk	mk	Vice-Chairman
<u>8.2.2001</u> As per order dt. 12.1.2001 passed in M.W. 15/2001, the dates are corrected in the OA accordingly. 8.2.01 DR		

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. Nos.. 194/96 & . of
195/96

DATE OF DECISION 22 XII 2000

Shri K.M.Rabha (O.A. 194/96)

PETITIONER(S)

Shri S.K.Das (O.A. 195/96)

Mr. M.Chanda

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. B.S. Basumatary, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

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

THE HON'BLE MR. M.P.SINGH, MEMBER (A).

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.

1.15 F. (3)

V
1.15 F. (3)

(e) 1. 153251

THE VENGEANCE OF THE SPLENDID RESPONDENTS

Guarino - S.A.T.

ЭДИТОРЫ ГИТ

4. Whether the legend is to be circumscribed to the other enclosures
3. Whether other photographs may be seen first copy of the legend
2. To be referred to the reporter or not
1. Whether Reporters of local papers may be allowed to see the legend

Yangtze River get involved by Hong, Pei

211. *f* *W.*
. *THE* *5.*

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1204

31

512' on the highest point of the ridge.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 194 of 1996

with

Original Application No. 195 of 1996

Date of decision : This the 22nd day of December 2000.
Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Hon'ble Mr. M.P.Singh, Member (A).
O.A. No. 194 of 1996.

Shri Kamini Mohan Rabha,
Assistant,
Central Administrative Tribunal
Rajgarh Road, Bhangagarh,
Guwahati-781005

...Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India,
Represented by the Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
North Block,
New Delhi-110 001
2. The Registrar,
Central Administrative Tribunal (PB),
Faridkot House, Copernicus Marg,
New Delhi-110 001.
3. The Registrar,
Central Administrative Tribunal
Guwahati Behch,
Rajgarh Road, Bhangagarh,
Guwahati-781005

....Respondents

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

O.A. No. 195 of 1996.

Shri Swadesh Kumar Das, U.D.C.
Central Administrative Tribunal,
Rajgarh Road, Bhangagarh,
Guwahati-781005.

....Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India,
Represented by the Secretary,
Ministry of Personnel, Public
Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110 001.

Contd....

2. The Registrar,
Central Administrative Tribunal (PB)
Faridkot House, Copernicus Marg,
New Delhi-110 001
3. The Registrar,
Central Administrative Tribunal,
Guwahati Bench,
Rajgarh Road, Bhangagarh,
Guwahati-781 005

....Respondents

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

.....

O R D E R

CHOWDHURY J. (V.C.).

Both the applications involves common question of law and facts except some minor variations and the reliefs sought for are also same or similar therefore both the O.A.s were taken up for disposal by a common order.

2. The core issue in both the applications arises from the impugned order of reversion issued under Office Order No. 139/Pro/90-Estt/294 dated 11.2.1994.

3. Before entering into the issue of adjudication it would be appropriate to state the relevant facts for proper adjudication of the issue involved.

O.A. No. 194 of 1996.

The applicant was initially appointed as Lower Division Clerk on deputation basis in the Guwahati Bench of the Central Administrative Tribunal on 4.10.1985. His first appointment was in the Ministry of Information and Broadcasting as Lower Division Clerk with effect from 18.4.1983. He was promoted as Upper Division Clerk on 18.12.1986 on ad hoc basis in the Central Administrative Tribunal. He

** Corrected as
per order dated
12.1.2001 p.m.
Ex M.P. No 15/2001
16/2001 Narm
S O (S) 8/2/01*

Contd....

He was absorbed in Central Administrative Tribunal in the post of Lower Division Clerk on 1.11.1989 as regular appointee. His service in the grade of Upper Division Clerk was regularised on 29.11.1990. The applicant was promoted to the post of Assistant on ad hoc basis from 1.6.1992 to 31.5.1993 and again from 3.6.1993 to 15.12.1993.

He was appointed as Assistant on regular basis with effect from 15.12.1993 in temporary capacity on the strength of

* Corrected as per
order D.P.C. 12.1.1994
Parv in M.P. No. 154
16/2001

9.2.1994

9.12.1994

DPC held on 7.12.1993. A Review DPC was held on 9.12.1994 and as per the findings of the Review DPC the impugned order was passed on 11.2.1994 reverting the applicant to the post of Upper Division Clerk. The applicant against the impugned order of reversion submitted a representation dated 27.4.1994 to the concerned authority. He also submitted representation before the National Commission for Scheduled Caste and Scheduled Tribes for redressal of his grievances. An ad hoc promotion was granted to the applicant to the post of Assistant with the approval of the competent authority vide order dated 2.5.1996. This application is made by the applicant assailing the order of reversion and also for a direction for conferring the benefit of the subsequent promotion with retrospective effect.

O.A. No. 195 of 1996.

The applicant had also initially joined the Central Administrative Tribunal on deputation basis in the post of Lower Division Clerk on 13.11.1985. He joined the parent department as Lower Division Clerk on 20.4.1983. He was also promoted as Upper Division Clerk on ad hoc basis on 26.9.1988 and on regular basis on 29.11.1990.

Contd....

The applicant was further appointed as Assistant on ad hoc basis with effect from 1.6.1992 to 15.12.1993, by order dated 28.5.1992 the applicant was promoted temporarily on ad hoc basis to the post of Assistant against the reserve quota of Schedule Caste for a period of six months with effect from 1.6.1992 in the scale of pay of Rs. 1640-60-2600-EB-75-2900. In this case a Review DPC was also held on 9.2.1994 and the applicant was reverted to the post of U.D. C. by a common order dated 11.2.1994. The applicant also submitted representation before the concerned authority challenging the legality of the aforesaid order of reversion. Failing to get redressal moved this Tribunal challenging the legality and validity of the order.

4. The respondents in their reply questioned the maintainability of the application on the ground for non-joinder of P. C. Dutta, who was appointed in the meantime as Assistant on ad hoc basis against the vacancy of the first applicant. The respondents also stated that there were four posts of Assistant in the Guwahati Bench of the Tribunal, out of which one post was surrendered with effect from 1.3.1995 in view of the Govt. austerity measure. One post of Assistant was further abolished in the month of February, 1996 for implementing the Staff Inspection Unit Report. ~~Those two posts were held by Sri J.N. Sharma and Shri J.C. Mohan. Sri Sharma and Sri Mohan were promoted as Section Officers with effect from 10.5.1994 and 7.5.1996 respectively.~~ Against the resultant vacancies Sri P.C. Dutta and Sri K.M. Rabha UDCs are working on adhoc basis. Sri Rabha, applicant in O.A. No. 194/96 was appointed on deputation basis in the Guwahati Bench of the Central Administrative Tribunal

as LDC on 4.10.1985. He was appointed as UDC on ad hoc basis with effect from 18.12.1986. He was allowed to continue as UDC on ad hoc basis and his services was regularised in the aforesaid post with effect from 29.11.1990. He was promoted as Assistant on ad hoc basis ^{1.6.1992} with effect from 15.12.1993. It was further found that the Guwahati Bench of the Tribunal took the date of deputation as the relevant date for the purpose of counting regular service as UDC for the purpose of eligibility for promotion to the post of Assistant. The applicants who were appointed as Assistant from 15.12.1993 on temporary basis did not fulfil the required length of service in the grade of UDC and therefore their promotion orders were rightly reviewed. In view of the fact that both the applicants were appointed as UDC on regular basis with effect from 29.11.1990, they would have become eligible for promotion to the post of Assistant in the year 1995-96. Therefore the order of promotion to the post of Assistant was cancelled on 11.2.1994. On cancellation of the order of promotion to the post of Assistant with effect from 11.2.1994 the seniormost UDC Sri P.C. Dutta who fulfilled eligibility criteria was promoted to the post of Assistant on ad hoc basis with effect from 6.9.1994.

5. Both the applicants claimed their promotion on the basis of reservation policy regulated by the statute rules and the executive instruction issued thereunder from time to time. As per the forty point roster the first point is reserved for SC candidate, second and third point unreserved, fourth point reserved for ST candidate, fifth to seventh again unreserved, point number eight is reserved

h
v

for ST candidate. The persons appointed in the grade of Assistant against the reserved points as per the reservation rosters are as follows :

Roster Point No.		Name of the official	Designation	Comment
1	SC	Shri K.K.Roy	Asstt. SC	Filled up by SC
2	UR	Shri W.Ullah	Asstt. Gen	Filled up
3	UR	Shri N.N.Thakuria	Asstt. Gen	Filled up
4	ST	H.G.Choudhury	Asstt. Gen	Filled up in the early stage of the office by Gen.candidate owing to exigencies of judicial work on non-availability of reserved candidates by deputation.
5.	UR	Shri J.N.Sharma	Asstt	Shri Sarma has since been promoted on ad hoc basis as S.O. against which post Shri P.C.Dutta has been appointed on ad hoc basis, Sri Dutta is otherwise eligible for appointment as Asstt.
6.	UR	Shri J.C.Mohan	Asstt.	Continuing on regular basis
7.	UR	vacant		
8.	SC			"

From the above it appears that H.G.Choudhury who belongs to general category was appointed against the point no.4 which was reserved point for candidate belonging to ST community. Thereafter Sri J.N. Sharma and Sri J.C. Mohan were appointed against point nos. 5 and 6 respectively which were unreserved point. Point No. 7 is unreserved which has been utilised by appointment of Sri P. C. Dutta to the post of Assistant in the year 1994. The contention that since Sharma

Contd....

was promoted as Section Officer and Shri Dutta was appointed against the point no.5 cannot be accepted as two persons could not be appointed against one point. The Deputy Registrar of the Guwahati Bench wrote to Principal Bench (C.A. T.) New Delhi, vide its letter dated 14.11.1995 which is as follows :

" In our opinion Shri P.C.Dutta who has been continuing as Assistant on ad hoc basis deserves to be regularised as eligible ST candidate is not available and will be available only after 28.11.95. It will be appropriate, therefore, to regularise the service of Shri P.C.Dutta at point No.7 against unreserved vacancy and consider ad hoc promotion of Shri K.M.Rabha against temporary vacancy of Shri J.N.Sharma until the regular promotion of Shri Sharma takes place. However, if this is not approved, we may promote Shri K.M.Rabha at point No.7 against the carry forward ST backlog and continue Shri P.C.Dutta on ad hoc basis against the temporary vacancy of Shri J.N.Sharma promoted on ad hoc basis as Section Officer."

From the above, it is clear that the point No.7 although unreserved would have been reserved for a candidate belonging to ST community which was a carry forward reservation from point no. 4 reserved for ST community. Point No.8 of the roster was again reserved for a candidate belonging to SC community and therefore was to be filled up by a candidate belonging to SC community. Thus reserved for a SC candidate at point no.8 could have been treated as unreserved as it was a single vacancy of the year and there could not be 100% reservation in a particular year. The aforesaid contention was made on behalf of the applicants as regards adherence to the reservation policy. The applicants mainly contended that the impugned order of reversion was passed by holding a Review DPC contrary to all the canons of justice and therefore the impugned order of reversion could not be sustained. The applicant in O.A. No. 194/96 also claimed for retrospective promotion as alluded on the ground of reversion. Both the applicants submitted that their ad hoc services would not be melted away but was to be computed including the deputation period towards seniority.

Mr. M. Chanda, learned counsel for the applicants in support of his contention referred to a number of decisions including the decisions of the Supreme Court reported in (1999) 9 SCC 596, (1999) 8 SCC 392, (1992) 19 ATC 315.

6. We have heard the learned counsel Mr. M. Chanda for the applicants and Mr. B.S. Basumatary, learned Addl. C.G.S.C. for the respondents at length. We are not impressed upon on the submission of Mr. B.S. Basumatary, Addl. C.G.S.C. that this application is liable to be rejected on the ground for absence of the necessary parties, namely that of not impleading Shri P.C. Dutta as party respondent. The application under section 19 of the Administrative Tribunals Act is not a suit in such an application only person or bodies against whom relief is sought who would be vitally affected by the judgement (unless the interest have been represented by them who have been impleaded) are only to be added as parties. Merely because certain question will have to be answered and or determined incidentally in giving or not giving relief asked for in the application does not make each and every person a necessary party. In judging the question one is to consider as to whether the presence of the person is necessary to render an effective decision and what is the relief claimed against such person. If no relief is sought against such person and such person is not necessarily be impleaded as party. We do not find any reason to go into the question as to whether the appointment of Sri P.C. Dutta could have been made by the respondents against a reserved vacancy. The adjudication of the aforesaid question does not come in for consideration at this stage. In the present applications the issue mainly revolve round the legitimacy of the order of reversion dated 11.2.1994. The applicants have challenged the order of reversion as arbitrary and discriminatory and violative of the principles of natural justice. There is no dispute that the decision taken by the respondents in issuing the order of reversion dated 11.2.1994 was a unilateral decision and as to whether it was at all lawful to come to such unilateral decision. In this case these applicants were selected on

the basis of a DPC held on 7.12.1993 headed by the Vice-Chairman for filling up of two vacancies of Assistant on promotion from the post of UDC. On that date, the DPC mentioned that there were four posts of Assistant in the Bench on which two were already filled up by general candidates on promotion. Other two were therefore required to be filled up by SC and ST candidates. Accordingly one from ST and one from SC were considered. The DPC considered the recruitment rules and observed that UDC becomes eligible for promotion on completion of five years of regular service. The DPC found that the applicants namely Sri Rabha and Sri Das were holding regular UDCs in the grade from 18.12.1986 and 26.9.1988 respectively and completed six years 11 months and five years one and half months respectively as UDC on 23.11.1993. They were found eligible for consideration of promotion to the post of Assistant on regular basis. The DPC also took note of the fact that these applicants were holding the post of Assistant on ad hoc basis since 1.6.92 to 31.5.93 and again from 8.6.93 to 7.12.1993 i.e. the date the DPC was constituted considering five years ACRs of these two applicants and the service records.. The DPC found that those two applicants to be fit for promotion to the post of Assistant. Admittedly it was a conscious decision taken by the DPC. On the recommendation of the DPC the applicants were promoted by order dated 15.12.93. Records did not indicate as to why a review DPC was required to be held. Reasons may be the communication sent by the Principal Bench on 13.1.1994 asking for information/records for perusal of the Chairman pertaining to the given promotion of these two applicants. By the

Contd...

in aforesaid communication the Principal Bench advised the Section Officer of the Guwahati Bench to forward the following information/records of the proceedings and records pertaining to the ad hoc promotion. (i) orders constituted in the DPC and proceeding of the DPC regarding their promotion (ii) Copies of the order of promotion if any (iii) Any relaxation was made in favour of the said two persons and regarding nomination of the members of DPC (iv) The seniority list of UDC, and the ACR of the said two applicants.

The Review DPC was held on 9.2.1994 by the same persons, who were in the earlier DPC reviewed the decision/recommendation of the DPC held on 7.12.1993. This time the DPC computed the period of regular service in the cadre of UDC commencing from 29.11.1990 to 8.2.1994 and accordingly viewed that the applicants did not complete five years regular service in the cadre of UDC on 23.11.93/7.12.1993. Accordingly the DPC reviewed its own decision dated 7.12.1993 and rescinded the recommendation of the DPC dated 7.12.1993. Consequently the impugned order of reversion dated 11.2.1994 was passed.

7. The counsel for the applicants argued at length that the adhoc service rendered by the applicants including the service rendered in their parent departments could not have been overlooked. It was also submitted that the decision was taken by the respondents unilaterally without providing any opportunity to the applicant. It was contended that the applicants were deprived of the opportunity to rebut their opinion of the DPC and rested with the service as rendered by them earlier ought to have been counted for seniority and under any reason it could not have been

ignored. It was submitted by the applicants that it was not open to the respondents to decide unilaterally on facts which could have been rebutted to be untrue. Admittedly this opportunity was not provided to the applicants at any stage. Mr. B.S. Basumatary, learned counsel for the respondents submitted that the DPC constituted with the high functionaries in its discretion thought it fit to decide to act upon the facts at any rate discretion was exercised by the DPC constituted with the high functionaries it should not be a subject of judicial review. We are not in a position to countenance the arguments of the learned counsel Mr. Basumatary and we are of the view that whether procedural fairness is required to be adopted or not is the pure question of law for which this Tribunal is competent to decide. Exercise of judicial review is not dependent on the discretion of the maker of the decision nor on the stature and eminence of decision making authority.

8. In our view public functionary performing public function and discharging public duties are required to act fairly. Procedural fairness embedded as a Principles of Natural Justice is the part of Article 14 of the Constitution. The rule of natural justice is founded purely on the principle of justice and to avoid injustice. There is always a presumption that the procedural fairness is required to be observed when the exercise of power adversely affected the individual right. The presumption is stronger when act in question affects the livelihood of the individual or serious pecuniary loss. No special circumstance are discernible to negate the procedural fairness in the case. Numerous decisions in this regard were referred by the counsel of the applicants. We are not going to recount all the decisions. We, however would like to recall the decision of the Supreme Court rendered in the case of Ram Ujarey Vs. Union of India



& Ors. reported in (1999) 2 SLJ (SC) 43. In the said case Supreme Court held as follows :

"..... In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came at the appellant, at no stage, was informed of the action which the respondents intended to take against him."

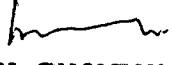
In these applications whether the applicants could have succeeded in their claim for seniority or not the real issue is whether they were afforded opportunity before the decision was taken. Since the decision was reviewed and the same affected the vested right of the applicants. In our view, in the impugned decision making authority, the Respondents faltered which alluded its ultimate decision by not adhering to the procedural fairness and on that count alone the impugned order of revision dated 11.2.1994 stood vitiated and thus unsustainable in law.

9. Now what next? What the authority is to do when it has failed to provide a fair hearing. We are of the firm opinion that the authority still owes a duty to provide an opportunity to the applicants to state their case. Considering all the aspects we are of the opinion that ends of justice will be met on the peculiar facts and circumstances if a direction is given to the Respondents to provide a full and fair opportunity to the applicants to place their case and justify their eligibility for promotion to the post of Assistant on 15.12.1993. We accordingly order as such upon all the concerned authority for providing opportunity to the applicants to state their case and to take appropriate decision thereafter as per law. The Respondents would also be free to take all lawful measures in taking steps in the right direction by rendering justice to the parties. Needless to say that the applicants would also be free to raise all conceivable legal issues before the Respondents in their support. It is also expected that the respondents shall take the necessary measures

for resolving the disputes as early as possible preferably within a period of three months from today.

10. The application is allowed to the extent indicated above. There shall, however, be no order as to costs.


(M.P.SINGH)
Member (A)


(D.N.CHOWDHURY)
Vice-Chairman)

trd

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4
Central Administrative Tribunal केन्द्रीय प्रशासनिक अधिकार 301 9 MAR 2006 Guwahati Bench. नवाखाती बैच			WP(C) No.4627/2002 PRESENT HON'BLE THE CHIEF JUSTICE HON'BLE MR.JUSTICE D.BISWAS 07.12.2005. Mr. S. K. Ghosh, learned counsel for the petitioner seeks leave of this Court to withdraw this writ petition. Accordingly, this writ petition stands dismissed as withdrawn without any order as to costs.

Sd/- D BISWAS
JUDGE

Sd/- BS REDDY
CHIEF JUSTICE

Memo No. HC.XXI 2844-47 R.M. dtd. 8.3.06

Copy forwarded for information and necessary action to :

1. Union of India, represented by the Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, North Block, New Delhi-110001.
2. The Registrar, Central Administrative Tribunal, Faridkot House, Copernicus Marg, New Delhi-110001.
3. The Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangaghar, Guwahati-781005.
4. Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Rajgarh Road, Bhangaghar, Guwahati-781005. He is requested to acknowledge receipt of the following case records. This has a reference to his letter No. CAT/GHY/6 JUDL/3138 Dtd. 22-11-2002.

Enclo :-

1. O.A. 194/96 M.P. 15/01 with Original Judgement) A, B & C
2. O.A. 195/96 M.P. 16/01) A, B & C

Total 10 Nos. file

By Order

Asstt. Registrar(I&E)
Guwahati High Court, Guwahati

sof (1)
Order in the
Confidential file

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CIP Hand over
to Section OS(E)
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The (E) Section OS(E)

Qar
15/3/06

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from

Civil Rule

W.P.(C) No. 4627

Appellant

Petitioner

Sri Swadesh Kumar Das

Versus

Union of India & Ors.

Respondent

Opposite Party

Appellant

Mr. N. Choudhury

Petitioner

Mr. S. K. Ghosh, A.D.M.

Respondent

C.G.S.C.

Opposite Party

Noting by Officer or
Advocate

Serial
No.

Date

Office notes, reports, orders or proceedings
with signature

2

3

4

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under Section 19 of the Administrative
Tribunal Act, 1995)

OA. 2125743 P.B

Title of the Case : OA No. 199 of 1996

Shri Kamini Mehan Rabha
-Versus-
Union of India & Drs.

.. Applicant
.. Respondents

I N D E X

<u>S.No.</u>	<u>Particulars of documents</u>	<u>Page No.</u>
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Date of filing : 5-9-96

Registration No: OA 194/96

Parmanu
for Registrar 5/9/96

Recd (copy)
by (A) J. Awad
P.S. (45C)
CAT
W.M.D
5/9/96

1. Particulars of the applicant

Shri Kamini Mehan Rabha, Assistant,
Central Administrative Tribunal,
Rajgarh Road, Bhangagarh,
Guwahati-781 005.

2. Particulars of the Respondents

1. Union of India,

Represented by the Secretary,
Ministry of Personnel, Public Grievances
& Pensions, Deptt. of Personnel &
Training, North Block,
New Delhi-110 001.

2. The Registrar,

Central Administrative Tribunal (PB),
Faridkot House, Copernicus Marg,
New Delhi- 110 001.

3. The Registrar,

Central Administrative Tribunal,
Guwahati Bench,
Rajgarh Road, Bhangagarh,
Guwahati-781 005.

3. Particulars for which this application is made:

This application is made for restoration of
promotion order dated 15.12.93 of the applicant and for
setting aside and quashing of the order of reversion
No.139/Pre/90-Estt/294 dated 11.2.94 and for treating
the applicant as Assistant w.e.f. 12.2.94 with all
consequential service benefit and monetary benefit.

4. Limitation

The applicant declares that this application is made within the time period prescribed in the Central Administrative Tribunal Act.

5. Jurisdiction

The applicant further begs to state that the cause of the application is within the jurisdiction of the Hon'ble Tribunal.

6. Facts of the case

- i) That your applicant is a citizen of India and as such entitled to all the rights and privileges granted under the constitution of India. The applicant belongs to Scheduled Tribe community. The applicant initially appointed as Lower Division Clerk through Staff Selection Commission in the Ministry of Information & Broadcasting, New Delhi and joined on 18.4.83 on regular basis.
- ii) That your applicant in pursuance to an advertisement for appointment of Lower Division Clerk on deputation basis in the Central Administrative Tribunal, Guwahati Bench, Guwahati in the year 1985 had applied for the same and the applicant was selected for appointment to the post of L.D.C. on deputation basis in the Central Administrative Tribunal, Guwahati Bench, Guwahati. The applicant after being selected joined in the Central Administrative Tribunal, Guwahati Bench, Guwahati on 4.10.1985.

iii) That your applicant while working on deputation basis in the Central Administrative Tribunal, Guwahati Bench, he was promoted on adhoc basis to the post of Upper Division Clerk and joined in the promotional post of Upper Division Clerk on 18.12.1986.

That the applicant was found fit and the Hon'ble Tribunal being satisfied with performance of the applicant promoted him on adhoc basis against the regular vacancy of U.D.C.

A copy of the adhoc promotion order dated 18.12.86 is annexed as Annexure-I.

iv) That your applicant while working as U.D.C. on adhoc basis against the regular vacancy the Principal Bench of the Central Administrative Tribunal issued a Circular for submission of option for permanent absorption and the applicant accordingly submitted his option for permanent absorption in the Central Administrative Tribunal and the Hon'ble Tribunal was pleased to absorb the applicant on permanent basis with effect from 1.11.89 and also allowed to continue as U.D.C. indefinitely till regularisation since the applicant working against the regular vacancy of U.D.C. in the Guwahati Bench of the Central Administrative Tribunal.

A copy of the order dated 18.5.90 for absorption is enclosed as Annexure-II.

v) That your applicant beg to state that a Departmental Promotion Committee was constituted on 29.11.90 to regularise the adhoc appointment of the

applicant who was working as adhoc UDC against the regular vacancy and as recommended by the DPC held on 20.11.90 the applicant was regularised in the post of UDC with effect from 29.11.90 vide order dated 6.12.90.

A copy of the Office Order regularising the promotion issued under letter No.139/Pre/90-Estt. of the Central Administrative Tribunal, Guwahati Bench dated 6.12.90 is enclosed as Annexure-III.

vi) That while your applicant working as UDC he was further promoted on adhoc basis to the post of Assistant against the regular reserve vacancy of Scheduled Tribe in the scale of Rs.1400-2600/- with effect from 1.6.92 vide order issued under letter No.107/88-Admn/1001 dated 20.5.92. It is also stated in the said promotion order dated 20.5.92 that the adhoc promotion would not confer any right to claim promotion on regular basis and that the promotion may be withdrawn at any time before completion of six months without any notice. However, the applicant is allowed to continue to work as Assistant against the regular Scheduled Tribe post till the end of December, 1993 by extending the same from time to time.

A copy of the office order dated 20.5.92 is enclosed as Annexure-IV.

vii) That your applicant further beg to state that a Departmental Promotion Committee was constituted on 7.12.1993 for filling up two regular vacancies of Assistant - one is for Scheduled Tribe and one is for Scheduled Caste vacancy and on the basis of the

recommendation of the DPC your applicant was promoted against the Scheduled Tribe vacancy alongwith Shri S.K. Das, SC vide office order under letter No.139/Pre/90-Estt./1999 dated 15.12.93 in the pay scale of Rs.1640-2900/- in term of the said promotion order dt.15.12.93. The applicant continued to work in the promotional post of Assistant till 11.2.94 with satisfaction to all concerned.

A copy of the promotion order dated 15.12.93 is enclosed as Annexure- V.

viii) Most surprisingly, the Central Administrative Tribunal, Guwahati Bench vide office order issued vide letter no.139/Pre/90-Estt/294 dated 11.2.94 issued order of the reversion with effect from 11.2.94 (AN) wherein it is stated that in pursuance of the decision of the Review DPC dated 9.2.94, Hon'ble Krishnak Vice-Chairman had been pleased to rescind the order of Promotion of the applicant and of Shri S.K. Das to the post of Assistant issued vide office order dated 15.12.93.

This illegal order of reversion is passed in violation of existing rules and also without following Principles and of natural justice. Be it stated that no reason was stated in the said illegal order of reversion dated 11.2.94. Therefore, the said order of reversion dated 11.2.94 is liable to be set aside and quashed.

A copy of the reversion order dated 11.2.94 is enclosed as Annexure-VI.

ix) That your applicant being highly aggrieved due to arbitrary reversion order dated 11.2.94 preferred representations addressed to the Hon'ble Chairman, Central Administrative Tribunal, Principal Bench, New Delhi through proper channel, and other representations addressed to the competent authorities, of the Principal Bench as well as Guwahati Bench of the Central Administrative Tribunal.

A copy of the representation dated 27.4.94 is enclosed as Annexure-VII.

x) That your applicant thereafter preferred representation before the National Commission for Scheduled Caste and Scheduled Tribes for redressal of his grievances particularly for his illegal order of reversion dated 11.2.94. The applicant also submitted representation dated 28.2.95 addressed to the Deputy Registrar of the Guwahati Bench, Central Administrative Tribunal and also to the Hon'ble Chairman, Principal Bench of the Central Administrative Tribunal, wherein it was requested to consider his case for promotion to the post of Assistant against the reserved vacancy and it also stated regarding the illegal order of reversion dated 11.2.94.

A copy of the representation dated 30.5.95 is enclosed as Annexure-VIII.

xi) That the Acting Registrar of the Central Administrative Tribunal, Principal Bench, New Delhi vide his letter no. PB/1/77/91-Estt.II dated 18.10.95 addressed to the Registrar, Central Administrative Tribunal,

Guwahati Bench stated that two persons namely Shri S.K. Das and Shri K.M. Rabha, both UDC were promoted by the Guwahati Bench against the vacancy reserved for Scheduled Caste and Scheduled Tribe respectively and the information was sent to the Principal Bench to this effect. However, Principal Bench wanted certain information and some quarries were made to the Guwahati Bench to send information on that points and it ~~was~~ is also stated in the said letter that it appears that instead of replying the said quarries the Guwahati Bench is reverted the aforesaid two persons without any information to the Principal Bench which should not had been done without verifying the roster points reserved for SC/ST candidates for promotion to the post of Assistant. It is also observed in the said letter that in case the roster point for the aforesaid two persons were lying vacant and their promotion was in accordance with rules and Govt. instructions and in the ordinary course they should not have been reverted. The relevant portion of the letter dated 18.10.95 issued by the Acting Registrar, Central Administrative Tribunal, Principal Bench are quoted below :-

" Two persons, namely Shri S.K. Das and Sh.K.M. Rabha, UDC, were promoted by the Guwahati Bench against the vacancies reserved for SC/ST respectively and an information was sent to the Principal Bench to this effect. However, Principal Bench wanted certain information and some quarries were made to the Guwahati Bench to send information on that points. It appears that instead of replying to the said quarries, the Guwahati Bench reverted the aforesaid two persons without any

information to the Principal Bench which should not have been done without verifying the roster point reserved for SC/ST candidates for promotion to the post of Assistant. In case the roster point for the aforesaid two persons were lying vacant, their promotion was in accordance with the Rules and Govt. instructions and in the ordinary course they should not have been reverted.

From the correspondence it has further revealed that after reversions of the aforesaid two persons, one general category candidate has been promoted as an Assistant against the reserved post of SC/ST, which does not seem to be in accordance with the instructions of the Govt. issued from time to time.

In view of the above, you are requested to kindly look into the matter personally and send us your comments so that the matter can be placed before the Hon'ble Chairman for ratification of the defect in not granting promotion to the SC/ST candidate and filling up of the post meant for SC/ST candidate by general category candidate."

From the above, it appears that one post of Assistant was also filled up in the Guwahati Bench by a General category candidate without considering the case of the applicant. However, in view of the above letter dated 18.10.95 the present applicant is expected that his case would be considered as in the last paragraph in the above letter it was indicated that the matter can be placed before the Hon'ble Chairman for ratification of the defects in not granting promotion to the SC/ST candidate and filling up the post meant for SC/ST candidate by general category.

A copy of the letter is also endorsed to the Under Secretary to the Govt. of India, Deptt. of Personnel & Training, New Delhi. But most unfortunately no action was initiated for redressal of the grievance of the applicant for the promotion to the post of Assistant. In the fact and circumstances stated above the illegal impugned order of reversion order dated 11.2.94 is liable to be set aside and quashed and the applicant be declared to the promotional post of Assistant continuously w.e.f. 15.12.93.

A copy of the letter dated 18.10.95 issued by the Acting Registrar, CAT(PB), New Delhi is enclosed as Annexure-JX.

xii) That your applicant even thereafter submitted representation dated 6.2.96 for consideration of his promotion to the post of Assistant.

xiii) That the Deputy Registrar, Central Administrative Tribunal, Principal Bench vide his letter no. PB/1/77/

91-Estt.II/3123(A) dated 6.3.96 addressed to the Deputy Registrar, CAT, Guwahati Bench under the subject alleged harassment to the SC/ST candidate in the CAT, that the issue regarding the promotion of the applicant has been examined in detail and on perusal of roster of reservation for SC/ST it is seen that there is a backlog of one ST vacancy in the grade of Assistant. It is further stated as per rules a general category candidate cannot be promoted against the vacancy reserved for SC/ST without obtaining dereservation from the Govt. It is also stated in the letter dated 6.3.96 that since Shri P.C. Dutta is promoted against the reserved vacancy for SC/ST candidate his promotion is ⁱⁿ _{of} violation the rules which are statutory in nature. It is also observed that the

applicant has became eligible for premotion, therefore, he should be promoted forthwith by followint the prescribed procedures. The relevant portion of the letter dated 6.3.96 is quoted below :-

" The issue regarding promotion of Shri K.M. Rabha and Sh. S.K. Das has been examined in detail. On perusal of roster of reservation for SC/ST it is seen that there is a backlog of one ST vacancy in the grade of Assistant. As per rules a general category candidate can not be promoted against a vacancy reserved for SC/ST without obtaining desrvation from the Govt. Since Sh. P.C. Dutta is promoted against a vacancy reserved for ST candidate his promotion is violative of rules, which are statutory in nature. Now that, one ST candidate namely Sh.K.M. Rabha has become eligible for premotion he should be promoted forthwith by following the prescribed procedure of obtaining approval from Hon'ble Chairman for constitution of DPC and on the basis of recommendation of that DPC. Shri P.C.Dutta shall have to be reverted at this stage. He can be promoted when the next vacancy becomes available which will be for a general candidate. "

From above it is quite clear that the applicant was duly promoted vide No.139/Pre/90-Estt/1999 dated 15.12.93 to the post of Assistant and there was no irregularity in premotion order issued under office order dated 15.12.93. Therefore, the impugned rever-
sion order is liable to be set aside and quashed. Be it stated, ^{that} in the letter dated 6.3.96 although it is admitted by the Principal Bench, Central Administrative Tribunal that there is a backlog vacancy for SC/ST and it is made clear from the contents in the letter dated 18.10.95 and 6.3.96, the premotion of the

applicant in terms of order dated 15.12.93 was made against the backlog vacancy of Scheduled Tribe. Therefore, the impugned order of reversion dated 11.2.94 is liable to be set aside and quashed.

A copy of the Principal Bench of the Central Administrative Tribunals' letter no. PB/1/77/91/3122(A) dated 6.3.96 is enclosed as Annexure-X.

xiv) That the applicant was eagerly waiting for restoration his promotion by cancelling the reversion order dated 11.2.94. However, the Principal Bench of the Central Administrative Tribunal, New Delhi vide letter No. PB/1/77/91-Estt.II dated 9.4.96, it is intimated with reference to letter no. 21.3.96 of the Guwahati Bench of the CAT the full particulars of the applicant alongwith his ACR dossiers, final seniority list of UDC duly verified and also requested that the DPC note may be sent urgently for ~~consideration~~ considering the case of promotion of the applicant. It is also stated that the said letter dated 9.4.96 the DPC would be constituted in the Principal Bench itself. It is also requested for certifying that no vigilance case either pending or contemplated against the applicant and it is also requested to furnish necessary papers forthwith as the Department ^{and} Personnel & Training is pressing hard in the matter. Therefore, vide letter no. PB/1/21/95-Estt.I dated 2.5.96 whereby the applicant is promoted on adhoc basis to the post of Assistant. Whereas the claim of the applicant was for restoration of the promotion order dated 15.12.93. But just to make an eye wash the applicant is promoted to the post of Assistant against the resultant vacancy fallen vacant due to promotion of Shri J.C. Mahan

to the post of Section Officer from the post of Assistant. Be it stated that the applicant has not been considered for regular promotion against the backlog vacancy of Scheduled Tribe against which the applicant was regularly promoted vide order dated 15.12.93. Therefore, a fresh cause of action is arisen due to non-promotion of the applicant on regular basis with retrospective effect to the post of Assistant. The grant of adhoc promotion without redressing the grievances of the applicant for continuation of the promotion order dated 15.12.93 in terms of the promotion order dated 15.12.93 means that the same is refused. Therefore, a fresh cause of action arises and in the compelling circumstances the applicant having no other alternative remedy approach the Hon'ble Tribunal by an application for protection of his right and interest for restoring his promotion order dated 15.12.93 setting aside the illegal order of reversion dated 11.2.94.

A copy of the letter dated 9.4.96 and 2.5.96 are enclosed as Annexure XI & XII.

(a) ~~(b)~~ That your applicant is eligible for promotion to the post of Assistant, but the Authorities did not consider the case of the applicant since his reversion vide impugned order dated 11.2.94, although it is admitted that there is a clear backlog vacancy of Assistant exists in the Guwahati Bench and even now the applicant is promoted on adhoc basis. As a result, the applicant is suffering financial loss as well as the same would delay the future promotion of the applicant in next higher grade and this regard,

There is a clear instruction is laid down by the Deptt. of Personnel & Training. The applicant urged to produced the same at the time of hearing before this Hon'ble Tribunal.

xx

xv) That your applicant further beg to state that the SC/ST roster points is never followed and maintained in this establishment, and it is also seen that always, there is excess recruitment is made in the cadre of Assistant from general cadre. Therefore, the Hon'ble Tribunal be pleased to direct the respondents to produce, the relevant record whereby the roster points are maintained. The applicant is a victim for not complying the roster points strictly which is mandatory and statutory in force. Therefore, the applicant desires to be promoted with immediate effect on regular basis with all consequential service benefit as the Scheduled Tribe vacancy of Assistant ^{which} is occurred long back in this Establishment and the applicant is eligible for promotion.

xvi)

That the application is made bonafide and in the cause of justice.

7. Reliefs prayed for :-

In the facts and circumstances stated above the applicant prays for the following reliefs :-

1. That the applicant be promoted on regular basis with immediate effect.
2. That the impugned order or reversion bearing letter no. 139/Pre/90-Estt/294 dated 11.2.94 be set aside and quashed.
3. That the respondents be directed to treat the applicant in continuous service to the post of Assistant in terms of promotion order dated 15.12.93 with all consequential service benefits.

and further be directed to give all consequential service benefit including monetary benefit with effect from 12.2.94.

4. That the adhoc promotion issued under letter dated 2.5.96, be modified treating the same as regular promotion in terms of prayer no.1,2 & 3.
5. To pass any other order/orders as deemed fit and proper by the Hon'ble Tribunal in the facts and circumstances of the case.
6. Cost of the case.

The above reliefs is prayed on the following amongst other GROUNDS.

- i) For that the promotion of the applicant to the post of Assistant was considered against the clear vacancy of Scheduled Tribe backlog vacancy by duly constituted Departmental Promotion Committee.
- ii) For that impugned reversion of order is passed without following the Principles of natural justice.
- iii) For that the respondents did not provide any opportunity to show cause before passing the impugned order or reversion dt.11.2.94.
- iv) For that the impugned order dt.11.2.94 is passed without complying the requirements laid down in Articles in 311 of the Constitution.
- v) For that the impugned order lead the Civil consequences and the financial loss is a continuous wrong and therefore, cause of action arises everyday.
- vi) For that the illegal action of Respondents is violated of the Article 14 and 16 of the Constitution. Therefore, the impugned order is liable to be set aside and quashed.
- vii) For that a fresh cause of action has started as the representation for retrospective regular promotion is refused by issuing the order of adhoc promotion vide No.PB/1/21/95-Estt.I dated 2.5.96.
- viii) For that quota rule of Scheduled Tribe and Scheduled Caste roster points was never

maintained particularly in the matter of promotion in the cadre of Assistant.

ix) For that excess posts is filled up from general categories in the cadre of Assistant.

x) For that the applicant is eligible for promotion to the post of Assistant.

xi) For that the applicant incurring financial loss and further future prospect for non-promotion on regular basis to the post of Assistant.

8. Interim reliefs prayed for :-

The application may be disposed of expeditiously on merit.

9. Details of remedies exhausted:

There is no any other remedy same and except filing this application before your Lordships' for appropriate relief.

10. That the matter is not pending in any other Court/Tribunal.

11. Particulars of IPO :

I.P.O. No. 346014

Date of Issue : 29-9-96

Issued from : CPO, Gauhati

Payable at : — — —

12. Details of Index :

An index showing the particulars of documents is enclosed.

13. List of enclosures

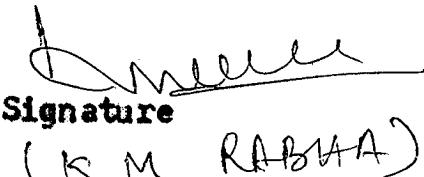
As per Index.

Verification

VERIFICATION

I, Shri Kamini Mahan Rabha son of
Shri Basanta Kumar Rabha aged 35 years presently
working as Assistant (Adhoc) in the Central
Administrative Tribunal, Guwahati Bench, Rajgarh
Road, Bhangagarh, Guwahati-781 005 do hereby
verify and state that the statements made in para
1 to 13 are true to my knowledge
and beliefs and I have not suppressed any material
facts.

And I sign this verification on this
4th day of September, 1996, at Guwahati.


Signature
(K M RABHA)

18
Rajgash Rd., Bhengaghat,
Guwahati - 5.

Dated Guwahati, the 18th Dec. '86.

As recommended by the Staff Selection Committee of this office Shri Kamini Mohan Rabha, LDC on deputation to this office is appointed purely temporarily on ad-hoc promotion as U.D.C. in the scale of pay Rs.1200-30-1560-EB-40-2040 plus other allowances admissible as perxx rules, against the vacant post, with immediate effect.

Shri Kamini Mohan Rabha will have no claim to the benefits consequent upon this adhoc appointment on his reversion to the parent department except to the extent of counting the period of his service during the deputation as if, he was still continuing as L.D.C.

Sd/-

(S. CHAKRABORTY)
Deputy Registrar (Adm)

Copy to :-

1. The Accounts Officer, Central Administrative Tribunal Guwahati for information and necessary action.
2. The Pay And Accounts Officer, Central Administrative Tribunal, Nirvachan Sadan, 7th floor, Ashoka Road, New Delhi -1.
3. Shri Kamini Mohan Rabha.
4. P/F of t + official.
5. File No.CAT/GHY/72/86.
6. Sparc

(S. CHAKRABORTY)
Deputy Registrar (Adm)

Attested
S. Chakraborty
PLS.

1) Vacant post
2)

(19)

Annexure - II

1/25/89 - Estt. 13773
 No. XX88X88X8XX.
 Central Administrative Tribunal
 Principal Bench

Feridkot House,
 Copernicus Marg,
 New Delhi-110001.

Dated: 18.5.1990.

The Deputy Registrar(A),
 Central Administrative Tribunal,
 Guwahati Bench,
 Guwahati

Subject: Absorption of officers in the Central Administrative Tribunal.

Sir,

I am directed to convey the approval of Hon'ble Chairman of the Central Administrative Tribunal to the absorption of following officers who are presently working on deputation basis, U.S.F. 1-1989 against the posts indicated against each:-

<u>S.No.</u>	<u>Name of the officer with present designation</u>	<u>Post against absorbed.</u>
1.	Sh. P.C.Dutto, U.D.C.	U.D.C.
2.	Sh. K.M.Rabha, U.D.C.	L.D.C.**
3.	Sh. S.K.Doss, U.D.C.	L.D.C.**
** (S/Shri K.M. Rabha and S.K. Doss are allowed to continue to officiate as U.D.C. on ad-hoc basis till they are regularised in that post).		

2. The inter-se-seniority of the above officers shall be determined, separately.

3. The pay of the above officers on absorption may be fixed by the Bench concerned in consultation with FA & CAO.

4. Any further proposal for appointment/absorption/regularisation will be considered only if it is certified that the representation of SC/ST categories in the respective cadres have been made as per Govt. instructions issued from time to time.

5. You may take further action as & fitly.

6. The receipt of this letter may kindly be acknowledged.

Yours faithfully,

(Signature)

Afterwards

No. 139/PROMOTION/90-Estt.
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

70
Annexure-III

Rajgarh Road, Bhang Ghat,
Guwahati-781 005.

Dated Guwahati, the 6th December, 1990.

OFFICE ORDER

As recommended by the Departmental Promotion Committee held on 29.11.90, Hon'ble Vice-Chairman has been pleased to regularise the ad-hoc appointment of the following officials w.e.f. 29.11.90.

<u>Sl.No.</u>	<u>Name & Designation</u>	<u>Regularised in which post</u>
1.	Shri Kamini Mohan Rabha, U.D.C.	U.D.C.
2.	Shri Swadesh Kumar Das, U.D.C.	U.D.C.

2. The other conditions of service will be governed by the relevant rules and orders issued by the government from time to time.

Recd 7/12/90
(B.K. BANDYOPADHYAY)
REGISTRAR.

No. 139/PROMOTION/90-Estt.,

Dated Guwahati, the 6-12-90.

Copy to :-

1. The Deputy Registrar(Admn.), Central Administrative Tribunal, Principal Bench, Feridkot House, Copernicus Marg, New Delhi-1.
2. The Pay & Accounts Officer, Central Administrative Tribunal, 7th Floor, Nirvachan Sadan, Lok Kosh Marg, New Delhi-1.
3. The Accounts Officer, Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
4. Shri Kamini Mohan Rabha, UDC/Shri Swadesh Kumar Das, UDC, Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
5. Personal file of the officials.
6. Service Book of the officials.
7. Spares.

Recd 7/12/90
(B.K. BANDYOPADHYAY)
REGISTRAR.

*Attested
by
Rabha*

'Rabha, KM'
061290.

Reigarh Road, Bhangagarh,
Guwahati-781 005.

Dated Guwahati, the 20th May, 1992.

OFFICE ORDER

Hon'ble Vice-Chairman has been pleased to promote temporarily and on adhoc basis the following U.D.C's to the post of Assistant against the reserved quota for Scheduled Caste and Scheduled Tribe, in the scale of pay of Rs.1400-40-1600-50-2300-EB-60-2600/- plus other allowances as admissible from time to time for a period of six months w.e.f. 1.6.1992.

1. Sri Kamini Nahan Rabha, UDC (ST)
2. Sri Swadesh Kumar Das, UDC (SC)

The above officials should note that their promotion is purely temporary, on adhoc basis and it will not confer any right in their favour to claim promotion on regular basis, and that this promotion may be withdrawn at any time before completion of six months without notice to them.

✓ 10/5/92
(S.K. BANDYOPADHYAY)
REGISTRAR.

Copy to :-

1. The Deputy Registrar(Admn.), Central Administrative Tribunal(PB) Faridket House, Copernicus Marg, New Delhi-1.
2. The Pay & Accounts Officer, Central Administrative Tribunal, New Delhi.
3. The Accounts Officer(i/c), Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
4. Shri K.N. Rabha, UDC.
5. Shri S.K. Das, UDC.
- 6-7. Personal file of the officials.
- 8-9. Service Book of the officials.
10. Estt/Vacancy file.
11. Guard file.
- 12-15. Spares.

After 10th

10/5/92
(S.K. BANDYOPADHYAY)
REGISTRAR.

No. 139/Pro/90-Estt. / 1993
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Rajgarh Road, Bhangagaih
Guwahati-781 005.

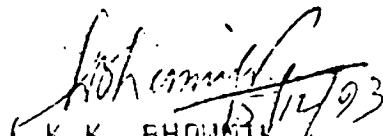
Dated Guwahati, the 15th December, 1993

OFFICE ORDER

On the recommendation of the Departmental Promotion Committee Hon'ble Vice-Chairman has been pleased to promote the following LDCs to the posts of Assistants temporarily in the scale of pay of Rs.1640-60-2600-EB-75-2900/- plus other allowances as admissible from time to time against the vacancies reserved for Scheduled Tribe and Scheduled Caste respectively, under usual terms and conditions of service, with effect from the date from which they assume charge.

1. Shri Kamini Mohan Rabha, ST.
2. Shri Swadesh Kumar Das, SC.

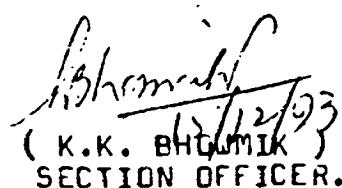
The above officials will be on probation for a period of 2 (two) years which may be extended or curtailed at the discretion of the competent authority.


(K.K. BHOWNIK
SECTION OFFICER.

Copy to :--

1. The Deputy Registrar(E), Central Administrative Tribunal 1(PB), New Delhi-1.
2. The Liaison Officer & FAOCAC, Central Administrative Tribunal, New Delhi-1.
3. The Pay & Accounts Officer, Central Administrative Tribunal, New Delhi-1.
4. The Accounts Officer, Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
5. Shri K.M. Rabha, Asstt.
6. Shri S.K. Das, Asstt.
- 7-8. Service Books of the officials.
- 9-10. Personal files of the officials.
11. Roster file/Vacancy file.
12. Guard file.
13. DPC file.
- 14-17. Spares.


Attest
K.K. BHOWNIK


(K.K. BHOWNIK
SECTION OFFICER.

No. 139/Pro/90-Estt/294
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

29

Rajgarh Maid, Bhangagarh,
Guwahati 781005.

Dated Guwahati, the 11th Feb. 1994

OFFICE ORDER

In pursuance of the decision of the Review D.P.C. dated 9-2-1994, Hon'ble Vice-Chairman has been pleased to rescind the order of promotion of Sri K.M.Rabha and Sri S.K.Das to the post of Assistants issued vide this office order No.139/Pro/90-Estt dated 15.12.93 with immediate effect and consequently Sri K.M.Rabha and Sri S.K.Das are reverted to the posts of UDC from today the 11th February, 1994(AN).

11/2/94
(K.K.BHOWMIK,
SECTION OFFICER

Copy to:-

1. The Deputy Registrar(E), Central Administrative Tribunal(PE), New Delhi-1.
2. The Liaison Officer & F.A.&C.A.O., Central Administrative Tribunal, New Delhi-1.
3. The Pay & Accounts Officer, Central Administrative Tribunal, New Delhi-1.
4. The Accounts Officer(i/c), Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
5. Sri K.M.Rabha. He is directed to relinquish the charge of office of Asstt. and takeover charge as UDC in the afternoon of 11th February, 1994.
6. Sri S.K.Das. He is directed to relinquish the charge of office of Asstt. and takeover charge as UDC in the afternoon of 11th February, 1994.
- 7-8. Service Books of the officials.
- 9-10. Personal files of the officials
11. Roster file/vacancy file.
12. Guard file.
13. D.P.C. file.
- 14-17. Spares.

*Attached
Other
P.D.*

11/2/94
(K.K.BHOWMIK,
SECTION OFFICER

20

Annexure - VII

To

The Hon'ble Chairman,
Central Administrative Tribunal (P.S.)
Faridkot House, Copernicus Marg,
New Delhi-110 001.

THROUGH PROPER CHANNEL

Sub:- Prayer for Promotion to the post of Assistant.

Sir,

With due respect, I beg to state that I had been promoted to the post of Assistant on 1.8.1952 on adhoc basis against the reserved post for Scheduled Tribe vide No.107/58-Adm. dt.22.5.52 and subsequently it had been regularised on 15.12.1953 vide No. 138/Prs/93-Estt/1993 dt.15.12.1993. But on 11.2.1954, I have been reverted to the post of U.D.C. vide no.135/Prs/93-Estt/1954 dt.11.2.54. (Copies of the orders enclosed).

In this connection, I beg to request you to kindly look into the matter/for promotion to the post of Assistant on regular basis in view of the order issued for regular promotion on 15.12.93 and for which act of kindness I shall remain everpray.

Yours faithfully,

Prasad
(K.M. PRASAD)

U.D.C
Jdcl.Secy., CAT, Guwahati.

Enclo. As above.

Dated Guwahati,
the 27.4.1994.

*Prasad
Ghosh
Jdcl*

(25/2)

Annexure - ~~8~~

VIII

To

The Hon'ble Chairman,
Central Administrative Tribunal (PB),
Faridkot House, Copernicus Marg,
New Delhi-110 071.

THROUGH PROPER CHANNEL

Sub :- Prayer for promotion to the post of Assistant.

Sir,

With due deference I beg to lay before your honour for favour of sympathetic consideration and necessary orders :-

That Sir, I had been promoted from the post of UDC to Asstt. on 1.6.92 and subsequently regularised on 15.12.93 and on 11.2.94 I have been reverted to the post of UDC on the ground that I have not completed the desired length of service.

That Sir, present two posts of Asstts. have been abolished from the Guwahati Bench. But one vacancy which is kept still on backlog (Reserved for ST) is filled by general category.

That Sir, I will completed the desired length of service which required five years on 28.11.95.

Under the circumstances stated above, I would like to request you to kindly consider my case for promotion to the post of Asstt. against the backlog (ST)vacancy as I belongs to the Scheduled Tribe category by relaxing the length of service and for which act of your kindness I shall remain ever grateful to you Sir.

Yours faithfully,



(K.M. RABHA) UDC

Central Administrative Tribunal
Guwahati Bench,
Rajgarh Road, Bhengagarh,
Guwahati-5.

Dated Guwahati,
the 30.5.95.

Attested
On the
30/5/95

(b)

Annexure - IX

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

No. PE/1/77/91-Estt.II
Faridket House,
Copernicus Marg, New Delhi-
110 001.

Dated : 18.10.95

To

The Registrar,
Central Administrative Tribunal,
Guwahati Bench,
Guwahati.

When

Sub :- Representation from S/Shri S.K. Das and K.M. Rabha,
UDC, CAT, Guwahati Bench regarding reversion to
the post of UDC from Assistant-regarding.

Sir,

Two persons, namely, S/Shri S.K. Das, UDC and K.M. Rabha, UDC were promoted by the Guwahati Bench against the vacancies reserved for SC/ST, respectively, and an information was sent to the Principal Bench to this effect. However, Principal Bench wanted certain information and some queries were made to the Guwahati Bench to send information on that points. It appears that instead of replying to the said queries, the Guwahati Bench reverted the aforesaid two persons without any information to the Principal Bench which should not have been done without verifying the roster points reserved for SC/ST candidates for promotion to the post of Assistant. In case the roster point for the aforesaid two persons were lying vacant, their promotion was in accordance with the Rules and Govt. instructions and in the ordinary course, they should not have been reverted.

From the correspondence it has further been revealed that after reversions of the aforesaid two persons one General Category candidate has been promoted as an Assistant against the reserved post of SC/ST, which does not seem to be in accordance with the instructions of the Govt. issued from time to time.

In view of the above, you are requested to kindly look into the matter personally and send us your comments so that the matter can be placed before the Hon'ble Chairman for ratification of the defect in not granting promotion to the SC/ST candidate and filling up of the post meant for SC/ST candidate by general category candidate.

Yours faithfully,

Sd/- illegible
(DIWAKAR KUKREJI)
ACTING REGISTRAR

copy to :-

1. The Under Secretary to the Government of India, Department of Personnel & Training, New Delhi with reference to their letter no. A-12020/3/95-AT dated 5.6.95.

Attentd
C. D. D.

13.1.95



केन्द्रीय प्रशासनिक अधिकरण

CENTRAL ADMINISTRATIVE TRIBUNAL.

प्रधान न्यायीठ

PRINCIPAL BENCH

फरिद्कोट हाउस कॉपर्निक्स मार्ग,
Faridkot House, Copernicus Marg.

नई दिल्ली - ११०००१

NEW DELHI-110001

XXXXXX

XXXXXX

XXXXXX

Dated: 01.3.1996

6.3.96

Tb:

The Deputy Registrar
Central Administrative Tribunal,
Guwahati Bench,
Guwahati.

Sub: Alleged harassment to the SC/ST employees in CAT.

Sir,

I am directed to refer to your letter No.139/Pro./90-Estt. 105 dated 25.01.1996 on the subject mentioned above and to state that SIU in its report, which has since been received, has recommended two posts of Assistants in Guwahati Bench.

The issue regarding promotion of Shri K.M. Rabha and Sh. S.K. Das has been examined in detail. On perusal of roster of reservation for SC/ST it is seen that there is back-log of one ST vacancy in the grade of Assistant. As per rules a general category candidate can not be promoted against a vacancy reserved for SC/ST without obtaining reservation from the Govt. Since Sh. P.C. Dutta is promoted against a vacancy reserved for ST candidate his promotion is violative of rules, which are statutory in nature. Now that, one ST candidate namely Sh. K.M. Rabha has become eligible for promotion he should be promoted forthwith by following the prescribed procedure of obtaining approval from Hon'ble Chairman for constitution of DPC and on the basis of recommendation of that DPC. Shri P.C. Dutta shall have to be reverted at this stage. He can be promoted when the next vacancy becomes available which will be for a general candidate.

As regards promotion of Shri S.K. Das, who is a SC candidate it is stated that he has at present no claim for his promotion in Guwahati Bench as there is not back-log of SC vacancy and next vacancy after promotion of Shri K.M. Rabha falls in the category for general candidate. However, one vacancy of Assistant to be filled by SC candidate is available in Ahmedabad Bench. In case Shri S.K. Das is willing for promotion as Assistant in Ahmedabad Bench, his case can be considered for the same.

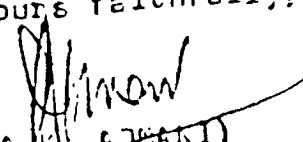
It is worthwhile to mention here that the National Commission for SC/ST and Deptt. of Personnel and Training are pressing hard for redressal of grievances of Sh. Rabha and S.K.Das.

You are, therefore, requested to take immediate action in accordance with the direction/clarification given above under

ATTC
M/S
P.D.W.

20
16
intimation to PB to enable us to send a suitable reply to the Govt.

Yours faithfully,


(A.K. Bhatia)
DEPUTY REGISTRAR(E)



Annexure - XI

केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

प्रधान न्यायपीठ

269
No. PB/1/77/91-Estt. 11
Faridkot House, Copernicus Marg,
New Delhi - 110 001

Dated: 9.4.96

To

The Deputy Registrar,
Central Administrative Tribunal
Guwahati Bench,
Guwahati.

Sub. Alleged harrasment to the SC/ST employees in CAT.

Sir,

I am directed to refer to the correspondence resting with your letter No. 139/Pro/90-Estt./239 dated 21st March, 96 on the subject cited above and to say that the full particulars duly verified of Shri K.M. Rabha, UDC alongwith his ACR dossier, Final seniority List of UDC, the DPC note may be sent urgently for considering the case of his promotion. The DPC would be constitute in the Principal Bench itself while sending the said papers, it may also be certified that no vigilance case is either pending or contemplated against him.

You are, therefore, requested to furnish the above papers forthwith as the Department of Personnel & Training is pressing hard in the matter.

Yours faithfully,

W. J. M. J.
(W. J. M. J.)
DEPUTY REGISTRAR (S).

*Accepted
A. H. S.*

(30)

BY SPEED POST

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

Faridkot House, Copernicus Marg,
New Delhi-110 001.

Phone : 382305

No. PB/1/21/95-Estt.I

Dated 2nd May, 1996.

To

The Deputy Registrar,
Central Administrative Tribunal,
Guwahati Bench,
Guwahati.

Sub :- Adhoc promotion to the post of Assistant-
Shri K.M. Rabha, U.D.C of Guwahati Bench-reg.

Sir,

I am directed to convey the approval of
Hon'ble Vice-Chairman (J), Principal Bench, Central
Administrative Tribunal for ad-hoc promotion of Shri
K.M. Rabha, U.D.C. to the post of Assistant in the
Guwahati Bench of the Tribunal for a period of one
year with effect from the date he take over the
charge of the post of Assistant against the resultant
vacancy of Shri J.C. Mahan.

2. This appointment will not bestow on him
any right for regular appointment and the period of
service rendered on ad-hoc basis will not be counted
for the purpose of seniority/confirmation or eligi-
bility for consideration for promotion/appointment in
the next higher grade.

Yours faithfully,

Sd/-Illegible

(A.K. AJMANI)
DEPUTY REGISTRAR(E)

Copy to :-

1. Estt. Sec-I Section, CAT, Principal Bench.
2. F.No. PB/1/48/90-Estt.I.

Attested
A.K. AJMANI

32
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO. 2175/1997 (PB)

SHRI K M RABHA

*****APPLICANT

VERSUS

UNION OF INDIA & OTHERS

*****RESPONDENTS

INDEX

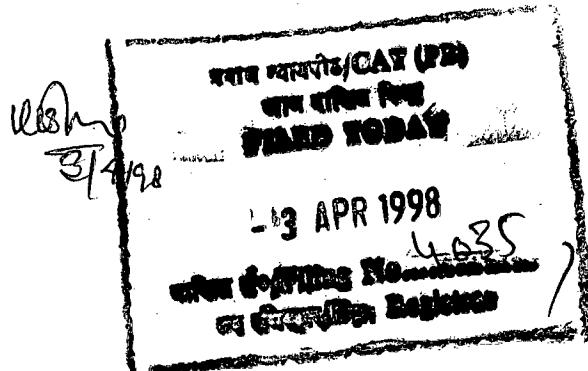
Sl. No.	PARTICULARS OF THE CASE	PAGE NO.
1.	Counter reply	1 - 5
2.	A copy of 40 points Roster Annexure R-1	6
3.	Office Order dated 6.5.96 Annexure R-2	7
4.	Memo. of Appearance	8

PLACE: New Delhi
DATED: 2-4-98
3

respondents
through *prakash* Dy. Regd. CAT (PB)

M. S. 3/4/98
CENTRAL GOVERNMENT
SENIOR COUNSEL

Copy sent to applicant
by Regd. Post vide Dy. No. 3275/A
dated 3-4-98



33
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO. 2175/1997 (PB)

SHRI K M RABHA

*****APPLICANT

VERSUS

UNION OF INDIA & OTHERS

*****RESPONDENTS

COUNTER REPLY ON BEHALF OF THE RESPONDENTS.

PRELIMINARY SUBMISSIONS:-

1. That the applicant has failed to implead Sh. P C Dutta adhoc Assistant who is likely to be adversely affected if the decision in this case goes in favour of the applicant and he is a necessary party. The OA is, thus, bad for non-joinder of necessary party.
2. That there were 4 posts of Assistant in the Guwahati Bench of the Tribunal out of which one post was surrendered under Govt. austerity measures in 1995. One post of Assistant was further reduced while implementing SIU report in Feb. 1996. Thus, there are only two posts of Assistants available in Guwahati Bench of the Tribunal after the implementation of SIU report which are being held in substantive capacity by S/Sh. J N Sarma and Sh. J C Mahan. S/Sh. J N Sarma and Sh. J C Mahan have been promoted as Section Officers on adhoc basis w.e.f. 10.5.94 and 7.5.96, respectively, as a stop-gap-arrangement. Against their resultant vacancies S/Sh. P C Dutta and K M Rabha, U.D.Cs. are working as Assistant on adhoc basis. At present there is no regular

post of Assistant vacant in the Guwahati Bench of the Tribunal. The claim of the applicant in the present OA is pre-mature. The same deserves to be dismissed on this ground.

PARA-WISE REPLY TO O.A.

1. That paras 1 to 5 of the OA need no comments.
2. That paras 6 (i) to (v) of the OA are matter of record.
3. That in reply to paras 6 (vi) to (viii) of the OA, it is submitted that the applicant while working as LDC in his parent office M/O Information and Broadcasting, New Delhi w.e.f. 18.4.83 came on deputation to CAT as L.D.C. on 4.10.85. He was appointed as UDC on adhoc basis w.e.f. 18.12.86. He was absorbed as LDC w.e.f. 1.11.89 while allowing him to continue as UDC on adhoc basis. He was regularised as UDC from 29.11.90. Thereafter, he was promoted as Assistant on adhoc basis w.e.f. 1.6.92 and appointed as temporary Assistant w.e.f. 15.12.93. However, it was found that the Guwahati Bench of the Tribunal took the date of deputation as the relevant date for counting regular service as UDC for the purpose of eligibility and promotion to the post of Assistant. S/Sh. K M Rabha and Sh. S K Dass who were promoted as Assistant w.e.f. 15.12.1993 on temporary basis did not fulfill the required length of regular service as UDC and their promotion orders were reviewed. S/Sh. K M Rabha and Sh. S K Dass who were appointed as UDCs on regular

18.12.86

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18.12.91

basis w.e.f. 29.11.90 would become eligible for promotion to the post of Assistant in 1995-96. S/Sh. K M Rabha and Sh. S K Dass were not eligible for promotion even in 1994 and their orders of promotion to the post of Assistant were rescinded w.e.f. 11.2.94.

4. That contents of paras 6 (ix) and (x) of the OA are matter of record.

5. That in reply to paras 6 (xi) to (xvii) of the OA, it is submitted that vide letter dated 18.10.95 (Annexure-IX to the OA), the comments of the Guwahati Bench were called for by the Principal Bench. Sh. J N Sarma was absorbed as Assistant w.e.f. 1.11.89 under Rule 5 of CAT (Group 'B' and 'C' Misc. Posts) Recruitment Rules, 1989 after the commencement of the said rules. The vacancies are to be filled in after applying 40 Points Reservation Roster. The copy of 40 Points Roster is annexed as Annexure R- 1. The reservation slots according to 40 Point Roster are as under:-

1. Schedule Caste : Carried forward.
2. Un-reserved : Filled up in 1994 by promoting Sh. J C Mohan.
3. Un-reserved : Filled up in 1994 by promoting Sh. P C Dutta on adh-hoc basis.
4. Schedule Tribe :

In the year 1990 none of the UDCs in Guwahati Bench belonging to ST /SC categories was eligible. Sh. J C Mohan, UDC belonging to General category was promoted against the un-reserved slot on 6.12.90. In the year

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(3b)

1992, S/Sh. K M Rabha and Sh. S K Dass, UDCs belonging to ST/ SC categories were promoted as Assistant on adhoc basis w.e.f. 1.6.92. They were further appointed as Assistant on temporary basis w.e.f. 15.12.93 against the vacancies reserved for ST and SC, respectively. Later on, it was found that S/Sh. K M Rabha and Sh. S K Dass were not eligible for promotion to the post of Assistant against which they were promoted. The order of their promotion were rescinded w.e.f. 11.2.94. However, Sh. P C Dutta, senior-most UDC of Guwahati Bench who fulfilled the requisite eligibility criteria for promotion to the post of Assistant, was promoted as Assistant on adhoc basis purely as a stop-gap-arrangement w.e.f. 6.9.94. As stated above the first slot is to go to SC candidate which is being carried forward. The second and third slots are un-reserved against which (i) Sh. J C Mahan was promoted as Assistant in 1990 on regular basis and (ii) Sh. P C Dutta was promoted as Assistant on ad-hoc basis in 1994. The fourth slot, as and when the vacancy arises, is to go to ST candidate. Thus, the impugned order dated 11th Feb 1994 is valid as S/Sh. K M Rabha and S K Dass were not eligible for the post of Assistant as per relevant Recruitment Rules at the relevant time. It is further submitted that against the resultant vacancy of Assistant, on promotion of Sh. J C Mahan as Section Officer on adhoc basis, the applicant Sh. K M Rabha has also been promoted as Assistant on adhoc basis w.e.f. 7.5.96 vide office order dated 6.5.96. A copy of which is annexed as Annexure R - 2. There are only two posts of Assistants left on the cadre of the Guwahati Bench against the sanctioned

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strength of 4 and Sh. J N Sarma and J C Mahan are holding the said two posts of Assistant on substantive capacity while working as Section Officer on adhoc basis. The reservation roster will also be strictly followed while making regular appointments to the posts of Assistant as and when regular vacancies become available.

6. That the relief claimed in para 7 of the OA is devoid of merits and OA deserves to be dismissed with costs.
7. Paras 8 to 13 of the OA need no comments.

The Original Application may, therefore, be dismissed with costs.

PLACE: NEW DELHI.
DATED:

J. N. Sarma
RESPONDENTS
THROUGH
CENTRAL GOVERNMENT
SENIOR COUNSEL

VERIFICATION:

Verified that the contents of paras 1 to 2 of the Preliminary Submissions and 1 to 7 of Para-wise Reply of this above counter reply are based on the information derived from official records which are believed to be true and nothing has been concealed therefrom.

PLACE: NEW DELHI.
DATED:

J. N. Sarma
RESPONDENTS
THROUGH

Annexure - R. I

ANNEXURE VI

Model Roster for Promotion

(40 Points)

[For reservation of 15% for SCs, 7½% for STs]

[G.I., M.H.A., O.M. No. 1/11/69-Estt. (SCT), dated 22.4.1970 and
Dept. of Per. & A.R., O.M. No. 1/9/74-Estt. (SCT), dated 29.4.1975]

Point in the roster	Whether Unreserved or Reserved	Point in the roster	Whether Unreserved or Reserved
1. Scheduled Caste	✓	21. Unreserved	
2. Unreserved		22. Scheduled Caste	
3. Unreserved		23. Unreserved	
4. Scheduled Tribe	✓	24. Unreserved	
5. Unreserved		25. Unreserved	
6. Unreserved		26. Unreserved	
7. Unreserved		27. Unreserved	
8. Scheduled Caste	✓	28. Scheduled Caste	
9. Unreserved		29. Unreserved	
10. Unreserved		30. Unreserved	
11. Unreserved		31. Scheduled Tribe	
12. Unreserved		32. Unreserved	
13. Unreserved		33. Unreserved	
14. Scheduled Castes		34. Unreserved	
15. Unreserved		35. Unreserved	
16. Unreserved		36. Scheduled Caste	
17. Scheduled Tribe		37. Unreserved	
18. Unreserved		38. Unreserved	
19. Unreserved		39. Unreserved	
20. Unreserved		40. Unreserved	

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Ann. R-2011

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Rajgarh Road, Bhangaghat
Guwahati-5.

Dated, Guwahati, 6-5-96.

-10-

OFFICE ORDER

In pursuance of the approval conveyed by Central Administrative Tribunal, (Principal Bench), New Delhi the letter No. PB/1/21/96-Estt/5365(A) dated. 2-5-96 Hon'ble Member(A) has been pleased to promote Shri K.N. Rabha, UDC to the post of Assistant on adhoc basis for a period of one year w.e.f. 7-5-96 forenoon in the scale of pay of Rs. 1640-60-2600-EB-75-2900/- plus other allowances admissible from time to time.

This promotion will not bestow on him any right for regular appointment and the period of service rendered adhoc basis will not be counted for the purpose of seniority/confirmation or eligibility for consideration for promotion/entitlement in the next higher grade.

(R. PANDA)
DEPUTY REGISTRAR

Copy to:-

- 1) The Deputy Registrar(E), C.A.T. (PB), New Delhi, with reference to his letter No. PB/1/21/95-Estt-17 5365(A) dated 2-5-96.
- 2) The Pay & Accounts Officer, CAT(PB), New Delhi.
- 3) Shri K.N. Rabha, Asstt.
- 4) The A.O/S.O.(A)/S.O.(J)/ C.O., CAT, Guwahati Bench
- 5) P/F of the official.
- 6) Service Book
- 7) Guard File
- 8) Spare

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(R. PANDA)
DEPUTY REGISTRAR

Prasanta
Indub

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI.

IN THE MATTER OF

OA NO. 2175/1997 (PB)

K. M. RABHA ... APPLICANT

VS.

UNION OF INDIA & ORS. ... RESPONDENTS.

-AND-

IN THE MATTER OF

REJOINDER SUBMITTED BY THE APPLICANT.

The applicant most humbly and respectfully beg to state as follows :-

1. That the applicant categorically denies the statements made in paragraph nos. 1 & 2 (preliminary submission of the Respondents) of the Written statement and further beg to state that it is categorically admitted in the Written statement itself that Sri P.C. Dutta has been promoted purely on adhoc basis as a stop-gap arrangement for smooth continuation of the office work. As such there is no necessity of impleading of Sri P.C. Dutta as respondent of the opposite party in the instant application. Moreover, in the instant application the applicant has challenged the illegal action of reversion of the applicant from the post of Assistant by the impugned order dated 11.2.94. Therefore, question of impleadment of Sri P.C. Dutta does not arise at all. The applicant is concerned with the regular promotion to the grade of Assistant by setting aside the impugned reversion order dated 11.2.94. The case of the applicant is against the unfair policy and illegal action of the respondents.

Contd. 2.

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1
(K. M. RABHA)
App. Court D. 27.4.98

The applicant is concerned with the post of Assistant which belongs to Scheduled Tribe category and was available since 1992 which was categorically admitted in the letter dated 6.3.96 (Annexure-V) of the OA. The statement of surrendering one post of Assistant under the Govt. Austerity measure in 1995 and abolition of post in the process of implementation of SIU report in February, 1996 has no bearing or link with the instant case of the applicant, rather the statement in paragraph 2 of the Written statement (parawise reply of the OA) is misleading. Be it stated that a reserved post for Scheduled Tribe cannot be abolished either under the Govt. Austerity measure or under the process of implementation of SIU report. The same would be evident from the clarification given by the Govt. of India on the question of abolition of post lying vacant for over a year or more, which giving clarification by the Govt. of India, Ministry of Finance. The relevant portion of the clarification is quoted below from the Journal Section of 1995(3)SLJ page 13:-

" Subject :- Abolition of posts lying vacant for over a year not applicable for those reserved for SC/ST.

The undersigned is directed to refer to this Ministry's OM No.7(7)-E.(Co-ord)/93, dated 3.5.1993 on the above subject wherein it has, inter alia, been indicated in para 1(b) that if a post is held in obedience or remains unfilled for a period of one year or more, it would be deemed to be abolished and that if the post is required subsequently, the prescribed procedure for creation of new post will have to be followed. References seeking clarification have been received as to whether exemption from these instructions can be granted in respect of posts reserved for SC/ST lying vacant for one year or more. It is hereby clarified that the above instructions of 3.5.1993 will not applicable to posts reserved for SC/ST vacant for one year or more to the extent necessary for maintaining reservation quota taking into account filled up general quota posts."

Similar clarification also given by the Govt. of India Deptt. of Personnel & Training. The clarification is quoted below from the Swamysnews (monthly) July, 1996 :-

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" Ban on creation of posts/filling up of vacancies are not applicable to posts reserved for SCs/STs.

.....

Various Ministries/Departments were requested to review the position relating to representation of Scheduled Castes and Scheduled Tribes in Government services vide Ministry of State for Personnel's D.O. letter dated 9.8.1995, to the respective Ministry. Instances have come to notice that difficulties are being experienced while filling up of reserved vacancies due to the ban of fresh recruitment imposed by the Ministry of Finance.

2. It is once again brought to the notice of all Ministries that the ban on creation of posts/filling up of vacancies imposed vide Department of Expenditure's OM No.7(7)-E(Co-Ord)/93, dated 3.5.1993(S1.No. 176 of Swamy's Annual, 1993) are not applicable to posts reserved for SCs/STs vacant for one year or more to the extent necessary for maintaining the reservation quota, taking into account filled up general quota posts."

Extract of the Govt. clarification issued under O.M. No.7(7)-E(Co-ord)/93 dated 6.4.1994 and OM No.36027/67/95/Estt.(Res), dated 12.3.1996 are annexed herewith as Annexure- I & II.

Therefore, in the light of above clarification issued by the Govt. of India the post of Assistant reserved for Scheduled Tribe community cannot be surrendered under the Govt. of India Austerity measure or in the process of implementation of SIU report. Therefore, it may be rightly presumed that the reserved post of Scheduled Tribe is still vacant in the Guwahati Bench of the Central Administrative Tribunal.

2. That the applicant categorically denies the statement made in paragraph 3 of the Written Statement (Parawise reply to the OA) and further beg to state that the promotion of the applicant have been duly considered by a duly constituted DPC for filling up the then existing post of Assistant reserved for Scheduled Tribe and knowing fully well the status of the applicant the DPC had recommended the promotion of the applicant which is indicated in the office order dated 15.12.93 (Annexure-V of the OA). Therefore, impugned order of reversion issued subsequently without providing any opportunity to the applicant

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Land monetary
benefits

is contrary to the principle of natural justice as the same has led the applicant to extreme civil consequences and on that score alone the impugned order or reversion dated 11.2.94 is liable to be set aside and quashed and the applicant is entitled to restore his original position of Assistant with all consequential service benefits/which was extended vide order dated 15.12.93.

3. That the applicant categorically denies the statement made in paragraph 5 of the Written statement (parawise reply to the OA) further beg to state that the reservation slots indicated in para 5 is false and misleading and the same has been stated without application of mind. As the statement itself is contradictory. In the one hand it is stated by the respondents that Sri J.N. Sharma and Sri J.C. Mahan are holding the two posts of Assistant on substantive capacity which are only available in the Guwahati Bench of the Central Administrative Tribunal at present, whereas in the reservation slot it is indicated in para 5 itself that the name of Sri J.C. Mahan is shown against the unreserved vacancy indicated in column 2 and surprisingly the name of Sri ~~xx~~ P.C. Dutta is shown against column No.3 which alleged to be against the unreserved vacancy, but nowhere indicated the name of Sri J.N. Sharma in the chart. Therefore, reservation slot as shown in para 5 is false and misleading as the same was shown without any reference of Sri J.N. Sharma. In this connection attention of the letter dated 6.3.96 at Annexure-X of the OA may be referred to. The relevant portion of the letter dated 6.3.96 is quoted below :-

" The issue regarding promotion of Shri K.M. Rabha and Sh. S.K. Das has been examined in detail. On perusal of roster of reservation for SC/ST it is seen that there is a back-log of one ST vacancy in the grade of Assistant.

As per rules a general category candidate can not be promoted against a vacancy reserved for SC/ST without obtaining deservation from the Govt. Since Sh. P.C. Dutta is promoted against a vacancy reserved post for ST candidate his promotion is violative of rules, which are statutory in nature. Now that, one ST candidate namely Sh. K.M. Rabha has become eligible for promotion he should be promoted forthwith by following the prescribed procedure of obtaining approval from Hon'ble Chairman for constitution of DPC and on the basis of recommendation of that DPC, Sh. P.C. Dutta shall have to be reverted at this stage. He can be promoted when the next vacancy becomes available which will be for a general candidate.

As regards promotion of Shri S.K. Das, who is a SC candidate it is stated that he has at present no claim for his promotion in Guwahati Bench as there is not back-log of SC vacancy and next vacancy after promotion of Shri K.M. Rabha fails in the category for general candidate. However, one vacancy of Assistant to be filled by SC candidate is available in Ahmedabad Bench. In case Sri S.K. Das is willing for promotion as Assistant in Ahmedabad Bench, his case can be considered for the same."

From the above statement of the letter dated 6.3.96 it is crystal clear that the one reserved post of ST still available against which the present applicant ought to have been accommodated. Therefore, statement of the respondents, that there are only two unreserved post are available at present is contradictory of their own statement. Moreover, the reserved post of ST which was available since 1992 and against which the present applicant was duly promoted vide order dated 15.12.93 is still available as the question of abolition of reserved ST post does not arise in the light of clarification given by the Govt. of India stated above. Therefore, the impugned order or reversion dated 11.2.94 which was passed without following the principle of natural justice is liable to be set aside and quashed and the applicant is entitled to be reinstated to the post of Assistant with all consequential service and monetary benefits.

4. It is pertinent to mention here that the CAT, Principal Bench, New Delhi in their letter bearing No. PB/1/77/91-Estt.II dated 18.10.95 addressed to the Registrar, CAT, Guwahati Bench, Guwahati wherein it is

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categorically admitted by the then Acting Registrar that the applicant alongwith one Sri S.K. Das, UDC were promoted to the post of Assistant in Guwahati Bench against the vacancy of SC & ST respectively and also further observed that the applicant alongwith Shri S.K. Das should not have been reverted without verifying the roster point reserved for SC/ST candidates for promotion to the post of Assistant. And also observed that ~~the~~ case of the roster point for the aforesaid two posts lying vacant then the promotion of the applicant is in accordance with rules and Govt. instruction. Therefore, the applicant should not have been reverted. It is also pointed out in the said letter dated 18.10.95 one Sri P.C. Dutta a general category candidate has been promoted as an Asstt. against the reserved post of SC/ST which does not seems to be in accordance with the instruction of the Govt. of India. The relevant portion of the letter dated 18.10.95 annexed as Annexure- IX of the OA quoted below :-

To

The Registrar,
Central Administrative Tribunal,
Guwahati Bench, Guwahati.

Sub :- Representation from S/Sh. S.K. Das, UDC and K.M. Rabha, UDC, CAT, Guwahati Bench reg. reversion to the post of UDC from Assistant reg.

Sir,

Two persons, namely, S/Sh. S.K. Das, UDC and K.M. Rabha, UDC, were promoted by the Guwahati Bench against the vacancies reserved for SC/ST respectively, and an information was sent to the Principal Bench to this effect. However, Principal Bench wanted certain information and some quarries were made to the Guwahati Bench to send information on that points. It appears that instead of replying to the said quarries, the Guwahati Bench reverted the aforesaid two persons without any information to the Principal Bench which should not have been done without verifying the roster point reserved for SC/ST candidates for promotion to the post of Assistant. In case the roster point for the aforesaid two persons were lying vacant, their promotion was in accordance with the Rules and Govt. instructions and in the ordinary course, they should not have been reverted.

From the correspondence it has further revealed that after reversion of the aforesaid two persons, one general category candidate has been promoted as an Assistant against the reserved post of SC/ST, which does not seem to be in accordance with the instructions of the Govt. issued from time to time. " 46

From the above observation, it appears that it was categorically admitted by the then Acting Registrar that the applicant should not have been reverted from the post of Assistant to UDC by the impugned order dated 11.2.94. It was further admitted that the applicant have been promoted against the vacant reserved post of SC/ST. Therefore the impugned order dated 11.2.94 is liable to be set aside and quashed and the applicant is entitled to restore to the post of Asstt. with all consequential service and monetary benefits.

In support of the applicant placed reliance in the following decision where the Apex Court as well as the different Benches of the Hon'ble Tribunal held that reversion or reduction in rank without affording any opportunity or without following principle of natural justice is violative of the Article 311 of the Constitution.

1. 1986 (3) SLJ, CAT. 338 (A. Marimuthu vs. Collector of Customs & Excise, Madurai) decided on 9.5.86 by the Hon'ble Madras Bench of the CAT.
2. ATJ 1996 (2) page 596 (Shiva Raj Singh Vs. The Inspector General of Prisons, New Delhi & Ors.) decided on 24.9.1996 in OA No. 1543/93 by the CAT, Principal Bench, New Delhi.

OA 123/94 (Nareswar Prasad Verma Vs. Union of India & Ors.) decided on 20.7.95 by the Hon'ble CAT, Patna Bench.

The relevant portion of the aforesaid decision which is in Swamy's News, May, 1996 is annexed herewith wherein it is held that reversion order passed without issuing any show cause notice is not sustainable in the eye of law as the same is violative of principle of natural justice and arbitrary attracting the provision of Article 14 of the Constitution of India. Annexure - II.

(and article 311(2))

In the light of the aforesaid decision the case of the applicant is deserved to be allowed with cost as the applicant is similarly situated. Therefore, the case of the applicant is squarely covered by the above decision. The applicant also like to draw attention of the Hon'ble Tribunal of para-6 of the Judgment and order passed in the case K. Ajit Babu and Ors. Vs. Union of India & Ors. (1997(6) SCC, Page 473) where it is held by the Supreme Court that the case ^{should be} decided alike. The relevant portion of para 6 is quoted below :-

" para-6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent." The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissent, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches. The larger Bench, then, has to consider the correctness of the earlier decision in disposing of the later application. The larger Bench can overrule the view taken in the earlier judgment and declare the law, which would be binding on all the benches

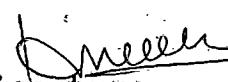
(see John Lucas). In the present case, what we find is that the Tribunal rejected the application of the appellants thinking that the appellants are seeking setting aside of the decision of the Tribunal in Transfer Application No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law."

In the facts and circumstances stated above the application deserved to be allowed with costs.

VERIFICATION

I Shri K.M. Rabha son of Sri B.K. Rabha working as Assistant in the office of the Central Administrative Tribunal, Guwahati Bench, Guwahati, applicant of the above case, do hereby declare and verify that the para 1, 2, 3 & 4 are derived from the records and rests are my humble submission before the Hon'ble Tribunal.

I sign this verification this day of 27th April, 1998 at Guwahati.


Signature

(K M RABHA)
Applicant.

Annexure - I

July, 1996

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Swamysnews

No. 13 (2)/IC/92, dated 7-4-1995 (Sl. No. 122 of Swamy's Annual, 1995), which were endorsed to all Heads of Postal Circles vide this Office Order No. 2-1/95-PE-I, dated 19-6-1995, will now be applicable to the Group 'D' non-test category employees.

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G.I., Dept. of Per. & Trg., O.M. No. 36027/67/95/Estn. (Res.), dated 12-3-1996

Ban on creation of posts/filling up of vacancies are not applicable to posts reserved for SCs/STs

Various Ministries/Departments were requested to review the position relating to representation of Scheduled Castes and Scheduled Tribes in Government services vide Ministry of State for Personnel's D.O. letter, dated 9-8-1995, to the respective Ministry. Instances have come to notice that difficulties are being experienced while filling up of reserved vacancies due to the ban of fresh recruitment imposed by the Ministry of Finance.

2. It is once again brought to the notice of all Ministries that the ban on creation of posts/filling up of vacancies imposed vide Department of Expenditure's O.M. No. 7 (7)-E. (Co-ord.)/93, dated 3-5-1993 (Sl. No. 176 of Swamy's Annual, 1993) are not applicable to posts reserved for SCs/STs vacant for one year or more to the extent necessary for maintaining the reservation quota, taking into account filled up general quota posts.

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G.I., M.F., O.M. No. 7 (7)-E. (Co-ord.)/93, dated 3-5-1996

Clarifications regarding guidelines for processing cases for creation of posts/filling up of vacancies due to ban

The undersigned is directed to refer to this Ministry's O.M. No. F. 7 (1)-E. (Co-ord.)/84, dated 20-6-1984, as amended from time to time on the subject indicated above and to state that instructions already exist for ban on creation/filling up of posts and the procedure for relaxation thereof in exceptional circumstances. Some doubts which arose in this regard were also clarified from time to time. Further clarifications are, however, being sought by various Ministries/Departments, etc., regarding the following two points. The matter has been considered in this Ministry and the correct position is clarified below against each point.

Point 1.—Whenever higher level posts are abolished, whether junior level posts are also to be abolished as a consequence thereof?

Swamysnews

Clarification will be necessary, level post(s) similar to be desirable to be restructuring and result of abolition.

Point 2.—whether the posts by the Adminis.

Clarification for a period of one Integrated Financial year of such posts a month of the period of one year. The procedure for cancellation briefly set out below.

Plan Post.

Group 'A' created with the Department prior to

(i) The estimated cost;

(ii) The post norms;

(iii) Group 'A' Finance

Non-Plan of Joint Secretary approval of Central Government

(ii) Group 'A' Secretary and the approval of a plan and non-superfluous as a non-plan post. Surrender of posts of promotion

Posts with functional jurisdiction

SN-4

Section 27(1)(a)
পুরুষ অধিকারী (প্রাপ্ত)
Central Administrative Tribunal
কেন্দ্রীয় প্রশাসনিক প্রিমিয়াম
Guwahati Bench, Guwahati-6
গুৱাহাটী প্রায়াপুর, গুৱাহাটী-৬

Anne & one - 111

claim of the applicants and R. Nos. 18 to 25 for the purpose of promotion to the cadre of Wireless Maintainer, Grade II as admissible with effect from 1-1-1984 against the posts arising from cadre restructuring along with others on the basis of the seniority list as on 1-1-1984 of Wireless Maintainer, Grade III of Eastern Railway in accordance with law.

[*Shyamal Chakraborty and others v. Union of India and others*, 5/96
Swamysnews 421, (Patna) date of judgment 18-7-1995]

O.A. No. 580 of 1992

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✓ Government can revise its decision on wrong promotion by reversion on detection of mistake, but doing so without a show-cause notice is violative of principles of natural justice and arbitrary

Facts: The applicant was appointed to the post of Geologist (Junior) on 2-5-1979 on the basis of a competitive examination held by UPSC in the Geological Survey of India. He was promoted along with others to the post of Geologist (Senior) on 24-6-1992 on the basis of the recommendations of a DPC held on 6th and 7th February, 1992. He was reverted from that post to Geologist (Junior) retrospectively with effect from 24-6-1992 and was again promoted as Geologist (Senior) with effect from 18-2-1992. It is on record that the promotion of the applicant was against one of the 51 posts of Geologist (Senior) meant for SC/ST which were dereserved on the ground that eligible SC/ST officers were not available. The contention of the respondents is that dereservation was erroneous and subsequently the mistake was detected as it was found that eligible SC and ST candidates were available. Therefore, the respondents held a review DPC meeting on 3-9-1993, in which the cases of eligible SC and ST officers were considered for promotion to the grade of Geologist (Senior) and on the basis of the recommendations of the review DPC they were promoted as such and 37 officers working as Geologist (Senior), of which the applicant was one, were reverted retrospectively to the grade of Geologist (Junior) with effect from the date of their original promotion to accommodate SC and ST officers to whom the posts belong.

Held: The question is, whether the applicant has any legal right to the post of Geologist (Senior) with effect from 24-5-1992 and whether the retrospective reversion of the applicant from the post of Geologist (Senior) to that of Geologist (Junior) as ordered by the respondents is sustainable under the rules.

In *State of Punjab v. Jagdeep Singh and others* [AIR 1964 SC 1521], the Supreme Court has laid down the principle in the following words:

“Where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence, had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status.”

In the present case, the applicant was promoted to the higher grade post of Geologist (Senior) against one of the posts meant for SC/ST which was deserved erroneously on the assumption that eligible SC/ST officers were not available. Evidently, the applicant has no legal right to the post and but for the mistake, he would not have been promoted at all on 24-6-1992 and an officer belonging to the reserved community would have been promoted against the post at the material time.

In this view of the matter and relying on the law laid by the Supreme Court, our considered opinion is that, if due to some bona fide mistake a Government servant is promoted, the Government can certainly revise its decision at a later stage and rectify the mistake when it is detected. Failure to correct the mistake when detected amounts to allowing an illegality to perpetuate. It is totally undesirable to the concept of rule of law.

Nevertheless, the fact remains that in this case although the applicant was reverted retrospectively after about two years, no show-cause notice was issued to him before reversion. In other words, he was not given an opportunity of being heard before the impugned order of reversion was issued. We hold the impugned order of reversion without a show-cause notice as violative of principles of natural justice and arbitrary, attracting the provisions of Article 14 of the Constitution of India. It is not disputed that the Government has the right to rectify a mistake even at a later stage when it is detected, but the correction is to be done with due regard to the principle of natural justice.

[*Nareshwar Prasad Verma v. Union of India and others*, 5/96
Swamysnews 423, (Patna), date of judgment 20-7-1995]

O.A. No. 123 of 1994

Sealed cover in respect of promotion cannot be opened though the disciplinary proceedings have been dropped if criminal charge before Special Judge is pending disposal

Facts: The applicant joined the Income Tax Department as Inspector in 1961 and was promoted as Income Tax Officer, Class II in 1968. He was next promoted as Income Tax Officer, Class I in 1981 and he continued as such till 1988. The CBI had on 9-4-1986

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Fixed by the applicant -
Master M. C. Deka A.G.
11.11.00

IN THE MATTER OF :

O.A. No. 2175/97 (P.B.)

O.A.M. 194/96

Sri K.M.Rabha

-vs-

Union of India & Ors.

-AND-

IN THE MATTER OF :

Additional Rejoinder submitted by
the applicant.

The applicant abovenamed most humbly and respectfully
begs to state as under :

1. That with regard to the statement made in paragraph 3 of the written statement it is stated that the applicant joined on deputation in the Guwahati Bench of Central Administrative Tribunal on 4.10.1985. He was appointed as Upper Division Clerk on Adhoc basis with effect from 18.12.1986 following the Rules and also on the recommendation of the D.P. C., thereafter, his service to the cadre of Upper Division Clerk was regularised with effect from 29.11.90 again following the recommendation of the DPC. Therefore he is entitled to be treated as regular Upper Division Clerk from the date of his initial promotion i.e. 18.12.1986 as because initial ad hoc promotion to the cadre of UDC is made following the recommendations of the D.P.C. and the regular promotion is made to the

Contd...

cadre of UDC is required to be treated on regular service in the light of the Hon'ble Supreme Court judgement and order passed in the case of Direct Recruit Class-II Officers vs- State of Maharashtra reported in AIR 1990 (SC) 1607. The similar view was also expressed by the Hon'ble Tribunal in OA 184/1996 decided on 26.3.1997 (Mahesh Tailor & Ors. Vs. Union of India and Ors.) before the Jaipur Bench of the Hon'ble Central Administrative Tribunal (Copy enclosed). Moreover the procedure adopted by the Central Administrative Tribunal in the case of absorption of deputationist is wrong held by the Hon'ble Tribunal in O.A. No. 1067/95 decided on 10.7.96 (Govinda Vallabh Vs. Union of India & Ors.) reported in Swamy's Case Law Digest 1996/2 page 544. Therefore contention of the respondents that the applicant did not fulfil the required length of service in the cadre of UDC for attaining eligibility for the purpose of promotion to the cadre of Assistant is not correct. In view of the decision referred to above, the applicant should be treated as regular UDC and therefore applicant's promotion to the post of Assistant with effect from 15.12.93 should be considered in accordance with the provision of recruitment rules.

In view of the above factual position the application is deserves to be allowed with costs.

...Verification

V E R I F I C A T I O N

I, Sri K.M.Rabha, son of Sri B.K. Rabha working as Assistant in the office of the Central Administrative Tribunal, Guwahati Bench, Guwahati, applicant in the O.A. No. 2175/97 (P.B.), do hereby declare and verify that the statements made above are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 11th day of December, 2000.

Kamini Mohan Rabha
Signature

Professor for Health Education on 10-12-1985, it was not possible to promote him to the post as no post of Associate Professor was available. It is further stated by the respondents that no officer, belonging to the Speciality of Health Education was promoted as Associate Professor superseding the applicant.

Held: In view of the specific stand taken by the respondents in reply, we find that the applicant could not furnish sufficient materials to convince us that he was ever superseded by any officer junior to him either in the cadre of Assistant Professor or in the cadre of Associate Professor of Health Education. Rather we find that the applicant was given due benefit of promotion as a special case in the cadre of Associate Professor with effect from 5-8-1986, in relaxation of the Rules, though it was not possible to promote him according to normal rules and we are given to understand by the learned Counsel for the applicants that the applicant has since now retired. From the averments in the application, we are convinced that the grievance of the applicant regarding fixation of seniority in the grade of Assistant Professor arose before the year 1984 and he filed the case for getting promotion and seniority in the year, 1990 by filing O.A. No. 179 of 1990 which has been disposed of on 27-3-1992, by granting liberty to the applicant to raise the point of seniority, in spite of the promotion given to him in the rank of Professor. It does not mean that the applicant is entitled to get correction of seniority in the cadre of Assistant Professor after 10 years on 30-7-1992 on the date of filing the earlier application. The applicant could have come before the proper forum for getting appropriate relief in respect of the seniority position without wasting his time when he found that his seniority was not rightly placed in the cadre of Assistant Professor in pursuance of Rule 6 and 8 of Central Health Services Rules, 1982. Such inordinate delay in seeking relief before the proper forum would surely disentitle the applicant to get protection of seniority after a lapse of 10 years and it would be unwise on our part to disturb the seniority of the persons who have already settled in a position in service during the period of 10 years or till date. So, we find that the application badly suffers from laches on the part of the applicant for inordinate delay in seeking remedy before the appropriate forum in this case and we do not find any merit in the application in view of the reasons stated above and hence the application is liable to be dismissed.

437. Swamy's CL Digest 1997/1

CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

V. Vijayakumar v. Union of India and others

O.A. No. 438 of 1994 Date of Judgment 11-3-1997

Railway Board circular, dated 21-6-1962 read with clarificatory letter dated 18-6-1990 does not unsettle the seniority of Senior Clerks who were already in that cadre before a Typist joins as a Junior Clerk

Facts: The main contention of the applicant in this OA is that the Railway Board's letter, dated 21-6-1962 stipulates that a Typist on his change of

cadre as Clerk is to be given seniority in the Clerical cadre from the date he joined as Typist and that the seniority fixed as above should be carried ahead when promoted as Senior Clerk and the Typist should be interpolated in the seniority of Senior Clerks above that of those who joined as Junior Clerk later than the date of their entry as Typists. It is further contended that the promotion to the next higher post of Head Clerk should be regulated on that basis. If no vacant post of Head Clerk is available, then promotion to the post of Head Clerk should be given immediately when a post becomes vacant. The applicant also submits that this is in accordance with the Railway Board clarificatory letter No. E (NG)I/90/PML/12, dated 18-6-1990.

Held: We have examined both the view points. The Railway Board's letter dated 21-6-1962 stipulates that a Typist who came to the Clerical cadre will count his seniority from the date of his joining as Typist. The clarificatory letter dated 18-6-1990 states that the fixation of seniority as above is only in the cadre of Junior Clerk. The promotion to the next higher grade of Senior Clerk will be regulated on the basis of the above seniority. Once he is promoted as Senior Clerk his seniority in Senior Clerk cadre will be reckoned from the date of his entry as Senior Clerk. The above clarification, in our opinion, is in order as (i) the settled seniority of the Senior Clerks who were already in that cadre before a Typist joins as a Junior Clerk cannot be unsettled. (ii) The option given to the Typists to come over to the Clerical cadre is to further their career prospects. The second reasoning is due to the fact that the promotion in the Typist cadre is not that good compared to that of the Clerical cadre. A Typist who is competent to be posted as Clerk on the basis of a positive act of selection may be able to go up in the ladder due to his ability.

The applicant in the present case was regularized as Typist with effect from 31-3-1982. When he joined the cadre of Junior Clerk on 21-5-1992, his seniority position in that cadre was interpolated as if he joined that cadre on 31-3-1982. He was promoted as Senior Clerk on 20-10-1992 waiving the two year service eligibility period as Junior Clerk for promotion as Senior Clerk. When he was promoted as Senior Clerk his seniority of the applicant as reflected above in the seniority list of Junior Clerks and Senior Clerks is in accordance with the Railway Board's letter dated 21-6-1962 read with the clarificatory letter dated 18-6-1990. On the basis of the assigned seniority in the cadre of Senior Clerk, he has to seek his further promotion to the next higher grade of Head Clerk. He cannot jump the queue for promotion to Head Clerk by granting him higher seniority in the cadre of Senior Clerk as prayed for by him.

438. Swamy's CL Digest 1997/1

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH

Mahesh Tailor and others v. Union of India and others

O.A. No. 184 of 1996 Date of Judgment 26-3-1997

(A)

Ad hoc service will also count for seniority, if the appointment was made after holding of DPC and against substantive vacancies

Held: In so far as the present case is concerned the appointments of the applicants on *ad hoc* basis were after holding the DPC and were against substantive vacancies. The respondents have not taken the stand in their reply to the present OA that the appointment of the applicants, on *ad hoc* basis was *de hors* the rules. The Principal Bench in *Ashok Mehta and others v. Regional Provident Commissioner and another* [T.A. No. 43 of 1987] and judgment dated 23-9-1993 has observed after referring to the earlier Full Bench judgment in *R.D. Gupta v. Union of India and others* [O.A. No. 1147 of 1988] that if an employee is promoted after the DPC found him fit for promotion that period should be counted for seniority even if the promotion has been described as *ad hoc* or temporary or officiating. Now in this case a DPC was held before the applicants were promoted to the posts of UDCs even on *ad hoc* basis. It is a different matter that another DPC was held before they were considered for regularization. It is not the case of the respondents in the present OA that the first DPC was qualitatively inferior to that held subsequently or that rules were not applied while considering the applicants for promotion when the first DPC was held. Thus in our view when the appointment of the applicants even on *ad hoc* basis was after holding of the DPC and was not *de hors* the rules and was against substantive vacancies, the observations of the Full Bench in *R.D. Gupta's case (supra)* would apply to the facts of the present case. As regard the conclusions of the Full Bench in *Ashok Mehta's case (supra)* the observations that promotion by way of *ad hoc* or stop-gap arrangement made due to administrative exigencies and not in accordance with rules would not count for seniority, would not be applicable in the facts of the present case in view of the position that the appointments of the applicants were after holding of the DPG and against substantive vacancies. There is nothing in the judgment in *Ashok Mehta case (supra)* which militates against the claim of the applicants that *ad hoc* services rendered by them prior of their regularization should be considered for recurring their seniority in the post of UDCs. Therefore, in our view there was no justification for the respondents to revise the seniority of the applicants in the light of the judgment of this Bench of the Tribunal in *Ganesh Narain Chawla and others v. Union of India and others* [O.A. No. 15 of 1991 decided on 23-9-1993] where in any case no specific directions were given as to how exactly, seniority of the applicants was to be revised. Although there were indeed directions therein that the seniority must be revised, there was also a direction to the respondents to follow the relevant judgments on the subject and apply rules while doing so. After the directions were given by the Tribunal for revising the seniority list, it was for the respondents to apply the principles of determination of seniority correctly in the light of various judgments of the Tribunal, the Hon'ble Supreme Court and the rules. We hold that in the facts and circumstances of the present case exclusion of *ad hoc* service rendered by the applicants prior to their regularization on the post of UDC is not justified. This is notwithstanding the fact that in the order of appointment of the

applicants their initial appointment has been described as *ad hoc* and it has further been stated that this would not confer any right on them to claim seniority in the post of UDC. We are making this observation for the reason that the correct legal principles have to be applied while determining the seniority and the true nature of the *ad hoc* service rendered has to be considered while applying such principles. We accordingly direct the respondents to once again revise the seniority list Annexure A-2 after counting the *ad hoc* service rendered by the applicants in the post of UDC.

(B)

Procedure for determining the seniority whose *ad hoc* appointments have been made against vacancies meant for Departmental Examination quota

Held: A question was raised during the arguments that some applicants had been appointed on *ad hoc* basis against the vacancies meant for Departmental Examination quota and, therefore, the period of service which was rendered by them against the vacancies meant for Departmental Examination candidates before their adjustment against vacancies meant for applicants themselves who were to be appointed on the basis of seniority-cum-fitness had to be excluded for the purpose of reckoning their seniority. However, it has already being held in *Mohinder Kumar case* that persons coming from both the streams, i.e., those appointed on the basis of seniority-cum-fitness and those coming through Departmental Examination have to be counted as promotees. Therefore, in this context, the judgment of the Hon'ble Supreme Court that total length of service has to be considered for the purpose of determining seniority assumes relevance. Also in *Ashok Mehta case* the Full Bench has held that rota quota principle will not apply while determining seniority in these cases. Accordingly, the total service rendered by the applicants including that on *ad hoc* basis has to be taken into consideration for the purpose of determination of their seniority.

439. Swamy's CL Digest 1997/1

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

Gurmukh Singh v. Union of India and others

O.A. No. 906/CH of 1995 Date of Judgment 30-4-1997

Where the authorities have acted in gross violation of all the prescribed rules and norms prevalent in preparation of the tentative seniority list, the same should be quashed

Held: This is yet another application by one of the employees of the Government, who has been denied his due regularization on absorption due to the obduracy of the respondent department. The unfortunate fact is that this obduracy is on the part of the Principal Bench of the Central Administrative Tribunal, an institution created under the Constitution of India rendering justice to Central Government employees and all those Central Government officials working with the State Administrations of the country. Reasonably the