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10/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 195/96

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SECTION OFFICER (Judl.)

Sukh
30/11/18

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

CA No. (195/96) of 21/6/92 P.B

Sh. S. K. Das Applicant(s)

Union of India & or. Respondent(s)

Mr. B. Banerjee Advocates for the applicant(s)
Mr. M. Chanda

Mr. G. Sarma, & or. 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
IPO No. 3460/13
Dated 2.9.96

Secy
Dy. Registrar 5/9/96
6/9

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.

Member

18.9.96 Mr. M. Chanda for the applicant.
Mr. G. Sarma, Addl. C.G.S.C. for
the respondents.

Issue notice before admission.
List for consideration
admission on 15.11.1996.

Member

trd

15.11.96 Mr B. Banerjee for the appli-
cant. Mr G. Sarma, Addl. C.G.S.C
for the respondents.

Service reports are awaited
Mr Sarma prays for further time
submit show cause. Allowed.

List on 13.12.96 for show
cause and consideration of admi-
ssion.

Member

25.9.96

Notice issued to the
concerned parties
vide D. No. 3242

Bar dt. 25.9.96

Service Reports are still awaited.

12/11

Service Reports are still awaited.
Show Cause has not been
submitted.

12/12

13.12.96

Mr M.Chanda for the applicant. Mr G.Sarma, Addl.C.G.S.C seeks time to file show cause. Allowed.

List for show cause and consideration of admission on 17.1.97.

Member

pg

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.

Member

pg

17/1

10.2.97

Let this case be listed on 14.2.1997.

Vice Chairman

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

nkm

18/2

Service Reports are still awaited.

Show cause has not been filed.

6/2/97

1) Show cause has not been filed.

2) Service Reports are still awaited.

3) Memo of appearance has not filed by the U.S.I.

13-2-97

1) Case is adjourned 4 (four) times for show cause.

2) Notice duly served on Respondent No-3. Service reports are awaited from Respondent No-1 & 2.

19-2-97

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

21-2-97

Heard Mr.B.Banerjee learned coun for the applicant and Mr.G.Sarma Addl C.G.S.C. for the respondents.

Perused the contents of the appl cation and relief sought. Application is admitted.

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

Vice-Chairman

5.3.97

Notice and order dtd 21.2.97 issued to the Calcutta Police vide D.No.702+704 by Registrar post A/D.

Bu

Notice duly served ^{lm} on R.No-173 ^{5/3}

4-4-97

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

1) Notice duly served on R.No. 173
2) on R.No. 2 are still awaited.
3) No W/S by himbin.

pg
fr
214

25-4-97

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

Vice-Chairman

Written statement has not been filed by the respondents

lm

fr
281A

2-5-97

Mr.G.Sarma learned Addl.C.G.S.C. again prays for extension of time to file written statement. Several adjournments have already been granted. I am not inclined to grant any further adjournment.

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

Vice-Chairman

19.6.97

1) Notice duly served on R. 1 to 3 (kept in OA 194/96.

2) NO written statement has been filed.

fr
19/6/97.

lm

fr
6/5

Place X H X before X the X Vice X Chairman X Box

XiX-XCNXiXnXiX

20.6.97



nkm

My dear Mr. Garrison,

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.

62
Member


Vice-Chairman

[illegible]




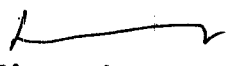

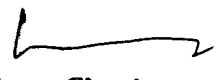
(15)

SA 195/96

5

Notes of the Registry	Date	Order of the Tribunal
<p>Flag 'X' may kindly be seen. As per order of the Hon'ble chairman, this OA has been re-transferred to this Bench & final hearing & disposal of the OA.</p> <p>This case is ready for hearing.</p> <p>Earlier there was a letter at flag 'A' that this case will not taken up by the Hon'ble present Vice-Chairman & Member and was requested to the Principal Bench to constitute a Division Bench to hear the case.</p> <p>placed before the Hon'ble Cant- & Ho. orders.</p> <p>8/12/98 8/12/98</p> <p>Registration 8/12/98</p> <p>11.2.99</p> <p>Flag 'X' is from P.B. CAT</p> <p>in view of the flag 'X' the applicant has filed written objection at flag 'A'.</p> <p>placed before the Hon'ble Cant- & Ho. consideration & order.</p> <p>11.2.99</p> <p>JK</p>	<p>10.12.98</p> <p>pg</p> <p>28/12/98</p> <p>29.12.98</p> <p>(A)</p> <p>30.12.98</p> <p>nkm</p> <p>12.2.99</p> <p>15.2.99</p>	<p>Seen the order passed by the Hon'ble Chairman, Central Administrative Tribunal, Principal Bench.</p> <p>put up before the Vice-Chairman on 29.12.98.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Put up tomorrow.</p> <p>By order</p> <p>Present: Hon'ble Mr Justice D.N. Baruah Vice-Chairman</p> <p>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.</p> <p>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.</p> <p>Vice-Chairman</p> <p>Advised to 15.2.99.</p> <p>By order</p> <p>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.</p> <p>The applicants have filed</p>

21/195/96

Notes of the Registry	Date	Order of the Tribunal
	15.2.99	<p>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. In the said letter the order dated 4.1.99 passed by the Hon'ble Chairman is referred to. Hon'ble Chairman has passed the following order</p> <p>"Cases may be transferred to Principal Bench if parties do not object."</p> <p>The applicants have filed objection and requested the Tribunal to hear the matter at Guwahati.</p> <p>Heard Mr J.L.Sarkar, learned counsel appearing on behalf of the applicant. He submits that it will not be possible for the applicant to go to Delhi and appear before the Principal Bench by engaging a lawyer. Mr B.S.Basumatary, learned Addl.C.G.S.C has no objection in hearing the matter at Principal Bench. In view of the above the Registrar shall communicate to the Principal Bench with copy of the objection filed by the applicant.</p> <p> Member</p> <p> Vice-Chairman</p>
<p>18.2.99</p> <p>A letter alongwith the order dt. 15.2.99 & objection sent from the separate file by speed post.</p>	pg 17/2/99	
<p>An additional order was given by the applicant on 11/12/99</p> <p>A.K.S. 11/12</p>	12.12.00	<p>Records has not been produced to-day. List it again for records on 15.12.00 for hearing.</p> <p> Member</p> <p> Vice-Chairman</p>
	15.12.00	<p>Heard learned counsel for the parties. Hearing concluded. Judgment reserved.</p> <p> Member</p> <p> Vice-Chairman</p>
	lm	

5
OA-2176/97.

Item-32

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 to be
sent to applicant
Reply not filed
by the applicant
be taken into account*

Item-20

OA-2176/97

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.

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

(DIWAKAR KUKRETI)
JOINT REGISTRAR

/Kant/

*hit to C.S.
to name it (2)
h
all*

5.2.1998

34.

OA-2176/97

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

Shri Mehta prays for four weeks time
for reply.

List on 11.3.98.

(Mrs. LAKSHMI SWAMINATHAN)

(S.R. ADIGE)

Member (J) Vice Chairman (A)

/GK/

Replied

List in C-II
as there is no
D.B. in C-II

197

Item No.17

O.A.No.2176/97


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.


(S.P. BISWAS)
MEMBER (A)


(T.N. BHAT)
MEMBER (J)


Reply not filed


43 /PB/
8/4/98

Present: Sh. N.S. Mehta, Counsel for the Applicant.

None for Applicant.

Learned Counsel for the respondent seeks and is allowed further two weeks time to file the counter reply. The Applicant will have, thereafter, one week to file the rejoinder, if any.
Call on 15/5/98.


(S.P. BISWAS)
M(A)


(T.N. BHAT)
M(J)


Pleading Complete

17

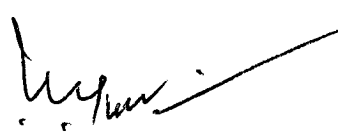
15.5.1998

OA No. 2176/97

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 ^{to} ~~for~~ 24.7.1998. A copy of this order be sent to the applicant.


(R.K. Ahooja)
Member (A)


(T.N. Bhat)
Member (J)

na

Notes of the Registry	Date	Order of the Tribunal
<p>27.12.2000</p> <p>Copy of the Judgment has been sent to the D/Sec. for issuing the same to the applicant as well as to the Respondent.</p> <p>nk</p> <p>8.12.01</p> <p>As per order dt. 12.1.01 passed in no 16/2001, date are corrected accordingly in OA.</p> <p>by 8/2/01</p> <p>SR</p> <p>SR 8/2/01</p>	<p>22.12.00</p>	<p>Judgment pronounced in open Court, kept in separate sheets.</p> <p>Application is allowed.</p> <p>Return the records.</p> <p>Member (A) Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal
13		

Ann-15

- 5 -

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

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-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.

ORDER

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.

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 4.10.1995. 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

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 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 ... 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....

58 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 Sri 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

Contd...

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

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

Contd...

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.

22 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 com to such unilateral decision. In this case these applicants were selected on

Contd..

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 the those two applicants to be fit for promotion to the post of Assistants. 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

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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 promotions (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 despondents 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

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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

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32 & 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.

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

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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.

Sd/ VICE CHAIRMAN
Sd/MEMBER (Adm)



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My 27/12/20
Deputy Registrar (G)
Central Administrative Tribunal,
Guwahati Bench
27/12/20

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.198 of 2000

Date of decision: This the 12th day of December 2000

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

The Hon'ble Mr M.P. Singh, Administrative Member

Shri Jatindra Chandra Roy,
Working as Telecom Office Assistant Gr.IV,
Office of the Chief General Manager, Telecom,
N.E. Circle, Shillong.Applicant

By Advocates Mr M. Chanda,
Mrs N.D. Goswami and Mr S. Ghosh.

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Communications,
Department of Telecommunication,
New Delhi.
2. The Director General,
Department of Telecom Service,
New Delhi.
3. The Chief General Manager, Telecom,
N.E. Circle, Shillong.
4. The General Manager, Telecom District,
Meghalaya, Shillong.Respondents

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

.....

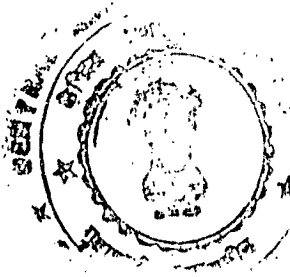
O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

The legality of the order dated 1.6.2000 reverting the applicant from Grade IV post to Grade III cadre of Telcom Office Assistant (General) is the subject matter of this O.A..

2. The applicant was initially appointed as Time Scale Clerk on 27.6.1972 in the Office of the Assistant Engineer (Phones), Military, Shillong under CGMT, Shillong. He was promoted in terms of the Time Bound Promotion Scheme on completion of sixteen years of service during the year 1988.

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He was further promoted as Telecom Office Assistant (TOA for short) Grade I in the year 1990 and in the year 1992 he was promoted to the cadre of TOA Grade II. The applicant was thereafter promoted to the cadre of TOA Grade III. By order dated 26.6.1992 the applicant alongwith one Smt N.E. Marrisen (ST) was placed in Grade IV of the basic cadre of TOA with effect from 1.7.1992 or from the date of assumption of charge by the officials whichever was later, pursuant to the approval of the Chief General Manager, N.E. Telecom Circle, Shillong. The applicant in terms of the order of promotion joined in the cadre and started discharging his duties. By the impugned order dated 1.6.2000 the applicant was reverted to Grade III cadre of TOA with effect from the date of issue of the impugned order in pursuance of Department of Telecommunication Order No.22-6/94/TE-II(Vol.III) dated 30.12.1999. The applicant has challenged the impugned order dated 1.6.2000 as arbitrary, discriminatory and violative of the principles of natural justice.



3. The respondents have contested the claim of the applicant and submitted that the respondents resorted to the impugned reversion to accommodate only eligible official to Grade IV against 10% posts in BCR Scheme as per the judgments of the Supreme Court and the Ahmedabad Bench of the Central Administrative Tribunal. No such orders are produced before us, but the applicant has produced before us an order dated 2.6.2000 passed by the Principal Bench of the Central Administrative Tribunal in O.A.No.425 of 2000, wherein the Principal Bench has set aside the order dated 30.12.1999 which was the basis of the impugned reversion order.

4. In view of the order of the Principal Bench and also considering the fact that the impugned order of reversion dated 1.6.2000 was passed after eight years without giving any opportunity to the applicant, we hold that the impugned order of reversion dated 1.6.2000 as illegal and accordingly the same is set aside.

5. The application is accordingly allowed. The applicant shall be given the consequential benefits.

No order as to costs.

Sd/-VICECHAIRMAN
Sd/MEMBER (A)

Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (J)

सहायक अधिकारी (न्यायिक शाखा)
National Administrative Tribunal

राष्ट्रीय प्रशासनिक अधिकरण
Principal Bench, Guwahati
पञ्जाब की न्यायपीठ, गुवाहाटी

O.A.No.195/96

Refe:- F.No.PB/4/19/96-R

dtd.22.8.97

As per order of the Hon'ble Chairman dtd. ^{16.7}22.8.97
(Flag'X') the O.A.No.195/96(Sri S.K.Das vrs.U.O.I.&ors)
is to be transfered to the Principal Bench of Central
Administrative Tribunal for hearing.
Ibid for favour of necessary orders.

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Dy.Registrar

Ld. Registrar

Lay before Honble Court for
Orders.

1/9/97

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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 order.

J. Legr.

26/6/97

Submitted before Hon'ble Vice-Chairman for favour of passing necessary Administrative order.

26/6/97

Hon'ble Vice-Chairman.

Let this case be taken up by a bench with me and the Hon'ble Member (A) & this bench Registrar to write to the principal Bench accordingly

D. D. 30.6.97

Hon'ble Vice-Chairman has sent a DO. No. today to the Hon'ble Chairman.

11/7/97

D.D.

So letter sent vide no. 866 dtd. 1.7.97.

for 1/7

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

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

Title of the Case :

OA No. 195 of 1996

Shri Swadesh Kumar Das

Applicant

Versus

Union of India & Others

Respondents.

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Date of filing : 5.9.96

Registration No. OA 195/96

Registrar 5/9/96

Recd 6/9/96
Golap Sarma.
AO (GSC)
CAT-
Guwahati
5.9.96.

Filed by the applicant
through M. Chandra.

1. Particulars of the applicant

Shri Swadesh Kumar Das, U.D.C.
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 dt. 15.12.93 of the applicant and for
setting aside and quashing of the order of reversion
no. 139/Pro/90-Estt/294 dated ^{15.12.93} 11.2.94 and for treating
applicant as Assistant, w.e.f. 12.2.94, with all con-
sequential service benefit and monetary benefit.

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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 Caste Community. The applicant initially appointed as Lower Division Clerk through Staff Selection-Commission in the Ministry of Defence, Air Head Quarters, New Delhi and joined on 20.4.83 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 13.11.1985.

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 26.9.88. That the applicant is found fit and the Hon'ble Central Administrative Tribunal being satisfied with his 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 27.9.88 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 Central Administrative Tribunal was pleased to absorb the applicant on permanent basis with effect from 1.11.89 and also allowed to continue as UDC indefinitely till regularisation since the applicant working against the regular vacancy of UDC 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 dt. 6.12.90.

A copy of the Office Order regularising the promotion issued under letter No. 139/Pro/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 - Caste in the pay scale of Rs. 1400-2600/- with effect from 1.6.1992 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 Caste 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

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recommendation of the DPC your applicant is promoted against the Scheduled Caste vacancy along with Shri K.M. Rabha, ST. vide office order under letter no. 139/Pro/90-Estt/1999 dated 15.12.93 in the pay scale of Rs.1640-2900/- in term of the said promotion order 15.12.93. The applicant continue 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/Pro/90-Estt/294 dated 11.2.94 issued order of reversion with effect from 11.2.94 A.M. wherein it is stated that in pursuance of the decision of the Review DPC dated 9.2.94, Hon'ble Vice Chairman had been pleased to rescind the order of Promotion of the applicant and of Shri K.M. Rabha to the post of Assistant issued vide office order dated 15.12.93.

This illegal order of reversion is ~~not~~ passed in violation of existing rule and also without following Principles 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 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 and 13.6.95 / addressed to the Deputy Registrar of the Guwahati - Bench, 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 13.6.95
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 queries were made to the Guwahati Bench to send information on that points and it is also stated in the said letter that it appears that instead of replying the said queries 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 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, UDC and K.M. Rabha, UDC, were promoted by the Guwahati Bench against the vacancies reserved for SC/ST respectively.

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and an ^{information} ~~inform-action~~ 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 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 above correspondence, it has further revealed that after reversion of the aforesaid two persons one general category candidate has been promoted as 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 rectification 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 is appeared 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 dt. 18.10.95 the present ^{applicant} application is expected that his case would be considered as in the last paragraph

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in the above letter it was indicated that the matter can be placed before the Hon'ble Chairman for rectification 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. 12.12.94 FN. 15.12.93.

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A copy of the letter dated 18.10.95 issued by the Acting Registrar, C.A.T.(PB, New Delhi is enclosed as Annexure-X. IX.

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, C.A.T.Guwahati Bench under the subject alleged harssement to the SC/ST candidate in the C.A.T., it is stated in the said letter dated 6.3.96

that Staff Ins-pection Unit (SIU) has recommended two posts of Assistant in Guwahati Bench. It is further stated that ^{as} ~~an~~ regard promotion of the applicant who is a Scheduled Caste candidate state that he has at present no claim for his promotion at Guwahati Bench as there is no backlog Scheduled Caste vacancy and next vacancy after promotion of Shri K.M. Rabha falls in the category for general candidate. It also stated in the said letter that one vacancy of Assistant to be filled by Scheduled Caste candidate is available in Ahmedabad Bench, in case the applicant for promotion in Ahmedabad Bench ^{is willing} his case can be considered for the same. It is also stated that the National Commission for Scheduled Castes and Scheduled Tribes and Department of Personnel & Training are pressing hard for redressal of grievances of Shri K.M. Rabha and Shri S.K. Das. ~~Thaxaxpaxix~~ In this connection it may also be stated that Shri K.M. Rabha was promoted in the Guwahati Bench against the backlog Scheduled Tribe vacancy on adhoc basis and the applicant stated that he was promoted initially on adhoc basis to the post of Assistant w.e.f. 1.6.92 and thereafter he was regularised following the recommendation of a duly constituted DPC vide order dated 15.12.93. But surprisingly he was reverted without following any Principle of natural Justice and also without stating any ground for such illegal reversion. Be it stated that he was regularised to the post of Assistant against the regular available Scheduled Caste vacancy. Therefore, the report if any submitted by the SIU in a subsequent date, the same cannot be taken into consideration for reconsideration of the illegal reversion. Therefore, it is crystal clear that the impugned order of reversion dated 11.2.94 is liable to be set aside and quashed.

The applicant also beg to state that the order dated 6.3.96 issued by the Deputy Registrar, Central Administrative Tribunal, Principal Bench, New Delhi whereby the claim of the applicant for redressal of grivences against the reversion order dated 11.2.94 is finally refused and a fresh cause of action started with effect from 6.3.96 as soon as the decision of the Principal Bench communicated under letter dated 6.3.96 without considering the illegal order of reversion from the post of Assistant. Rather it is stated that the applicant at present has no claim for his promotion in Guwahati Bench as there is no Backlog of SC vacancy and next promotion after promotion of Shri K.M. Rabha falls in the catefory for general candidate. The relevant portion of the letter dated 6.3.96 is quoted below :-

" 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 Ahmedabad Bench, his case can be considered for the same.

It is worthwhile to mention there 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.

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You are, therefore, requested to take immediate action in accordance with the direction/clarification given above under intimation to PB to enable us to send a suitable reply to the Govt."

From above, it is abundantly clear that in the Principal Bench decision not to redress the grievances of the applicant which was pressing since after the issuing of impugned illegal reversion order dated 11.2.94.

Therefore, a fresh cause of action arises w.e.f. 6.3.96

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and ^{application} the letter is well with-in the time limit prescribed in Administrative Tribunal Act 1985. The applicant after received the letter dated 18.10.95 eagerly writing *waiting* with the anticipation since the matter of illegal reversion is under active consideration by the Principal Bench a favourable order may be issued in his favour but surprisingly the letter dated 6.3.96, issued by the Principal Bench whereby refused to consider the claim as regard of his illegal reversion to the post of U.D.C. from the post of Assistant, therefore impugned order dated 11.2.94 which is liable to be set aside and quashed.

A copy of the said letter dated 6.3.96 is enclosed as Annexure-XI ~~XI~~ X.

xiv) That your applicant however, on receipt of letter dated 6.3.96 submitted a representation addressed to the Hon'ble Chairman Central Administrative Tribunal, Principal Bench, New Delhi where in it is informed that as the applicant is suffering from Malina/Gestric Ulcher, the applicant is not in a position

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to join in Ahmedabad Bench and requested for his posting at Calcutta Bench against any available vacancy. However, since there is no vacancy in Calcutta Bench the case of the applicant could not be considered in terms of his representation dated 25.3.96. However, vide Principal Bench letter No. PB/1/77/91-Estt-II/6729 dated 11.6.96 it is intimated that there is no vacant post of Assistant in Calcutta Bench and it is further stated that the promotion of Shri Das would be considered on his term and availability of vacancy of Assistant in the Guwahati Bench as there is no backlog vacancy for Assistant for Scheduled Caste.

In this connection, it may be stated that the present application is being preferred before this Tribunal against the arbitrary order of reversion dated 11.2.94 and pray before this Hon'ble Tribunal that the impugned order of reversion dated 11.2.94 be set aside and quashed and further be pleased to declare the applicant in continuous service in the post of Assistant with all consequential service benefits w.e.f. 15.12.93.

A copy of the representation dated 25.3.96 and letter dated 11.6.96 are enclosed as Annexure -XI.

~~This application is made bonafide and for the cause of Justice.~~

Chand
#24

form

-15

xvi) That your applicant further beg to state that the SC/ST roster points is never maintained in this establishment and it is seen that always excess recruitment is made in the cadre of Assistant from general category, 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 deserves to be promoted with all consequential service benefit including monetary benefit as the Scheduled Caste vacancy is occurred long back, in this establishment and applicant is eligible for promotion.

xvii) That there is a clear vacancy of Scheduled-Caste in there if roster points maintained strictly and the applicant is entitled to be promoted to the post of Assistant against the Scheduled Caste vacancy immediately.

this application is made bonafide and for the cause of Justice.

7

Relief prayed for :-

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

- i) That the applicant be promoted to the post of Assistant on regular basis with immediate effect.

- ii) That the impugned order of reversion bearing letter No. 139/Pro/90-Estt/294 dated 11.2.94 be set aside and quashed, and letter dated 11.6.96 also be set aside and quashed.
- iii) That the respondents be directed to treat the applicant to continuous service to the post of Assistant in terms of promotion order dated 15.12.93 with all consequential service benefits and monetary benefits w.e.f. 12.2.94 till reinstatement to the post of Assistant.
- iv) To pass any other order/orders as the Tribunal deem fit and proper in the facts and circumstances of the case.
- v) Cost of the case.

The abovereliefs 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 Caste by duly constituted Departmental Promotion Committee.
- ii) For that impugned reversion order is passed without following the Principle of natural justice.
- iii) For that the respondents did not provide any opportunity of show cause before passing the impugned order of reversion dated 11.2.94
- iv) For that no grounds or reasons stated in the impugned order or reversion dt. 11.2.94.
- v) For that the impugned order dated 11.2.94

is passed without complying the requirements laid down in Articles in 311 of the Constitution

- vi) For that the impugned order lead the Civil Consequences and the financial loss is a continuous wrong and therefore, cause of action arises everyday.
- vii) For that the illegal action of the Respondents is violated of the Article 14 and 16 of the Constitution. Therefore, the impugned order is liable to be set aside and quashed.
- viii) For that the quota rule of SC/ST is never maintained particularly in the matter of promotion of Assistant.
- ix) For that excess post is filled up from general category in the cadre of Assistant.
- x) For that the applicant is eligible for promotion to the post of Assistant.
- xi) For that the applicant is incurring financial loss regularly and further future prospect for non promotion to the post of Assistant.
- xii) For that presently one vacancy falls in Scheduled Caste quota of roster points maintained strickly.
- xiii) For that the applicant is eligible for promotion 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 save 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:-

1. IPO NO. 1 346013
2. Date of Issue : 2-9-96
3. Issued From : SPO, Guwahati
4. Payable at : — do —

12. Details of Index.

An Index showing the particulars of documents is enclosed.

13. List of ~~enclosures~~ enclosures

As per Index

Verification.

82/01

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19
-17-

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

I, Shri Swadesh Kumar Das, working as
UDC 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
this4th.....day of August, September, 1996 .


Signature.

(SWADESH KUMAR DAS)

(20) Annexure - 1
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

No. B2/S.K.DAS/1494-97

Rajgarh Road, Bhangagarh,
Guwahati- 781 005

Dated, Guwahati, the 27.10.88

In accordance with the approval of the Central Administrative Tribunal (PB), New Delhi, Shri Swadesh Kumar Das, LDC on deputation to this office is appointed as UDC, purely temporarily and on adhoc basis with effect from 26.9.88 in the scale of pay of Rs.1200-30-1560-EB-40-2040/- plus other allowances admissible as per rules, against the vacant post, in relaxation of the rules for a period of 1(one) year or till a regular incumbent is appointed to the post of UDC, whichever is earlier.

The appointment will be as per normal rules which govern adhoc appointment.

Shri S.K.Das will have no claim to seniority/promotion to the post of UDC is the parent cadre on the basis of this adhoc promotion in this office nor shall he be entitled to any financial benefit in the term of protection of pay drawn by him as UDC in the Central Administrative Tribunal.

His pay in the post of UDC will be regulated in accordance with the provision contained in FR-35.

Sd/-

(P.C. TALUKDAR)
DEPUTY REGISTRAR (A)

Copy to :-

1. The Dy. Registrar (A), Central Administrative Tribunal (PB), Faridkot House, Copernicus Marg, New Delhi. This refers to his office letter No.1/33/86-Estt/6476 dated 8.10.88.
2. The Pay & Accounts Officer, Central Administrative Tribunal Principal Bench, Nirvachan Sदन, 7th Floor, Ashoka Road, New Delhi, for information and necessary action.
3. The Accounts Officer, Central Administrative Tribunal 1, Guwahati Bench for information and necessary action.
4. Shri S.K. Das, LDC on deputation, Central Administrative Guwahati Bench, Guwahati-5.
5. Personal file of the official.
6. Spare.

Sd/-

(P.C. TALUKDAR)
DEPUTY REGISTRAR

Handwritten notes:
AH & Sd
Chh
Sd

1/25/89 - Estt. / 3773
No. ~~XX88/88~~XXXX.
Central Administrative Tribunal
Principal Bench

Amearne
me -
93
Feridkot House,
Copernicus Marg,
New Delhi-110001.

Dated: 18.5.1990.

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

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.A.F. 1-11-1989 against the posts indicated against each:-

S.No.	Name of the officer with present designation	Post against absorbed.
1.	Sh. P.C.Dutto, U.D.C.	U.D.C.
2.	Sh. K.M.Rodho, U.D.C.	L.D.C.**
3.	Sh. S.K.Doss, U.D.C.	L.D.C.**

** (S/Shri P.M. Rabha and S.K. Dass 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 advised.

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

Approved
Date
Signature

139/PROMOTION/90-Estt.
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Annexure-III

Rajgarh Road, Bhongair, Guwahati-781 005.

Dated Guwahati, the 5th 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.

(B.K. BANDYOPADHYAY)
REGISTRAR.

No.139/PROMOTION/90-Estt./

Dated Guwahati, the 5-12-90.

Copy to :-

1. The Deputy Registrar(Admn.), Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi-1.
2. The Pay & Accounts Officer, Central Administrative Tribunal, 7th Floor, Nirvachan Sadan, Ashoka Road, New Delhi-1.
3. The Accounts Officer, Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
- 4-5. Shri Kamini Mohan Rabha, UDC/Shri Swadesh Kumar Das, UDC, Central Administrative Tribunal, Guwahati Bench, Guwahati-5.
- 6-7. Personal file of the officials.
- 8-9. Service Book of the officials.
- 10-20. Spares.

(B.K. BANDYOPADHYAY)
REGISTRAR.

23

18

Annexure IV

No. 107/88-Admn. / 107
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
.....

Bejgarh 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 Mohan 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 would 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.

22/5/92
(B.K. BANDYOPADHYAY)
REGISTRAR.

Copy to :-

1. The Deputy Registrar(Admn.), Central Administrative Tribunal(PB) Faridkot 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.M. 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.

22.5.92
(B.K. BANDYOPADHYAY)
REGISTRAR.

Rajgarh Road, Bhangagarh
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 UDCs 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. Bhoomik
15/12/93
(K.K. BHOUMIK)
SECTION OFFICER.

Copy to :-

1. The Deputy Registrar(E), Central Administrative Tribunal (PB), New Delhi-1.
2. The Liaison Officer & FA&CAO, 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.

Attended
Shri
Das

K.K. Bhoomik
15/12/93
(K.K. BHOUMIK)
SECTION OFFICER.

25

Rajgarh Road, 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 UDCs from today the 11th February, 1994 (AN).

(Signature)
11/2/94
(K.K. BHOWMIK)
SECTION OFFICER

Copy to:-

1. The Deputy Registrar (E), Central Administrative Tribunal (PB), 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.

(Signature)
11/2/94

(Signature)
11/2/94
(K.K. BHOWMIK)
SECTION OFFICER

To

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

THROUGH PROPER CHANNEL

Subject :- 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 1.5.1992 on adhoc basis against the reserved post for Scheduled Caste vide no. 107/88-Admn. dated 22.5.92 and subsequently it had been regularised on 15.12.1993 vide no. 139/Pre/90-Estt/1999 dated 18.12.1993. But on 11.2.1994, I have been reverted to the post of U.D.C. vide no. 139/Pre/90-Estt/194 dated 11.2.94 (copies of the orders enclosed).

In the connection, I beg to request you to kindly look into the matter and to consider 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,

Enclo : As above.

Dated, Guwahati
the 27.4.1994

(SWADESH KUMAR DAS)
UDC

Attested
Dile
for

Annexure - VII

(27) Annexure-171
51

The Hon'ble Chairman
Central Administrative Tribunal
Principal Bench
Faridkot House, Copernicus Marg,
NEW DELHI - 110 001.

Dated, Guwahati, the 13.6.95

(THROUGH PROPER CHANNEL)

Sub: Prayer for promotion to the Post of Asstt.

Sir,

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

That Sir, I have been promoted to the Post of 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 U.D.C. on the
ground that I have not completed the desired length of service.

That Sir, it is reliable learnt that one post of Asstt.
in the Bench reserved for Scheduled Caste has been abolished
in few months back.

That Sir, as per the Govt. instructions posts reserved
for SC/ST cannot be abolished as per the austerity measures
of the Ministry of Finance.

Under the circumstances, stated above, I would like
to request you to kindly consider my case by relaxing the
length of service to take up with the Govt. & to allot the
reserved posts for SC/ST for promotion to the post of Asstt.
as considered earlier and for which act of kindness, I shall
ever grateful to you.

Yours faithfully,

(SWADESH KUMAR DAS)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
RAJGAH ROAD, BHANGAGAH?
GUWAHATI-781 005

Asstt. =
15/6

CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench, New Delhi

प्रधान न्यायपीठ

No. FB/1/77/91-2544.11

Parliament House, Copernicus Marg
New Delhi-110001.

Dated: 18.10.95

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 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/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

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केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi
प्रधान न्यायपीठ

-2-

Faridkot House, Copernicus Marg,
New Delhi-110001.

ractification 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,

(DIWAKAR KUKRETI)
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.

To:

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 SCU 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 deservation 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

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

Yours faithfully:

[Handwritten signature]

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

To
The Hon'ble Chairman
Central Administrative Tribunal
Principal Bench
Faridkot House
Copernicus Marg
New Delhi - 110 001.

(2)

Annex - XI
64

Dated, Guwahati: 15 25-396

(Through proper channel)

Sub: ^{Prayer} Request for promotion as Asstt.

Ref: Your letter No. PB/1/77/91-Estt-II/3123(A)
dated 6.3.96.

Hon'ble Sir,

Respectfully I beg to submit the following few lines for favour of your kind consideration and sympathetic order.

I was promoted as Asstt. on adhoc basic on 1-6-1992. Subsequently my service as Asstt. was regularised on 15-12-1993. However, unfortunately I was reverted as U.D.C. subsequently on 11-2-1994.

I belong to the S/C Community. Your Lordship has been kind enough to consider my case for promotion as Asstt. against the S/C vacancy available in C.A.T. Ahmedabad Bench. I am very grateful for special consideration shown to me. Ordinarily, I would have been very glad to avail myself of the golden opportunity. But unfortunately, I have been an acute patient of gastric ulcer technically known as melena. I have been hospitalised twice in serious condition in 1989 and 1994. In 1994 I was on the verge of death due to profuse vomiting of blood and was hospitalised in a critical condition. I have been constantly under treatment thereafter the great care is necessary in case of my diet and food.

Attested
by
[Signature]

In the circumstances I am afraid of the dangers involved in working in a far off place, where food habits and climatic condition are likely to undergo total change.

I would therefore, pray your Lordship to kindly to consider my case sympathetically keeping in view my delicate health problem.

Further, In 1994 there were four posts as Asstt. in respect of Guwahati Bench. I was appointed against one post of Asstt. reserved for S/C category. But that post has been abolished as it remained vacant after my reversion. According to the Govt. instructions contained letter No. A-110/3/5/93-AT dated 10th Oct '1994 and O.M. No. 7(70) (E.Coord)/93 dated 6.4.1994 Min. of Finance (copy enclosed) posts reserved for SC/ST candidates vacant for one year or more cannot be abolished even on remain temporary capacity. So, seems to be a strong ground for restoration of one post of Asstt. reserved for S/C candidate in Guwahati Bench according to the above instructions. If the post is restored I could be accommodate of in Guwahati Bench.

Alternatively, since the food habits in the eastern region are similar in nature I would have no objection to be posted as Asstt. in C.A.T. Calcutta Bench, if any vacancy is available.

May, I therefore, pray your Lordship to kindly consider my case sympathetically to accommodate me in Guwahati Bench itself by taking up the matter with the Govt. of India for restoration of the post of Asstt. reserved for S/C candidate. Alternatively I may kindly be accommodated in near by Calcutta Bench for which act of your kindness, I shall be ever grateful.

Yours faithfully,

(SWADESH KUMAR DAS)

U.D

केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi
प्रधान न्यायपीठ

(37)
No. PB/1/77/91-Estt. II
Faridkot House, Copernicus Marg.
New Delhi-110001.

Dated: 11.6.96

To

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

Sub: Representation of Shri S.K. Das for promotion
to the post of Assistant - regarding.

Sir,

I am directed to refer to your letter No. 82/S.K. Das/657 dated 23.5.96 on the subject cited above and to say that there is no vacant post of Assistant in the Calcutta Bench of the Central Administrative Tribunal against which the case of promotion of Shri S.K. Das can be considered. It is informed that the promotion of Upper Division Clerks is being done Bench-wise and it is not possible that he can be considered for promotion to some other Benches of CAT. However the promotion of Shri Das will be considered on his turn and availability of vacant post of Assistant in the Guwahati Bench as there is no back log of SC. He may be informed of the decision taken, accordingly.

Yours faithfully,

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

Attached
@hla
2/12

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO. 2176/1997 (PB)

SHRI S K DASS

*****APPLICANT

VERSUS

UNION OF INDIA & OTHERS

*****RESPONDENTS

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2.	A copy of 40 points Roster Annexure R-1	7
3.	Memo. of Appearance	8

PLACE: New Delhi
DATED: 3-4-98

RESPONDENTS *Dr. Rgr.*
THROUGH *CAT (PB)*

N. S. Nishit 3/4/98
CENTRAL GOVERNMENT
SENIOR COUNSEL

Copy sent to applicant
by Regd Post vide Dy No. 3274/A
dated 3-4-98

3/4/98

सर्व प्रतियां/CAT (PB) सर्व प्रतियां फाइल माईल टुडAY 213 APR 1998 फाइलिंग No. 4037 ऑफिस/रजिस्ट्रार

28
8

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO. 2176/1997 (PB)

SHRI S K DASS

*****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 Assistant 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.

3. That the applicant, Sh. S K Dass, a Scheduled Caste candidate, was offered promotion to the post of Assistant in Ahmedabad Bench of the Tribunal vide letter No. PB/1/77/91-EsttII, dated 6.3.96 (Annexure X to the OA) but the applicant expressed his unwillingness for moving out of Guwahati as stated by him in paras 6 (xiii) and (xiv). There is no post of Assistant available in Guwahati Bench against which the applicant could be accommodated. The present OA of the applicant is without any justification and deserves to be dismissed as pre-mature.

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 Ministry of Defence, Govt. of India, New Delhi w.e.f. 20.4.83 came on deputation to CAT as L.D.C. on 13.11.85. He was appointed as UDC on adhoc basis w.e.f. 26.9.88. 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 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:-

[Signature]

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

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

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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, Sh. K M Rabha (ST) has also been promoted as Assistant on adhoc basis w.e.f. 7.5.96 vide office order dated 6.5.96. There are only two posts of Assistant left on the cadre of the Guwahati Bench against the sanctioned 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 post of Assistant ^{as} and when regular vacanceis became available. It may be stated that there being no post of Assistant available in Guwahati Bench of the Tribunal, the applicant was offered promotion to the post of Assistant against SC slot in the Ahmedabad Bench of the Tribunal vide letter dated 6.3.96 (Annexure X to the OA) but the applicant vide his representation dated 25.3.96 (Annexure XI to the OA) expressed his inability to move out of Guwahati Bench.

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.

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

PLACE: NEW DELHI.
DATED: 3-4-98

[Signature]
RESPONDENTS *Dy. Ray*
THROUGH CAT

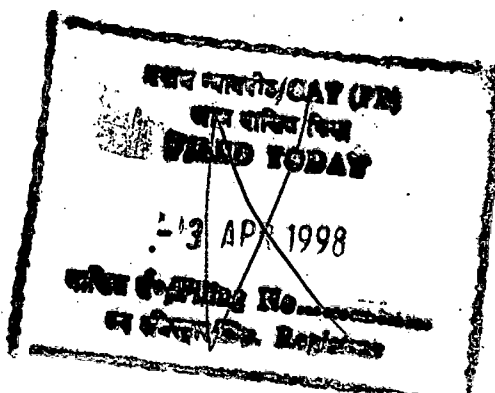
CENTRAL GOVERNMENT
SENIOR COUNSEL

VERIFICATION:

Verified that the contents of paras 1 to 3 of the Preliminary Submissions and paras 1 to 7 of para-wise 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: 3-4-98

[Signature]
RESPONDENTS



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

CTC
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW PRINCIPAL BENCH :: NEW DELHI

IN THE MATTER OF :

O.A. No. 2176/1997 (PB)

S.K. DAS 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 ~~interest~~ instant application the applicant has challenged the illegal action of reversion of the applicant ~~he~~ from the post of Assistant by the impugned order dated 11.2.94. Therefore, question of impleadment of Shri 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.

The applicant is concerned with the post of Assistant which belongs to Scheduled Caste category and was available since 1992 which was categorically admitted in the ~~letter dated 6.3.96~~ (Annexure promotion order dated 15.12.93 (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 Caste 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 in which gives clarification by the Govt. of India, Ministry of Finance. The relevant portion of the clarification is quoted ~~from~~ 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.

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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 post 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 be 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:-

"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.A. 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 (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."

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.

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Therefore, in the light of above clarification issued by the Govt. of India the post of Assistant reserved for Scheduled Caste 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 Caste is still vacant in the Guwahati Bench of the Central Administrative Tribunal..

2. That the applicant categorically deny the statement made in para 3 of the written statement (preliminary submission) and further beg to state that in the instant O.A. the applicant have challenged the impugned resersion order dated 11.2.94 (Annexure VI of O.A.), therefore the question of offer and exeptance as indicated in the letter dated 6.3.96 and also mentioned in the para 3 has no bearing with the question in the instant O.A., because the applicant pray for restoration of his promotion order dated 15.12.93 to the post of Assistant with all consequential service benefit and monetary benefits. Therefore the statement made in para 3 of the written statement (Preliminary submission) is an attempt by the respondent to cover up their lapses, and it is categorically denied that this application prematured.

3. 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 consituted DEC for filling up the then existing post of Assistant reserved for Scheduled Caste and knowing

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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 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 of 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 and monetary benefit which was extended vide order dated 15.12.93

4. 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 P.C. Dutta is shown against coloumn 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

J.N.

slot as shown in para 5 is false and misleading as the same was shown without any reference of Shri 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 detailed. 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 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 Sri S.K. Das is willing for promotion as Assistant in Ahmedabad Bench, his case can be considered for the same."

It is surprising to note that the above statement which is made by the Registry of the Principal Bench in his letter dated 6.3.96 where in it is stated that presently the applicant has no claim for his promotion to the post of Assistant, whereas the applicant was promoted to the post of Assistant vide order dated 15.12.93 following the recommendation of DPC against a regular vacancy of

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Scheduled Caste quota and in the statement made in para 5 it is specifically stated that there are at present two, unreserved post of Assistant are available which are regularly filled up by Sri J.N. Sharma and Sri J.C. Mahan. Therefore, it may be presumed from the statement made in para 5 that the reserved post of Assistant belong to SC category either abolished due to Govt. Austerity measure or in the process of implementation of S.I.U report, which is contrary to the clarification given by the Govt. of India so far reserved vacancy are concerned. Moreover, it further appears that presently there is no vacancy to the post of Assistant in the Guwahati Bench whereas there was a clear reserved vacancy of SC quota against which the applicant was promoted to the post of Assistant vide order dated 15.12.93. Therefore, statement of the respondents that there are only 2 unreserved post are available at present is contradictory of their own statement. Be it stated that the reserved SC vacancy of Assistant against which the present applicant was duly promoted vide order dated 15.12.93 is still available as the question of abolition of reserved SC post does not arise in the light of clarification given by the Govt. of India as stated above. Therefore the impugned order of reversion order 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 re-instated to the post of Assistant with all consequential service and monetary benefit.

for

The applicant further states that there is no bearing of offer and acceptance of promotion to the post of Assistant in the Ahmedabad Bench as the question raised in the instant application regarding validity of the order of reversion dated 11.2.94 and whether the applicant is entitled to restore to the post of Assistant in terms of order dated 15.12.93. However, in this connection it may be stated that, regarding offer and acceptance of promotion to the post of Assistant at Ahmedabad that the applicant have seriously suffered due to gastric ulcer and Melena in the recent past.

here

5. It is pertinent to mention 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 categorically admitted by the then Acting Registrar that the applicant alongwith one Shri K.M. Rabha, 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 K.M. Rabha 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 in 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 general category candidate has been promoted as an Assistant against the reserved post of SC/ST which does not seems to be in

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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 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 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~~ 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."

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 Appex 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, Madurari) decided on 9.5.86 by the Hon'ble Madras Bench of the CAT.
2. ATN-1996(2) page 596 (Shiva Raj Singh Vs. The Inspector General of Prisons, New Delhi & Ors.) decided on 24.9.96 in OA No.1543/93 by CAT, PB, New Delhi.
3. ~~(1995) 29 ATC 532 (SC) (Arunaben T. Bhojak Vs. Secy. Ahmedabad Education Society, Lal Bhawan, Ahmedabad & Ors.) decided on 27.1.95 in OA No. 3010 of 1995 by the S.C. of India.~~

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 and Article 311(2) of the Constitution of India. *Annexure-12*

In the light of the aforesaid decision the case of the applicant is deserved to be allowed with cost as the

the applicant is squarely ~~covered~~ 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 hold by the Supreme Court that the cases 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 ~~was~~ 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 dissents 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

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

I, Shri S.K. Das, son of Late Bala Hari Das, working as U.D.C. 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 and 5 are derived from the records and rests are my humble submission before the Hon'ble Tribunal.

I sign this verification this day of 28th April, 1998 at Guwahati.

Swadesh Kumar Das.
Signature.

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-1, 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/Estt. (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?

Section Officer (A)
Advisive Tribunal
Bench, Guwahati-5
Bench, Guwahati-5

Swamysnews

Clarification will be necessary level post(s) be desirable restructuring result of abolition

Point 2. whether the by the Admin

Clarification for a period Integrated F of such post month of the of one year procedure for briefly set out

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1995(3)

JOURNAL SECTION

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if the arrears' and ending with the words 'due to unavoidable reasons' of Para 21.2 with the following:

"However, if the arrears do not involve the first payment of pension, and if they have arisen due to late submission of the prescribed certificates by the pensioners and the arrears do not exceed Rs. 10,000/- where the amount of pension plus relief thereon is Rs. 2,000/- and below per month: Rs. 20,000/- where the amount of pension plus relief thereon is between Rs. 2001/- to Rs. 3,000/- p.m. and Rs. 30,000/- where the amount of pension plus relief thereon exceeds Rs. 3,000/- p.m.; they may be paid by the paying branch after obtaining specific orders of the Manager/Officer in charge who would sanction the payment after personally satisfying himself that the amount payable is actually due, the certificate(s) furnished has/have been duly countersigned, and the claim has remained undrawn due to unavoidable reasons".

C.S. No. 4

Para 21.3 Page 15. Insert the following after Rs. 10,000/- appearing in the first line of para 21.3:

Rs. 20,000/- Rs. 30,000/- (as the case may be in terms of para 21.2 above).

(21)

Copy of O.M. No. 7(7)-E. (Co-ord)/93, dated 6.4.1994, Government of India, Ministry of Finance.

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 O.M. 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 abeyance 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 be 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.

(22)

Copy of O.M. No. S-11011/31/88-CGHS-D.II/CGHS(P), dated 8.4.1994, Government of India, Ministry of Health & Family Welfare (Department of Health)

Subject: CGHS, Calcutta—Revision of Schedule of Charges of Medico-Diagnostic Service, Calcutta—Regarding.

To

The Director General of Health Service,
CGHS Desk-II,
New Delhi

Sr.

In continuation of this Ministry's letter No. S-11011/31/88-CGHS Desk-II/CGHS(P) dated 26.10.88, I am directed to refer to your L.D. No. S-11011/31/88-CGHS Desk-II

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

✓ 86

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 521], 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 dereserved 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 connection 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

87

Send cover in respect of promotion cannot be stopped if disciplinary proceedings have been stopped if a Special Judge is pending disposal

Facts: The applicant joined the service in 1961 and was promoted as Income Tax Officer, Class

Swamysnews

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH ::: NEW DELHI

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91
Filed by
S. K. Das
Applicant

IN THE MATTER OF :

O.A. No. 2176/1997 (PB)

Shri S.K. DAS

..... Applicant

-Versus-

Union of India & Others.

..... Respondents.

-And-

IN THE MATTER OF :

Addition rejoinder submitted
by the Applicant.

The applicant above named most humbly and respectfully beg
to state as under :-

1. That the applicant further state that one
post of Assistant has recently fall vacant due to promotion
of Shri J.N. Sharma, Assistant to the post of Section Officer
on regular basis vide letter No. PB/1/96-Estt-I/3725(A)
dated 13.4.1998.

Therefore there is no difficulty on the part of
respondent to accommodate the applicant into vacant post
of Assistant by treating the same as reserved post of S/C
and also restoring the original promotion order dated 15.12.94
and also by setting aside the impugned reversion order
dated 11.2.94.

2. A copy of the promotion order of Shri J.N. Sharma
dated 13.4.98 is annexed herewith and marked as Annexure-XIII

Copy
Recd by
Shri

195 to S.K. Das
195 to S.K. Das

195 to S.K. Das
195 to S.K. Das

for perusal of the Hon'ble Tribunal.

2. That in view of the vacant post which is now available due to promotion of Shri J.N. Sharma there can not be any difficulty on the part of the respondents to restore the promotion order dated 15.12.93 with all consequential benefits to the applicant.

That this additional rejoinder is submitted in view of the post of Assistant which has fallen vacant due to promotion of Shri J.N. Sharma to the post of Section Officer on regular basis.

In view of the circumstances stated above the application deserves to be allowed, with cost.

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

I, Shri S.K. Das, son of Late Bala hari Das, working as U.D.C. 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 and 2 are derived from the records and rests are my humble submission before the Hon'ble Tribunal.

I sign this verification on this day of 12th May, 1998 at Guwahati.

Suresh Kumar Das
Signature.