

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 8.8.196

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SECTION OFFICER (Judl.)

Bahin
25/11/18

DA No. 88/96
MP No. (DA)
RA No. (DA)
CP No. (DA)

Anil Ch. Nath
VERSUS

APPLICANT(S)

RESPONDENT(S)

Union of India & Ors Advocate for the applicant.
Mr. B.K. Sharma, Mr. J. Bhattacharya
Mr. S. Sarma

Mr. G. Sarma Addl. C.S.C. Advocate for the Respondents.
Mr. A.K. Chandany, Addl. C.S.C.

Office Notes

Court's Orders

10-6-96

Mr. B.K. Sharma for the applicants. Mr. G. Sarma Addl. C.G.S.C. for the respondents.

Heard counsel for admission. Application is admitted. Issue notice on the respondents by registered post. Written statement within 23-7-96.

List on 23-7-96 for order.

Heard Mr. B.K. Sharma on interim relief prayer. Pending of the application shall not be a bar for the respondents for consideration of promotion of the applicant on the Biennial Cadre Review Scheme.

Application is in form and within time. C. F. of Rs. 50/- deposited vide IPO/BD No. 266/96 Dated 1.6.96

Dr. Registrar

Member(A)

Member(J)

Im

B-6-96

Notice issued to the parties vide No. 1383dt. 13.6.96.

23.7.96

Mr. B.K. Sharma for the applicant.

Written statement has not been submitted list for written statement and further order on 14.8.96.

Member

trd

22/7

Bon

(2)

CA, 88/96.

d

17/7-96

A letter from the Dept.

Telecom, ~~and~~ changing

in Standing Counsel

received and should be

pg-49.

17/7.

14-8-96

Learned Addl. C.G.S.C. Mr. A.K.

Choudhury seeks ~~applies~~ time

for filing written statement.

List for written statement

and further order on 12-9-96.


Member

lm

14/8

17.9.96

Learned counsel Mr S. Sarma
for the applicant. Mr A.K. Choudhury,
learned Addl. C.G.S.C. for the respondents.
Written statement has not been filed and
Mr Choudhury seeks time for submitting
written statement.

List for written statement
and further orders on 7.10.96.


Member

16.9.96

nkm
18/9

Memo of appearance

filed by for A K Choudhury, 7.10.96
ACSC.

Mr A.K.Choudhury, Addl. C.G.S.C.
for the respondents.

Written statement has been
submitted. Let copy of the same be
served on the counsel of the opposit
party.

List for hearing on 20.11.96.


Member

19.3.97

Let the case be listed for hearing on
28.4.1997.


8-10-96

W/S filed by in R.M. 1,283,


Member

at pg. 49-66

trd


Vice-Chairman

O.A. 88/96

3

40-4-97
 Reply to The written
 Statement filed by
 The Counsel of The
 applicant, at page
 67 to 73.

28.4.97

On the prayer of S.Sarma on
 behalf of Mr B.K.Sharma the case is
 adjourned to 29.4.97.


 Member


 Vice-Chairman

pg

29-4-97

On the prayer of Mr.S.Sarma
 on behalf of learned counsel Mr.B.K.
 Sharma appearing on behalf of the
 applicant, ^{the} case is adjourned to
 1-5-97. for hearing.


 Member


 Vice-Chairman

lm


 30/4

1.5.97

Mr A.K.Choudhury, learned Addl.C.G.S.
 C is reported to be indisposed and Mr
 S.Alli, Sr.C.G.S.C has prayed for short
 adjournment. Mr B.K.Sharma, learned
 counsel appearing on behalf of the appli-
 cant has no objection.

Case is adjourned till 8.5.97.


 Member


 Vice-Chairman

pg


 21/5

8.5.97.

Left over. List on 3.6.97. for
 hearing


 Member


 Vice-Chairman

pg.



 9/5

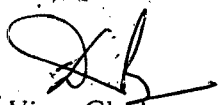
W/statement - & Reply to
 the wfs. by Mr B.K.

7/5

3.6.97

Heard the learned counsel for the parties.
Hearing concluded. Judgment reserved.


Member



Vice-Chairman

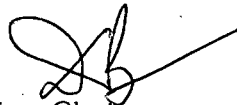
nkm


A/b

30.6.97

Judgment delivered in open court, kept
in separate sheets. The application is allowed. No
order as to costs.


Member


Vice-Chairman

nkm

28.7.97

Cert of the judgment
has been issued to
the party vide
S.No. 2491 to 2494
On 24.7.97

th

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

O.A. NO. 88 of 1996.
T.A. NO.

DATE OF DECISION 30.6.1997

Shri Anil Chandra Nath

(PETITIONER(S))

Shri B.K.Sharma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri A.K.Choudhury, Addl.C.G.S.C

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE-CHAIRMAN.

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

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

Judgment delivered by Hon'ble Administrative Member

XB

Sanglyne
30/6/97

K

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 88 of 1996.

Date of Order : This the 30th Day of June, 1997.

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

Shri G.L.Sanglyine, Administrative Member.

Shri Anil Chandra Nath,
Section Supervisor (A&P),
Office of the Chief General Manager,
Assam Telecom Circle, Guwahati-7. . . . Applicant

By Advocate Shri B.K.Sharma.

- Versus -

1. Union of India
represented by the Secretary,
Ministry of Telecommunications,
New Delhi.
2. The Chief General Manager,
Assam Telecom Circle, Ulubari,
Guwahati-7.
3. The Deputy General Manager (Admn.),
Office of the Chief General Manager,
Assam Telecom Circle,
Guwahati-7. . . . Respondents.

By Advocate Shri A.K.Choudhury, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER,

Shri Anil Chandra Nath, the applicant, had joined service in the department of Posts and Telegraph on 19.10.1968 as a Lower Division Clerk. In course of time he was promoted as Section Supervisor on 1.6.1988. He is now working in the same capacity as Section Supervisor in the office of the Chief General Manager, Telecom, Assam Circle, Guwahati in the scale of pay of Rs.1400-40-1800-EB-50-2300/-. In this present application he seeks that he should be promoted as Senior Section Supervisor in the pay scale of Rs.1600-50-2300-EB-60-2660/-p.m on the strength

of the Biennial Cadre Review Scheme adopted by the Government of India, Ministry of Communications, Department of Telecommunications (Telecom, New Delhi) as conveyed in Annexure-A No.27-4/87-TE-II(1) dated 16.10.1990. According to this scheme an employee who has completed 26 years of service in the basic grade is entitled to be considered for promotion. The applicant had completed 26 years of service on 19.10.1994 and had become eligible for consideration for promotion under the aforesaid Biennial Cadre Review Scheme with effect from 1.1.1995. According to the respondents the applicant was considered for promotion under the scheme by the Departmental Promotion Committee but the findings of the Committee in respect of the applicant was kept in sealed cover on the ground that there was no vigilance clearance from the Vigilance Officer as a vigilance case was pending against the applicant. As a result, the name of the applicant does not figure in the promotion order No.STS-10/22/Pt-I/99 dated 2.12.1994 (Annexure-B) issued by the Chief General Manager, Telecom, Assam Circle, Guwahati. Moreover, disciplinary proceeding was initiated against the applicant on 2.2.1995. Therefore, on the strength of paragraph 7 of the Office Memorandum No.22011/4/91-Estt(A) dated 14.9.1992 the applicant could not have been promoted. In the impugned order No.DGM(A)Agit dated 24.11.1995 (Annexure-D(1)), they have reproduced para 7, which is as below, in support of their action:

"A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommen-

contd.....3

-dations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

2. Shri B.K.Sharma, learned counsel for the applicant, has submitted that the applicant had been wrongly deprived of his promotion by the respondents. He submits that the circumstances mentioned in the aforesaid para 2 of the O.M. do not obtain in the case of the applicant. The circumstances for placing a case under sealed cover as stated in para 2 of the O.M. are as below :

- "(i) Government servants under suspension ;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending ; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending."

Circumstance (i) and (iii) are absent in the case of the applicant and circumstance No.(ii) is not applicable as no charge memo had been issued to the applicant before the consideration of his case by the DPC and no disciplinary proceeding was pending against him on the date of such consideration. According to him, promotion cannot be denied to the applicant before initiation of the disciplinary proceeding. In this regard he places reliance on Union of India & Ors. vs. K.V. Janakiraman reported in AIR 1991 SC 2010. He also submits that the Biennial Cadre Review Scheme does not debar promotion on account of pendency of departmental proceeding. In this regard he places reliance on the decision dated 30.1.1992 of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.986 of 1991 and in the

decision dated 17.9.1993 of the Guwahati Bench of the Tribunal in O.A.No.154 of 1992. Shri G.Sarma, the learned Addl.C.G.S.C., vehemently supports the action of the respondents and the grounds given by them.

3. We have heard counsel of both sides. The issue for consideration before us is whether the respondents had correctly resorted to the sealed cover procedure in respect of the promotion of the applicant in the facts and the circumstances of his case as available in the present application. The promotion we are concerned with in this application is the "purely on temporary and adhoc basis" promotion to the post of Senior Section Supervisor as mentioned in the order No.STES-10/22/PT-1/99 dated 2-12-1994 (Annexure-B). Our answer is firmly in the negative for the reasons given herein. The Apex Court had in the judgment dated 27-8-1991 in the Jankiraman case (Supra) held :

"On the first question, viz, as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point."

In the present case before us the departmental promotion Committee had considered the matter of promotion of the applicant and the other employees concerned under the

contd/-

Biennial Cadre Review Scheme on or before 2-12-1994 (Annexure-B). The charge memo against the applicant was issued on 2-2-1995 (Annexure A to the written statement). The Departmental Promotion Committee could not have, therefore, legally resorted to the sealed cover procedure on or before 2-12-1994 in respect of promotion of the applicant under the scheme as aforesaid. Further, the case of the applicant did not come under any of the three circumstances mentioned in para 2 of the O.M. No.22011/4/91-Estt(A) dated 14-9-1992(Annexure-E) at the time of consideration of his promotion. The applicant was not under suspension. He was not prosecuted for a criminal charge or any such charge was pending against him. There was also no pendency of any disciplinary proceeding against the applicant on or before 2-12-1994. The respondents have claimed in the impugned order Annexure-D(1) that they had invoked the provision of para 7 of the aforesaid O.M. If so, they had arbitrarily resorted to the sealed cover procedure under the said paragraph. They could not have invoked the provision of para 7 of the O.M. already quoted above because the delay in giving appointment or actual promotion to the applicant was due to the fact that the sealed cover procedure was illegally resorted to by them on or before 2.12.1994. Had there been no such illegal action on the part of the respondents the promotion as envisaged in the order dated 2-12-1994 could have been granted to the applicant on 2-12-1994 itself and the promotion would have taken effect on 1-1-1995, that is, long before the disciplinary proceeding was initiated against the applicant on 2-2-1995.

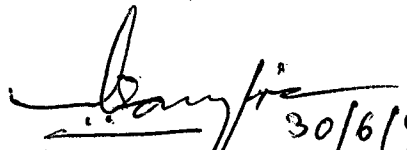
4. The other issue for consideration is whether promotion under the Biennial Cadre Review Scheme aforesaid (Annexure A) can be given to an employee in whose case disciplinary proceeding is pending. As already seen in

the instant case there was no pendency of any disciplinary proceeding as on or before 2-12-1994 or even on 1-1-1995. However, presently the disciplinary proceeding initiated on 2-2-1995 is pending. In V.V.Kamath Vs.Union of India and 2 others the Ernakulam Bench of the Central Administrative Tribunal considered the case of promotion under the BCR scheme where a disciplinary proceeding was pending against the employee and had held in their order dated 30-1-1992 in O.A.No.980 of 1991 that the employee was entitled to promotion under the BCR Scheme. The Guwahati Bench of the Tribunal has consistently been in agreement with the view of the Ernakulam Bench to the effect that pendency of disciplinary proceeding is not a bar for one time bound promotion under the Biennial Cadre Review Scheme. We hold the same view in the present application.

5. In the light of the above findings we set aside and quash the impugned order No.DGM(A) Agit dated 24-11-1995. Further, we direct the respondents to open the sealed cover in respect of the applicant and, if it is found that the Departmental Promotion Committee had actually recommended promotion of the applicant under the scheme, promote the applicant to the post of Senior Section Supervisor with effect from 1-1-1995 with all consequential effects including monetary benefits. This shall be completed within forty five days from the date of receipt of this order by the respondent No.2, the Chief General Manager, Assam Telecom Circle, Ulubari, Guwahati.

The application is allowed in terms of the order above. However, considering the entire facts and circumstances of the case we make no order as to costs.


(D.N.BARUAH)
VICE-CHAIRMAN


(G.L.SANGLI)
ADMINISTRATIVE MEMBER
30/6/97

13
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

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

Title of the Case O.A. No. 88/96.

Shri Anil Chandra Nath,
Section Supervisor (A&P),
Office of the Chief General Manager,
Assam Telecom Circle, Guwahati-7. Applicant.

VS.

The Union of India & Others. Respondents.

I N D E X.

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FOR USE IN TRIBUNAL'S OFFICE :-

Date of filing :- 6.6.96

Registration No.:- 88/96

R E G I S T R A R.

Recd Copy
Golap Sarma
ADCSL
24.6.96

Filed by Srivastava Suresh
3.6.96.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :::::

GUWAHATI BENCH.

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

O.A. NO. 88/1996.

BETWEEN :

Shri Anil Chandra Nath,
Section Supervisor (A & P),
Office of the Chief General Manager,
Assam Telecom Circle,
Guwahati-7.

.... Applicant.

AND :

1. The Union of India,
represented by the Secretary,
Ministry of Telecommunications,
New Delhi.
2. The Chief General Manager,
Assam Telecom Circle, Ulubari,
Guwahati-7.
3. The Deputy General Manager (Admn.),
Office of the Chief General Manager,

.....2.

A

2.

Assam Telecom Circle,
Guwahati-7.

..... Respondents.

DETAILS OF APPLICATION.

1. Particulars of the order against which the application is made :-

This application is directed against office order No. DGM(A)/Agit dated 24.11.95 and Order No. STES-10/22/PT-1/99 dated 2.12.94 by which promotion of the applicant is held up and other similarly placed persons have been promoted.

2. Jurisdiction of the Tribunal :-

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

3. Limitations :-

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

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4. Facts of the case :-

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

4.2 That the applicant entered the Central Government Service in the Post and Telegraph (combined) Department as L.D.C. on 19.10.1968 in the Office of the Postmaster General, Shillong vide PMG letter No. Staff.A-133/ID/Ch.IV dated .10.68.

After bifurcation of the Post and Telegraph Department in 1975 your applicant was allotted to Telecom Department and was posted in the newly formed Office of the General Manager, Telecom, Shillong. The applicant appeared at the departmental competitive examination held in September, 1976 and on the basis of the result thereof was promoted to the grade of U.D.C. vide GMT Shillong Memo. No. STB/UD/Exam/76 dated 5.1.77.

Subsequently, in 1987 when the Assam Telecom Circle was created your applicant was transferred and absorbed in the office of the General Manager, Telecom,

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Guwahati. Your applicant was subsequently promoted to the grade of Section Supervisor vide GMT Memo. No. STES-11/3 dated 1.6.88.

4.3 That your applicant begs to state that the staffing pattern of the Office of the Chief General Manager, Telecom was changed from IDC/UDC/SS/OS to TOA/SS/SSS/CSS with effect from 9.9.1992 vide Telecom Commission Order No. 27-4/87/TE.11 dated 9.9.92 and accordingly your applicant was fitted in the changed pattern as Section Supervisor. Since then your applicant is working as Section Supervisor in the Office of the Chief General Manager, Telecom, Assam Telecom Circle, Guwahati.

4.4 That your applicant begs to state that the Department of Telecommunications introduced a scheme of Biennial Cadre Review in 1990 with a view to provide relief from stagnation under which scheme posts could be upgraded on the basis of functional justification. The Biennial Cadre Review pertains to the demand of the staff union for granting one time bound promotion on completion of 26 years of service in the basic cadre. The scheme also stipulates that officials who complete 26 years of service between July and December would be promoted from the first day of the following (next) year. Accordingly,

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the policy decision was issued under Memo. No.
27-4/87/TE/II(1) dated 16.10.90.

A copy of the said policy decision dated
16.10.90 is annexed hereto and is marked
as ANNEXURE - A to this application.

4.5 That your applicant begs to state that
it is the administrative procedure to identify the
eligible officials in different cadres for promotion
well ahead of the crucial date followed by selection
procedure so that promotion order can be issued at least
15 days ahead so that the promotee may take over the
charge of the promotional post. Your applicant
completed 26 years of service on 18.10.94 and become
eligible for promotion to the cadre of Senior
Section Supervisor TOA(G)-Grade III with effect from
1.1.95. Accordingly, under the Biennial Cadre Review
Scheme alongwith your applicant ten other Section
Supervisors TOA(G)-Grade II of the Circle also
completed the required length of service for promotion
to Senior Section Supervisor TOA(G)-Grade III on
1.1.95. The appointing authority processed the
cases in November, 1994 in a routine manner and
adjudged the suitability of the officials. Simultaneously,
the head of circle in consultation with and concurrence

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of Deputy General Manager (Admn.) and Director (Finance & Accounts) approved the creation of the posts of Senior Section Supervisor TOA(G)-Grade III through upgradation of the prevailing posts. Finally order of promotion of the ten Section Supervisors TOA(G)-Grade II was issued under Memo. No. STES-10/22/Part-1/99 date-d 2.12.94. However in the said list of promotion, the name of your applicant did not figure.

A copy of the order dated 2.12.94 is annexed hereto and is marked as ANNEXURE - B to this application.

4.6 That your applicant begs to state that it may be pertinent to note, the Respondents for the reasons best known to them are bent upon to deprive your applicant from his legitimate dues. It may be noted that when your applicant was due to cross the E.B. at the stage of ~~Rs. 1800/-~~ Rs. 1800/- in the S.S. Scale of Rs. 1400/- - 2300/- on 1.3.94, the Department in clear violation of the Fundamental Rules did not take any action for processing the matter and your applicant was unnecessarily, because of the action of the Respondents, held up at the stage of Rs. 1800/-.

Your applicant submitted a number of representations highlighting the injustice done to him and illegality in the action of holding up of

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the E.B. Only after such representations and realising their mistakes, the Respondents allowed your applicant to cross efficiency for (E.B.) only on 25.1.95 with a retrospective effect from the date on which otherwise it was due to him, that is, from 1.3.94.

A copy of the order dated 25.1.94 is annexed hereto and is marked as ANNEXURE - C to this application.

4.7 That your applicant begs to state that as he was not promoted to Senior Section Supervisor in clear violation of the Rules and procedures framed with regard to service conditions, he submitted a number of representations before the authorities requesting them to promote your applicant as he had already completed 26 years of service in the department and as per Biennial Cadre Review Scheme he is ~~entitled~~ entitled to.

To the representation, the Deputy General Manager (Admn.) under his letter dated 24.11.95, intimated that your applicant could not be promoted to the post of Senior Section Supervisor as he had been served with charge sheet dated 2.2.95 and

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8.

disciplinary proceeding in pending against your applicant. To support his stand the Deputy General Manager (Admn.) cited G.O.I. Order No. 22011/4/91-ESTT(A) dated 14.9.92.

Copies of the representation and its reply dated 24.11.95 are annexed hereto and are marked as ANNEXURE - D and D(1) to this application.

4.8 That your applicant begs to state that the decision of the Respondents to defer him from promotion is arbitrary and not sustainable in law in as much as he is/was to be promoted under the Biennial Cadre Review Scheme. The Government of India (G.O.I.) Order dated 14.9.92 which is relied upon by the Respondent to bar promotion of your applicant is not at all attracted in the case of your applicant. The Biennial Cadre Review Scheme (Annexure - A) does not prescribed any bar for promotion under the scheme on account of pendency of disciplinary proceedings under Rule 14 of the C.C.S. (CCA) Rules, 1965. The applicant submits that the Respondents cannot deny a time bound promotion to an eligible officer on the completion of 26 years of service in the basic cadre. The applicant has completed 26 years of service in the basic cadre on 18.10.94.

.....9.



4.9 That your applicant begs to state that he completed 26 years of service in the basic cadre on 18.10.94 and became eligible for promotion to the cadre of Senior Section Supervisor with effect from 1.1.95. As on 1.1.95 there were not even a whisper of any proceedings or contemplation of proceedings not to speak of charge sheet. As on 1.1.95 there were no adverse communication made to your applicant asking for any reply to any show cause notice. No grounds were either intimated orally or through written document to indicate denial of promotion to your applicant. The charge sheet was communicated only on 2.2.95, that to, after submitting representation to know the reason for non-promotion of your applicant, to the authorities.

In any view of the matter there were nothing against your applicant as on 1.1.95 and the G.O.I. Order dated 14.9.92 on which the Respondents have relied to deprive your applicant is not attracted.

A copy of the said G.O.I. Order dated 14.9.92 is annexed hereto and is marked as ANNEXURE - E to this application.

4.10 That your applicant begs to state that in a case of similar nature before Ernakulam Bench of this Hon'ble Tribunal being O.A. No. 986/91, it

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has been held on 30.1.92 that since B.C.R. Scheme does not bar any promotion on account of pendency of disciplinary proceeding there is no justification in denying the promotion and the Hon'ble Tribunal held that the applicant therein is entitled to be promoted in the higher grade from the date when his juniors were promoted with all consequential benefits.

Even this Hon'ble Tribunal in O.A. No. 154/92, upholding the above mentioned judgment, clearly stated that the B.C.R. Scheme pertains to the demands of the staff union for granting one time bound promotion on completion of 26 years of service in the basic cadre. Hence a person cannot be denied promotion on account of pendency of disciplinary proceeding.

An extract of O.A. No. 986/91 dated 30.1.92 and the order in O.A. No. 154/92 dated 17.9.93 are annexed hereto and marked as ANNEXURE - F and F(1) to this application.

4.11 That your applicant begs to state that the malafide intention of the authorities writ large on the fact that the disciplinary authority has taken up an issue which is vexatious and intended to deny/delay the ~~xx~~ legitimate promotion due to

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Amr

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your applicant. The disciplinary proceeding is liable to be dropped and the applicant cannot be denied of his promotion on that account. In any case, the applicant must not be allowed to suffer for no fault of his .

4.12. That your applicant begs to reiterate the fact that the instant case of charge sheet was issued on 2.2.95. Thus it is clear that disciplinary proceedings against the applicant was initiated on 2.2.95. It also makes abundantly clear that your applicant was not under cloud when his promotion became due. The issuance of the charge sheet and initiation of disciplinary proceedings are subsequent developments which cannot cast shadow on his promotion. Obviously the applicant does not fit in any of the three categories wherein promotion can be stayed/suspended (Annexure - E). Promotion cannot be denied for reasons which occurred subsequently. There was no valid ground to withhold the promotion when the similarly placed officials were given clearance for promotion on 2.12.94.

4.13 That your applicant begs to state that it is a well established proposition of law that when some principles laid down by a Court are applicable in similar other cases, such other cases

.....12.



must also be given the benefit of the same. In view of the judgments 30.1.92 passed by the Ernakulam Bench of this Hon'ble Tribunal in O.A. No. 986/91 and the judgment passed in O.A. No. 154/92 dated 7.9.93 by this Hon'ble Tribunal, the applicant in the present case is entitled to be promoted.

4.14 That your applicant begs to state that the above mentioned judgments have clearly stated that when the question of promotion under Biennial Cadre Review Scheme is applicable to an incumbent arises, question of pendency of disciplinary proceedings does not arise at all. In the instant case as such the applicant deserves to be promoted from the dated when his colleagues were promoted.

5. Grounds for relief with legal provisions :-

- I. For that the action of the Respondents are guided by malafide, arbitrariness and discrimination and cannot stand legal scrutiny.
- II. For that the systematic malafide intention to harass and deprive your applicant writ large on the respondents because even when the applicant was to cross the Efficiency Bar (E.B.) at the stage of Rs. 1800/- in S.S. Scale on 1.3.94, the respondents unnecessarily hold it up and after much mental and



financial harassment gave effect to it on 25.1.95 with retrospective effect. The same has been done at this stage also.

III. For that when the promotion became ~~th~~ due on 18.10.94 on completion of 26 years the applicant should have been automatically promoted. The respondents did not do so and after filing representations, your applicant was intimated on 2.2.95 with a charge sheet. Obviously the promotion which became due on 1.1.95 cannot be denied for reasons which occurred subsequently. There was no valid ground to withhold the promotion when the similarly placed officials were ordered for promotion on 2.12.94.

IV. For that the Biennial Cadre Review Scheme does not prescribe any bar for promotion under the scheme on account of pendency of disciplinary proceedings under Rule 14 of the C.C.S. (CCA) Rules and as such the respondents are bound to give promotion to the higher grade to your applicant.

V. For that the respondents cannot be allowed to bring out a skeleton from the cupboard under the pretext of initiating departmental proceeding and withhold his promotion and made to suffer for no fault of his. The authorities cannot be allowed to drag the matter further to the detriment of the applicant.



VI. For that in view of the ratio laid down by the Hon'ble Tribunals as annexed (Annexure - F and F(1)), the applicant is entitled to his regular promotion to the higher grade of Rs. 1600-50-2300-EB-60-2600/- as Senior Section Supervisor and the respondents are bound to allow the applicant to give effect to the promotion order.

VII. For that the illegal, arbitrary action of the respondents are in clear violation of Articles 14, 16 and 21 of the Constitution of India and the legal provisions applicable to the Central Government employees. The respondents have clearly flouted the basic principles of Natural Justice, fairplay and service jurisprudence.

6. Details of remedies exhausted :-

The applicant states that since the order of promotion has been held up and the applicant has submitted his representation and the respondents have refused to accede to his prayers and as such, he has no other alternative remedy except by filing this application.

7. Matters not previously filed or pending before any other Court :-

The applicant declares that he has not

previously filed any application, suit or writ petition in respect of the subject matter of this application before any other Court, authority or any other Bench of this Hon'ble Tribunal nor any such writ petition, suit or application is pending before any of them.

8. Reliefs sought for :-

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

- I. A declaration that the applicant is entitled to be regularly promoted to the higher grade in the pay scale of Rs. 1600-50-2300-EB-60-2660/-.
- II. A direction to the respondents to promote the applicant to the higher grade on regular basis with effect from 1.1.95 as stipulated in the order dated 2.12.94 (Annexure - B).
- III. To set aside and quash the disciplinary proceeding pending against the applicant, if any.
- IV. To set aside and quash order dated 24.11.95 (Annexure - D(1)).
- V. Cost of the application.
- VI. Any order or orders as Your Lordships deem

fit and proper under the facts and circumstances of the case.

9. Interim order prayed for :-

Pending disposal of the application, the respondents be directed to promote the applicant to the higher grade of Rs. 1600-50-2300-EB-60-2660/- in terms of the order dated 2.12.94.

10. Particulars of the I.P.O. :-

- (i) I.P.O. No. :- 8, 07, 346169.
- (ii) Date :- 1.6.96.
- (iii) Payable at :- Guwahati.

11. List of Enclosures :-

As stated in the Index.

VERIFICATION.

I, Shri Anil Chandra Nath, aged about 46 years, S/O. Late D. Nath, working as Section Supervisor (A & P) in the Office of the Chief General Manager, Assam Telecom Circle, Guwahati-7 do hereby solemnly verify and state that the statements made in paragraphs 1 to 4, 6 to 9, 10 and 11 are true to my knowledge and those made in paragraph 5 are true as per my legal advice and I have not suppressed and material fact.

And I sign this verification on this the 31st day of May, 1996 at Guwahati.

Anil ch. Nath
(ANIL CH. NATH)

Government of India
Ministry of Communications
Department of Telecommunications
(Telecom Commission)
New Delhi-110 001.

* * * * *

To

All Heads of Telecom Circles,
Metro Districts/Maintenance Regions/
Project Circles.

Sub. :- Biennial Cadre Reviews.

For some time past the Staff unions have been pressing for acceptance of their demand for Second-Time Bound promotion on completion of 26 years of service in the basic grade. After careful consideration, it has been decided that this concept is not acceptable.

2. However, with a view to provide relief from stagnation in the grade, Government have accepted the need for a biennial cadre review i.e. ~~1 annexxxxx~~ (once in two years) Under which posts could be upgraded on the basis of functional justification. The following instructions are accordingly issued :-

(i) Biennial cadre reviews will be applicable

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Attested
S. Malla Ach.
28/5

for only those cadres in Groups C&D for which scheme of 'One Time Bound Promotion' on completion of 16 years of service in the basic grade is already in existence.

- (ii) This Scheme of 'Biennial Cadre Reviews' ~~will~~ will be applicable only to those regular employees who were in service as on 1.1.90 and not later entrants.
- (iii) Biennial Cadre Reviews will be conducted in respect of the eligible cadres at the level of circles who control these cadres.
- (iv) At the time of review the number of officials who have completed/would be completing 26 years of service in the basic grades (including time spent in higher scales/OTBP) will be ascertained. The persons will be screened by the duly constituted Review Committee to assess the performance and determine their suitability for advancement.
- (v) In the Biennial Reviews, suitable number of posts will be created upgradation based on functional justification.
- (vi) Creation of posts by upgradation will be in

*Attached
to
Malla Adv.
28/5*

the scales indicated below :-

Basic scale of the cadre.	Scale after OTBP after 16 years of service in basic grade.	Scale after Biennial Review on completion years of more.
750 - 940	800 - 1150	950 - 1400
825 - 1200	950 - 1400	1200 - 1800
975 - 1540	1320 - 2040	1400 - 2600
975 - 1660	1400 - 2300	1600 - 2600 (10% of the pay in the pay scale of Rs. 2660 will be in the scale of 2000 - 3200)
1320 - 2040	1400 - 2600	1640 - 2900 (10% of the pay in the pay scale of Rs. 2900 will be in the pay scale of Rs. 200 - 3200)

(vii) Pay of the officials after Biennial Cadre Reviews will be fixed under the provisions of FR 22-C, as amend from time to time.

(viii) Necessary posts will be created by upgradation up the powers of CGMs in consultation with their accounts finance.

(ix) The first Biennial Cadre Review for eligible

Attached
J. Gnath
28/5

cadre officials may be conducted immediately covering the period upto 30.6.92 to ascertain the eligible officials who have completed/will be completing 26 years of service or more as on the crucial dates, namely, the date of the review, 1.1.91, ~~xx~~ 1.7.91 and 1.1.92. The number of posts needed to provide for the promotion of the eligible persons will be determined and will be sanctioned/activated in 4 instalments the first immediately, the second on 1.1.91, the third on and the fourth on ~~xx~~ 1.1.92. With these posts, it should be possible to provide for promotion of those employee who have completed 26 years of service or more on the above crucial dates, subject to their otherwise be found fit. The criterion for promotion will be seniority, subject to selection.

Order implementing the first instalment of cadre review should be issued before 30.11.90.

In the second cadre review, which will cover the period from 1.7.92 to 30.6.94, which should be completed before 1.7.92, the required number of posts needed to be released in half-yearly instalments on 1.7.92, 1.1.93, 1.7.93 and 1.1.94 to cater for promotion of those who would have completed 26 years of

Alaska
Malta Adv.
28/5

21.

service on the 4 crucial dates, instalments so that the promotions of eligible personnel could be notified on due dates.

- (x) Supervisory allowance now admissible to OTBP cadres will be abolished in all cadres covered under this scheme w.e.f. 1.12.90.
- (xi) Creation of posts by upgradation under the Biennial Cadre Review will be by matching savings to the extent of 1% cut on ~~basic~~ basic cadre and 5% cut on supervisory cadre. These cuts ~~are~~ (under Biennial cadre review) are in addition to the existing cuts of 5% in basic cadres and 15% in supervisory cadres under the OTBP Scheme.

This issue with the concurrence of Finance Advice vide their U.O. No. 3044/90-FA-I dated 16.10.90.

Yours faithfully,

Sd/- Gopal Dass,
16.10.90
Director (TE).

Copy to :-

1. All officers of the rank of DDGs and above.
2. All recognised unions/Associations/~~xxxxxxx~~ Federations.
3. Secretary, Staff Side, Departmental JCM.
4. Guard file.

Sd/- K.S. Bhatia,
Section Officer (TE-II).

....

Amended
J. Malhotra Adv.
28/5

Annexure - B.

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER TELECOM.,
ASSAM CIRCLE, GUWAHATI-781007.

* * * * *

NO.STES-10/22/PT-1/99 DATED AT GUWAHATI, THE 02.12.94

The Section Supervisors as shown in the annexure are hereby promoted to officialte as Senior Section Supervisors in the scale of pay of Rs. 1600-50-2300-EB-60-2660/- p.m. "purely on temporary and adhoc basis" until further orders.

The promotion takes effect on assumption of charges of the higher post by the promotees on or after 01.01.95.

Pay of the official will be fixed under FR-221(a)(i).

The promotion is purely temporary and adhoc in nature and does not bestow on the official any claim for regular absorption in the cadre. The & OGMT, Assam Circle, Guwahati reserves the right to terminate the adhoc promotion at any time without assigning any reason thereof.

.....23.

Attached
J. Mallick Adv.
28/5

The Head of the unit will ensure that there is no Disciplinary case pending or contemplated against any of the officials.

All Head of SSA are requested to submit report of compliance and the date of effect of the promotion.

Sd/-

(B.K. BARMAN)
ASSTT. GENERAL MANAGER (ADMN.)
OF CHIEF GENERAL MANAGER TELECOM., GHY.

Copy forwarded for information and necessary action to :-

1. Telecom. District Manager., Guwahati.
- 2 - 4. Telecom District Engineer, Dibrugarh/Tezpur/Silchar.
- 5- 6. Area Manager Telecom., Dibrugarh/Guwahati.
7. The A.O. (TA), Circle Office, Guwahati.
- 8 - 9. The C. Secy., NFTE/FNTO.
10. Guard File.
11. Spare Copy.

Sd/- Illegible,
2.XII.94

FOR CHIEF GENERAL MANAGER TELECOM., GHY.

Attached
to
Malla Adv.
28/5

24.

MEMO. NO. STES-10/22/PT.-I/99

Dated at Ghy., the 02.12.94.

A N N E X U R E.

SL.NO.	NAME OF THE OFFICIAL	COMMUNITY	WORKING UNIT
01.	SHRI PARTITOSH PAUL	OC	DIBRUGARH SSA
02.	SHRI SASANKA DUTTA	OC	DIBRUGARH SSA
03.	SHRI GUNA RAM NATH	OC	TEZPUR SSA
04.	SHRI GAJANAN DEORI	ST	TEZPUR SSA
05.	SHRI S.S. PAUL.	OC	SILCHAR SSA
06.	SHRI R.N. SEN.	OC	SILCHAR SSA
07.	SHRI M.S. BARMAN.	ST	SILCHAR SSA
08.	MRS. CHANDA CHATTARAJ	OC	T.D.M., GUWAHATI.
09.	SHRI CHANDRA KR. DAS-I	OC	T.D.M., GUWAHATI.
10.	SYED ABDUL LATIF	OC	T.D.M., GUWAHATI.

.....

Attached
Small Adv.
28/12

Annexure - C.

GOVERNMENT OF INDIA.

DEPARTMENT OF TELECOMMUNICATIONS

OFFICE OF THE CHIEF GENERAL MANAGER : ASSAM TELECOM.

CIRCLE : ULUBARI : GUWAHATI-781007.

* * * * *

Memo. No. - 11/17 Dated at Guwahati, the 25.01.95.

Sri Anil Chandra Nath, SS (A&P), Circle Office, Guwahati is hereby allowed to cross the efficiency bar at the stages and on the dates shown against his name.

Sl. No.	Name of the official and designation.	Scale of pay.	Stage	Date.
1.	Sri Anil Ch. Nath SS (A&P).	1400-40-1800 -EB-50-2300	1800	01.03.94

Sd/-

(B.K. Deori)
Deputy General Manager (Admn.)
O/O. the Chief General Manager,
Assam Telecom. Circle, Guwahati-7.

Copy to :-

1. A.O. (A&P), C.O., Guwahati for making necessary entries.
2. S.S. (A&P), C.O., Guwahati.
3. Sri A.C. Nath.
4. E/F.

Sd/- Illegible,
for Chief General Manager,
Assam Telecom. Circle, Guwahati-7.

....

*Attached
S. Mallick Adv.
28/5*

Annexure - D.

To

Shri K. Sridhara,
Chief General Manager,
Assam Telecom. Circle,
Guwahati-7.

Date : 16.1.95

Sub. :- Promotion under BCR Scheme.

Hon'ble Sir,

Most respectfully, I beg to state that I had completed 26 (twenty six) years of service on 19.10.1994 and as such my promotion to the cadre of Sr. Section Supervisor under the B.C.R. Scheme is due with effect from 1.1.1995. But till date my promotion order is not released. If my promotion order is not released, I will suffer monetary loss. By the by it may be mentioned that my increment due from March, 1994 is also held up. The reason for holding up my increment for such a long time is not known to me. In this connection I had already written to you earlier.

Under the above circumstances I fervently request your judicious self to look into the matter and do the needful to release my promotion order and for this act of kindness I shall remain ever grateful to you.

.....27.

*Attached
to
Matter Adv.
28/5*

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27.

With profound regards.

Yours faithfully,

Sd/- A.C. Nath,
SS (A&P)
O/O. the CGMT/GH-7.

.....

Affected.
S. Mulla Adv.
28/5

Annexure - D(1).

GOVERNMENT OF INDIA.

DEPARTMENT OF TELECOMMUNICATIONS.

OFFICE OF THE CHIEF GENERAL MANAGER, ASSAM TELECOM
CIRCLE, ULUBARI, GUWAHATI-7.

No. DGM(A)/Agit

Dtd. at Guwahati the 24.11.1995

To

Sri P.D. Kalita,
Circle Secretary,
N.U.T.E.E. (Group "C"),
Guwahati.

Please refer to your letter dtd. 15.11.95
signed by your and others regarding promotion of
Sri A.C. Nath.

1. In this connection you are informed that
Sri A.C. Nath has not been given promotion in accor-
dance with G.I., Deptt. of Per. & Trg. C.M. No.
22011/4/91-Estt(A) dtd. 14th September, 1992 which
states that "A Govern~~ment~~ servant, who is recommended
for promotion by the DPC but in whose case any of
the circumstances mentioned in para 2 above arisen
after the recommendation of the DPC are received
but before he is actually promoted, will be consi-
dered as if his case had been placed in a sealed
cover by the DPC. He shall not be promoted until
he is completely exonerated of the charges against
him."

*Attended
S. Mallik Adv.
28/11/95*

2. Your contention that other similarly placed officials numbering 10 were promoted in December, 94 is neither relevant nor accurate. It is pointed out that regular promotion to the officials referred by you given only in March, 1994 in which name of Sri A.C. Nath could not be included as per provision of rule stated above.

Sd/- A.K. Bhargava,
24/11
Dy. General Manager (Admn.).

Copy to Sri A.C. Nath.

Attached
J. Malhotra Adv.
28/5

30.

Annexure - E.

No. 22011/4/91-Estt(A).

Government of India.

Ministry of Personnel, Public Grievances and
Pensions, Department of Personnel & Training.

North Block New Delhi - 110001

Dated, the 14th Sept., 1992.

OFFICE MEMORANDUM.

Subject : Promotion of Government servants against whom
disciplinary/court proceedings are pending
on whose Conduct is under Investigation. Pro-
cedure and guidelines to be followed.

The undersigned is directed to refer to Depart-
ment of Personnel & Training O.M. No. 22011/2/86-Estt(A)
dated 12th January, 1988 and subsequent instructions
issued from time to time on the above subject and to
say that the procedure and guidelines to be followed
in the matter of promotion of Government servants against
whom disciplinary/court proceeding are pending or whose
conduct is under Investigation have been reviewed
carefully. Government have also noticed the judgment
dated 27.08.1991 of the Supreme Court in Union of India
etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As
a result of the review and in supersession of all the

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Attested
Malla Adv
28/9

earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this O.M. for their guidance.

✓ 2. All the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-

- ✓ (i) Government servants under suspension ;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending ; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending. //

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC. Including 'Unit

Attended.
S. Malla Adv.
28/5

for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Finding regarding suitability for promotion to the grade/post of in respect of Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to till the vacancy should be separately advised to till the vacancy in the higher grade only in an officiating capacity when the finding of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2. The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened ~~will~~ the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened in case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers

*Attached
J. Malla Adv.
28/5*

and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary by reverting the junior most officiating person. He may be promoted nationally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies appears of ^{attants} ~~xxxxxx~~ or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of attants of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, lot example delayed at the instance of the employee of the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or an account of non-availability of evidence due to the acts attributable to the employee etc. These are only come of the circumstances where such denial can be justified.

3.1 If any pendlty is imposed on the Government

Alteceda
J. Mahla Adv.
28/5

servant as a result of the disciplinary proceedings or if he is found guilty in the criminal proceedings against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'warning' should not be issued as a result of such proceedings. If it is found as a result of the proceedings, that some blame attaches to the Government servant, at least the penalty of 'censure' should be imposed.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion

*Attested
S. Matta Adv.
28/5*

Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress disciplinary proceedings/criminal prosecution and the further measures to be taken to ex completion tion.

5. In spite of the six monthly review related to in para 4 above, there may be some cases, disciplinary case/criminal prosecution against the Government servant is not concluded ever after the of two years from the date of the meeting of first DPC, which kept its findings in respect of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects :-

- (a) Whether the promotion of the officer will be against public interest ;
- (b) Whether the charges are grave enough to warrant continued denial of promotion ;
- (c) Whether there is any likelihood of the case coming to a conclusion in the near future ;
- (d) Whether the delay in the finalisation of

Attached
 J. M. A. A.
 28/5

proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned ; and

- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy alter ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views ~~into~~ laid account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course alter the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. ~~Whether the~~ Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's

*Attache
J. Malta Adv
28/5*

record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that :-

- (i) the promotion is being made on purely ad-hoc promotion will not confer any right lot regular promotion ; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government ~~XXXXXX~~ reserves the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as regular one from the date of the ad-hoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the

*Attested
J. Malla Adv.
28/5*

and the actual date of promotion of the person ranked immediately Junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

✓ 7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above ^{arise} alter the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a

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 J. Pratta Rao.
 28/5

sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also. //

8. In so far as the personnel serving in the Indian Audit and Accounts Department ~~xxxx~~ are concerned, ~~these~~ these instructions have been issued after consultation with the Comptroller and Audit General of India.

9. Hindi version will follow.

Sd/- M.S. BALI,
DIRECTOR.

To

All Ministers and Departments of the Government of India with usual number of spare copies.

No. 22011/4/91-Estt(A) Dated the 14th Sept., 1992.

Copy forwarded for information to :-

1. Central Vigilance Commission, New Delhi.
2. Central Bureau of Investigation, New Delhi.
3. Union Public Service Commission, New Delhi.
4. Comptroller and Auditor General, New Delhi.
5. President's Secretariat/Vice President's Secretariat/
Lok Sabha Secretariat/Rajya Sabha Secretariat and
Prime Minister's Office.

*Attached
of
Mhalla Adv.
28/5*

6. Chief Secretaries of All States and Union Territories.
7. All Officers and Administrative Sections in the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

Sd/- M.S. BALI,
DIRECTOR.

*Attached
S. Maitra Adv.
28/5*

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Annexure - F.

Pendency of Rule 14 not a Bar in BCR.

Ernakulam CAT Judgment.

Hon. CAT, Ernakulam Bench in its judgment in O.A. 986/91 delivered on 30.1.92 held that pendency of Rule 14 proceedings is not a bar in giving promotion under BCR Scheme. This is an important decision by the Tribunal. We reproduce ~~herein~~ hereunder the relevant portion of the judgment.

O.A. No. 986 of 91.

V.V. Kamath (CTO Cochin-2) VS. Union of India and
2 others.

Date of Judgment : 30.1.1992 Signed by
The Hon'ble Mr. S.P. Mukherjee, Vice Chairman and the
Hon'ble Mr. N. Dharmadan, Member (Judicial).

EXTRACTS.

6. The Biennial Cadre Review pertains to the demands of Staff Union for granting one time bound promotion on completion of 26 years of service in the basic cadre. The respondents have accepted the demand and issued a policy decision uniformly applicable to all concerned. It does not prescribe any bar for granting of promotion under the scheme on account of the pendency of disciplinary proceeding under Rule 14 of CCS (CCA) Rules.

Attended
S. Chatterjee Adv.
28/5

7. The respondents have no case that the one time bound promotion is to be denied to an eligible officer on the completion of 26 years of his service in the basic cadre simply because of the pendency of disciplinary proceedings. In fact the applicant has not suppressed this fact in his application as submitted by the learned counsel for the respondents. In para 6 of the Original Application he has mentioned about the disciplinary proceedings and the charge sheet issued to him under CCS (CCA) Rules on 4.10.88. He further submitted that he filed a written statement and participated in the first sitting of enquiry on 22.5.89 and that there is no further progress in the enquiry. In the rejoinder the applicant submitted that promotion on the basis of biennial cadre review cannot be denied for the reason that the disciplinary proceedings are pending finalisation. As a matter of fact the applicant completed 26 years of service in the basic cadre on 21.4.1986 even before the service of notice in connection with the disciplinary proceedings and he is entitled to be promoted. It can be seen from Annexure-II that at the time of review the officials who are completing 26 years of service are to be screened by DPC to assess the performance and determine their suitability for advancement and the disciplinary proceedings can be continued after promotion without any further difficulty or ~~detriments~~ detriment to the department. Since Annexure-II does not bar any promotion under the one time bound promotion scheme applicant is entitled to get promotion. Under

*Attached
to
Matter Adv.
28/5*

these circumstances, there is no justification in denying promotion to the applicant as claimed by him.

8. In the result having regard to the fact and circumstances of the case, we are of the view that the applicant is entitled to be promoted in the higher grade in the scale of pay of Rs. 1600-2660 from the date of his junior was promoted with all consequential benefits legally eligible.

9. The Original Application is allowed to the extent indicated above. There shall be no order as to costs.

Note :- Annexure-II mentioned in the judgment is the Order of D T dt. 16.9.1990 on Biennial Cadre Review.

Adv. M.R. Rajendran Nair, an ex-employee of P&T and Leader of NEPTE ~~and~~ appeared for Com. Kamath.

- General Secretary.

*Attached
J. Malia Adv.
28/5*

Annexure - F(1).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

O.A. NO. 154 of 1992.

Date of Decision : The 17th day of September, 1993.

Shri Ramendra Chandra Paul,
 son of late Ramdayal Paul,
 working as Telecom Operating Assistant,
 Grade-II, C.T.O., Guwahati.

.... Applicant.

versus

1. The Union of India,
 represented by the Secretary,
 Ministry of Telecommunications,
 New Delhi.
2. The Chief General Manager,
 Assam Telecom Circle, Ulubari,
 Guwahati.
3. The Chief Superintendent,
 Central Telegraph Office,
 Guwahati.

.... Respondents.

For the applicant :- Mr. B.K. Sharma,
 Mr. M.K. Choudhury &
 Mr. A.K. Roy, Advocates.

Attested
 J. Malla Adv.
 28/5

For the respondents :- Mr. S. Ali, Sr. C.G.S.C.

CORAM :

THE HON'BLE JUSTICE SHRI S. HAQUE, VICE-CHAIRMAN

AND

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

JUDGMENT.

HAQUE, J.

The applicant, Shri Ramendra Ch. Paul has filed this application under Section 19 of the Administrative Tribunals, Act, 1985 assailing office order No. STA-39/BCR/6 dated 2.4.1991 (Annexure-3) by which his promotion was held up and against order No. STA-39/BCR/23 dated 27.4.1991 (Annexure-6) rejecting his representation.

2. The applicant was working as Telegram Operating Assistant (Grade-II) in the year 1990. The applicant qualified for promotion on completion of twentysix years of service in the basic cadre under the scheme of Biennial Cadre Review (Annexure-1). Accordingly, vide order No. STA-39/BCR/4 dated Guwahati, the 11.3.1991 (Annexure-2) the applicant was promoted on adhoc

*Allected
Matter Adv.
28/5*

basis with effect from 1.12.1990 and subsequently regularised with effect from 24.10.1990. But the promotion of the applicant was withheld vide order No. STA-39/BCR/6 dated 2.4.1991 (Annexure-3) on the ground that a disciplinary proceeding was pending against him.

3. The applicant submitted a representation dated 9.4.1992 (Annexure-5) referring to the decision dated 30.1.1992 in O.A. No. 986/91 of the Ernakulam Bench (Annexure-7) praying to withdraw the withholding order. But the said prayer was rejected vide letter No. STA-39/BCR/23 dated 27.4.1992 (Annexure-6) on the ground that no instructions had been received for implementation of the verdict of the Ernakulam Bench. Hence this application.

4. The respondents have contested this application on the ground that promotion under Biennial Cadre Review Scheme can also be withheld for pendency of disciplinary proceeding. Senior Central Government Standing Counsel, Mr. S. Ali makes submission in that line.

5. Learned counsel Mr. B.K. Sharma submits that the decision of the Ernakulam Bench is squarely

Accepted
S. Maitta Adv.
28/5

applicable in this case and the order withholding the applicant's promotion was bad in law. We have perused the judgment of the Ernakulam Bench. We are also of the view that the Biennial Cadre Review pertains to the demands of the staff union for granting one time bound promotion on completion of twenty-six years of service in the basic cadre. The respondents had issued the scheme/policy decision (Annexure-1) uniformly applicable to all concerned qualified for promotion on completion of twenty-six years of service and there was no bar for refusing promotion on account of pendency of disciplinary proceeding. Therefore, the ground assigned under Annexure-3 to withheld promotion of the applicant was wholly bad in law. The decision of the Ernakulam Bench is fully applicable in the instant case.

6. It may be mentioned here that by now the disciplinary proceeding of the applicant ended on 20.8.1993 with penalty of censure which is no bar for promotion and this is a settled principle of law.

7. In the result this application is allowed. The order No. STA-39/BCR/6 dated 2.4.1991 (Annexure -3) and order No. STA-39/BCR/23 dated 27.4.1991 (Annexure-6) are hereby set aside. The applicant is entitled to promotion to higher grade in terms of Biennial Cadre Review No. DDT No. 27-4/87-TE-II(I) dated 16.10.1990 with effect from 24.10.1990 with

Attested
by
Matta Adv.
28/5

all consequential benefits.

8. The respondents are directed to implement the directions of the judgment within 30 (thirty) days from the date of receipt of copy of the judgment.

9. Inform all concerned with copy of the judgment.

Sd/- S. Haque,
VICE CHAIRMAN.

Sd/- G.L. Sanglyine,
MEMBER (ADMN.).

TRUE COPY.

Sd/- Illegible,

Deputy Registrar (Judicial),
Central Administrative Tribunal,
Guwahati Bench, Guwahati.

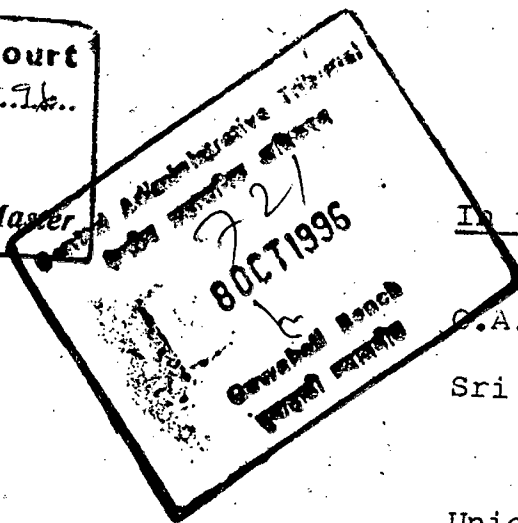
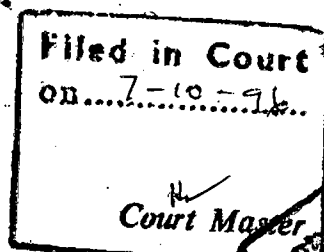
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Attested
S. Maiti Adv.
28/5

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Filed by:-
A. H. Choudhury
7.10.96
Addl. Central Govt.
Standing Counsel.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH



In the matter of :

C.A. No. 88/96

Sri Anil Chandra Nath

-versus-

Union of India & Ors.

-And-

In the matter of :

Written statement for and on behalf
of the Respondent Nos. 1, 2 & 3.

I, B. Dasgupta, Asstt. Director, Telecom (Legal)
Office of the Chief General Manager, Telecom, Assam
Circle Guwahati-781007 do hereby solemnly affirm and
say as follows :-

1. That I am the Assistant Director, Telecom (Legal)
Ministry of Communications, Government of India, Assam
Circle, Guwahati one of the respondents in this case
and acquainted with the facts and circumstances of this
case. I have gone through a copy of the application and
have understood the contents thereof and I have been
authorised to file this written statement on behalf of
the respondent Nos. 1, 2 and 3. Save and except whatever
is specifically admitted in this written statement the
other contentions and statements made in this written

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Received copy.
amark
(A. H. Choudhury)
4.3.97
applicant

B. Dasgupta -
Asstt. Director for Telecom (Legal)
O/o the C. G. M. Telecom
Assam Circle, Guwahati-781007.

statement the other contentions and statement made in this application may be deemed to have been denied. Before submission of parawise comments of the Original Application the respondents deem it necessary to give a brief history of the case for proper adjudication of the matter. The brief history of the case is as follows :

BRIEF HISTORY OF THE CASE

The applicant entered in the department as Lower Division Clerk on 19.10.1968, He was subsequently promoted to the grade of Upper Division Clerk vide GMT Shillong Memo No. STB/UD/Exam/76 dtd. 5.1.1977 later on he was designated as SS as per Telecom Commission letter No. 27-4/87/TE.II dated 9.9.1992. He had completed 26 years of service in basic cadre on 19.10.1994, and became eligible for consideration to be promoted under BCR Scheme date of effect would have been 1.1.1995. Shri Nath was also due to cross Efficiency Bar in the scale of Rs. 1400-2300 on 1.3.1994.

In case of Efficiency Bar Crossing, there was some delay for administrative and procedural in nature and the case was settled in favour of the applicant with retrospective effect.

In case of BCR promotion as per Depart of Telecom. letter No. 27-4/87-TE-II(I) dated 16.10.1990 under para 2(iv) at the time of review the number of officials who have completed/would be completing 26 years of service in

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B. D. Singh
Asstt. Director Telecom (Legal)
O/O the C. O. M. Telecom
Assam Circle, Guwahati-781007

the basic grades (including time spent in higher scales/OTBP) will be ascertained. The persons will be screened by the duly constituted Review Committee to assess the performance and determine their suitability for advancement his case was considered by the Departmental Promotion Committee (in short DPC), but the findings was kept under sealed cover as reports from VO indicated that the vigilance clearance was not there in respect of the applicant. This procedure is strictly in accordance to the procedure prescribed in pages 650 para 11.2 of Swamy's Complete Manual on Establishment & Administration which is quoted as under :-

" 11.2 Procedure to be followed by DPC in respect of Government servants under cloud:

The Departmental Promotion Committee shall assess the suitability of the Government servants come in within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration of disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "findings regarding suitability for promotion/confirmation in service/grade/post in respect of Shri (name of the Government servant). Not to be opened till the termination of disciplinary case/criminal prosecution against Shri". The proceedings of the DPC, need only contain the

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Asstt. Director, Telecom (Legal)
O/O the C. O. M. Telecom
Assam Circle, Guwahati-781007

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findings are contained in the attached sealed cover". The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

It is clear from the charge sheet issued to the applicant there were a number of charges framed against the applicant. A complaint related to furnishing of doubtful SC Caste Certificate by the applicant (he was recruited as SC candidate at the time of appointment as LDC. But produced SC Caste certificate and enjoyed promotion as SS in SC Quota) was received on 26.6.94 vide letter No. Secy/4/CC/81 from Secretary, Central Government S/C & S/T Welfare Association/Guwahati. On the basis of that and other complaint received against the complaint the Vigilance Cell of Assam Telecom Circle recommended C.G.M.T./Assam to initiate disciplinary proceedings against the applicant vide their letter No. Vig/Assam/101/82 dated 22.12.94 after completing investigation of all the charges from their side. At the same time Vigilance did not give clearance for his promotion in BCR Scheme. So it is a fact that vigilance cases against the applicant started long before 2.2.1995. Later on the date collected from the D.C.s of Khasi Hills, Shillong and Nowgang/Assam amply proved that the SC Caste Certificate produced by the applicant is not genuine.

PARAWISE COMMENTS

1. That with regard to the contents made in paragraphs 1,2,3, 4.1,4.2 and 4.3 of the application the respondents beg to state that they have no comments on them.

[Signature]
Asstt. Director Telecom (Legal)
O/O the C. G. M. T. e. m
Assam Circle, Guwahati - 781001

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2. That with regard to the contents made in paragraph 4.4. of the application the respondents beg to state that the Policy decision of Department of Telecommunication issued under Memo No. 27-4/87-TE-II(I) dated 16.10.90 has been strictly implemented and officials were promoted according to seniority cum fitness provided their vigilance position were clear.

3. That with regard to the contents made in paragraph 4.5 of the application the respondents beg to state that it is not a fact that anybody who completes 26 years of service should be automatically promoted to the higher grade. In fact, the officials who are covered by BCR scheme and complete 26 years of service are promoted to the higher grade provided the Departmental Promotion Committee considers them fit and against whom no vigilance case is pending. In the instant case, Shri A.C.Nath could not be promoted and figured in the Annexure 'B' of O.A. 88 of 1996 as there was a vigilance case pending against the applicant and DPC minutes in respect of the applicant was kept under 'Sealed Cover'.

4. That with regard to the contents made in paragraph 4.6 of the application the respondents beg to state that the applicant was allowed to cross Efficiency Bar with retrospective effect though order was issued later. This delay was mostly procedural and administrative in nature. No injustice is caused to the applicant as alleged in the application.

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B. Dasgupta
Asstt. Director (Telecom) (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007

5. That with regard to the contents made in paragraph 4.7 of the application the respondents beg to state that they have no comments on them.

6. That with regard to the contents made in paragraph 4.8 of the application the respondents beg to state that the promotion under BCR scheme related from lower grade to higher grade. The BCR promotion is based on recommendation of DPC. In all cases the DPC has to judge the fitness prospect of the official under review and an official who is chargesheeted with charges ~~xxxxxx~~ cannot be considered as fit for promotion to a post of superior responsibility. The implementation of recommendation of DPC is subject to clearance from the vigilance cell of the office/~~department~~ before making actual promotion of the official approved by DPC to ensure that no disciplinary proceedings are pending against the official concerned.

7. That with regard to the contents made in paragraph 4.9 of the application the respondents beg to state that there was a vigilance case contemplated against the official prior and as on 01.01.95, 'Sealed Cover' procedure was followed in his case and subsequently chargesheet was issued on 02.02.95 under Rule-14 of the CCS(CCA) Rules, 1965.

A copy of the Charge Sheet is annexed hereto and the same is marked as Annexure-A.

8. That with regard to the contents made in paragraph 4.10 of the application the respondents beg to state that the applicant produced some of the judgement of the Tribunal

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[Signature]
Asstt. Secy. for Tele. cum (Legal)
O/O the C. G. M. 1 & m
Assam Circle, Guwahati - 781007.

cases which are not similar to that of his own.

In O.A. No. 154 of 1992 the Hon'ble Central Administrative Tribunal, Guwahati Bench, the applicant Shri Ramendra Chandra Paul TOA/CTO/Guwahati, was promoted on adhoc basis with effect from 1.12.1990 and subsequently regularised with effect from 24.10.1990. But subsequently his promotion was withheld on the ground that a disciplinary proceeding was pending against him. But in case of the present applicant no such procedural lapses like first conferring of adhoc promotion and subsequent withdrawal of the same has taken place. In this instant application the ~~XXXXXXXXXX~~ applicant has been chargesheeted for committing gross irregularities intentionally by violating the departmental rules and procedures with ill-motive and also for his failure to maintain his devotion to duty and absolute integrity and acted in a manner of unbecoming of a responsible Government servant which contravene the Rule 3 (i) (ii) & (iii) of CCS (Conduct) Rules 1965. In view of above charges in the chargesheet served to the applicant he cannot be simply equated with Shri V.V. Kamath (CTO Cochin-2) applicant of O.A. No. 986/91 of Ernakulam Bench of the Hon'ble Central Administrative Tribunal.

9. That with regard to the contents made in paragraph 4.11 of the application, the respondents beg to state that the disciplinary proceeding is in full swing. The applicant already appeared before the enquiry committee a number of times. Until the disciplinary proceedings is over the question of BCR promotion does not arise. The

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Asstt. Director (Legal)
O/O the G. G. M. T. c m
Assam Circle, Guwahati-781007

disciplinary proceedings initiated against the applicant cannot be arbitrarily dropped without completing the same in the interest of service.

10. That with regard to the contents made in paragraph 4.12 of the application the respondents beg to state that the statement made by the applicant is not correct. The case against him was under investigation prior to 01.01.95 by the vigilance cell of this office. The final chargesheet was served on 02.02.95 only.

✓ 11. That with regard to the contents made in paragraph 4.13 of the application the respondents beg to state that the cases referred to by the applicant are not of similar nature of the instant case of the applicant as explained in paragraph 4.11.

in

12. That with regard to the contents made/paragraph 4.14 of the application the respondents beg to state that the ~~actions taken by~~ judgement given in other cases is not quite relevant for this instant case.

13. That with regard to the contents made in paragraph 5(i) of the application the respondents beg to state that the actions taken by the department are as per departmental rules and procedures.

14. That with regard to the contents made in paragraph 5(ii) of the application the respondents beg to state that allowing the crossing of Efficiency Bar was due on 01.03.94 prior to the initiation of disciplinary proceedings.

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[Signature]
O/O the C. G. M. T. C. M.
Assam Circle, Guwahati-781001.

15. That with regard to the contents made in paragraph 5(iii) of the application the respondents beg to state that mere completion of 26 years of service cannot be a claim for promotion as the DPC has to consult other relevant factors as stated earlier. Promotion is to be given on the recommendation of the DPC as per the established norms.

16. That with regard to the contents made in paragraphs 5 (iv) of the application the respondents beg to state that until the disciplinary proceeding is over, as the applicant has been charge-sheeted under rule-14 of CCS(CCA) rules. In view of the offense committed by the applicant being of serious nature, promotion to the higher grade is not permissible.

17. That with regard to the contents made in paragraphs 5 (v) of the application the respondents beg to state that the departmental proceedings once started, must be completed and the official must be exonerated honourably before giving promotion to him.

18. That with regard to the contents made in paragraph 5 (vi) of the application the respondents beg to state that the Hon.ble Tribunal judgement is not of the similar nature of the case of the applicant.

19. That with regard to the contents made in paragraph 5 (vii) of the application the respondents beg to state that action taken in this regard is not a violation rather safeguarding the Constitution of India and the basic principles of natural justice, fair play and service jurisprudence.

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20. That with regard to the contents made in paragraph 6 of the application the respondents beg to state that the departmental proceedings once started must be completed and the official concerned must be exonerated honourably before giving promotion to the applicant.

21. That with regard to the contents made in paragraph 7 of the application, the respondents beg to state that they have no comments on them.

22. That with regard to the contents made in paragraphs 8(i) & (ii) of the application the respondents beg to state that declaration cannot be given until disciplinary proceedings are completed and the official is exonerated honourably.

23. That with regard to the contents made in paragraph 8(ii) of the application the respondents beg to state that at this stage, as per judgement of the Hon'ble Supreme Court against Civil Appeal No. 2561-62 of 1994, decided on 1.12.1994 para vii (enclosed in the Annexure-~~XX~~ B), that the court may not pass any direction prior to the conclusion of the Disciplinary Proceedings.

24. That with regard to the contents made in paragraph 8(iv) of the application, the respondents beg to state that the letter mentioned in Annexure-D(I) of the Original Application No. 88 of 1996 is not an order but a communication of facts, So the question of quashing does not arise.

25. That with regard to the contents made in paragraph 8(v) of the application the respondents beg to state that cost of application is irrelevant at this stage.

26. That with regard to the contents made in paragraph 8 (vi) of the application the respondents beg to state that they have no comments on them.

27. That with regard to the contents made in paragraph 9 of the application the respondents beg to state that an order can be issued only after departmental proceeding is completed and the applicant is exonerated honourably.

28. That with regard to the contents made in paragraphs 10 and 11 of the application the respondents beg to state that they have not comments on them.

29. That the respondents submit that the application has no merit and as such the same is liable to be dismissed.

[Signature]
Asstt. Director (Legal)
O/O the C. G. M T c m
Assam Circle, Guwahati - 781002

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

I, Sri B. Dasgupta, Assistant Director Telecom (Legal), Office of the Chief General Manager, Telecom., Assam Circle Guwahati, do hereby declare that the statements made in this written statement are true to my knowledge to my knowledge and belief.

I, sign this verification on this the 30th day of September, 1996 at Guwahati.

B Dasgupta

DEPONENT

Office of the Chief General Manager (Legal)
O/O the C. G. M. Telecom
Assam Circle. Guwahati-781007.

13 Annexure - #
page I

Charge Sheet for imposing penalties under Rule 14 of CCS(CCA) Rules
=====

No. DGM(A)/CON/ACN/15

AM

GOVERNMENT OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE CHIEF GENERAL MANAGER, ASSAM TELECOM CIRCLE
ULUBARI, GUWAHATI-7
=====

Dtd. at Guwahati the 02nd February, 1995

MEMORANDUM
=====

The President / undersigned proposes to hold an enquiry against Sri Anil Chandra Nath under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965. The substance of the imputations of mis-conduct or mis-behaviour in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or mis-behaviour in support of each article of charge is enclosed (Annexure II).

2. Sri Anil Chandra Nath is directed to submit within 10(ten) days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an enquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Sri Anil Chandra Nath is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the enquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS(CCA) Rules, 1965 or the orders/directions issued in pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.
5. Attention of Sri Anil Chandra Nath is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964 under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt

(Contd. to P/2)

14 62 Annexure page 2
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with in these proceedings it will be presumed that Sri Anil Chandra Nath is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged.

(By order and in the name of the President)


(B.K. Deori)

Dy. General Manager (Admn)
O/O the Chief General Manager
Assam Telecom Circle
Guwahati-7

To

Sri Anil Chandra Nath,
Section Supervisor (A&P)
O/o the Chief General Manager
Assam Telecom Circle
Guwahati-7

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(63)

Annexure 4
page 5
16

ANNEXURE I

=====

ARTICLE OF CHARGES FRAMED AGAINST SRI A.C.NATH, S.S.(A&P), OFFICE
OF THE CHIEF GENERAL MANAGER, ASSAM TELECOM CIRCLE, GUWAHATI-7 ::
=====

While Sri A.C.Nath, S.S. was posted and functioning in the various posts at Circle Office, Guwahati, he committed a gross irregularities intentionally by violating the Departmental rules and procedures with ill motive.

That Sri A.C.Nath, S.S. was promoted from U.D.C. to Section Supervisor under S.C. quota and was allotted Departmental Quarter at Beltola under S.C. quota though Sri A.C.Nath entered into the Department as O.C. community. It is authenticated that Sri Nath had misguided the Department by not pointing out his actual caste community in case of his promotion from U.D.C. to S.S. Thus he was enjoying facilities of "S.C." community in getting benefit of promotion and allotment of Departmental quarter by depriving the deserving officials.

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ANNEXURE II
=====

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR WHICH ACTION IS PROPOSED TO BE TAKEN AGAINST SHRI A.C.NATH, S.S.(A&P), O/O THE CHIEF GENERAL MANAGER, ASSAM TELECOM CIRCLE, GUWAHATI-7
=====

While posted and functioning in the Circle Office, Guwahati, Sri A.C.Nath, S.S. committed a high gross irregularities intentionally as furnished below.

That Sri A.C.Nath got promotion from U.D.C. to S.S. under S.C. quota and was allotted Departmental quarter at Beltola in his name under S.C. quota. Sri A.C.Nath entered into the Department as O.C. community. Knowing fully well Sri Nath remained silent and he was enjoying the benefit by depriving the others without pointing out the anomalies to the Department in respect of allotting Govt. quarter in S.C. quota and promotion to S.S. in S.C. quota in his case.

Further, the allotted Departmental Quarter in his name was rented out by Sri A.C.Nath to the other party by taking Rs.510/- per month without the approval of the Department and thus Sri Nath was earning money. In view of the caste anomalies, the caste certificate, if any, was called for from Sri A.C.Nath. Sri Nath produced a photo copy of the caste certificate issued by the D.C. of Khashi Hills, Shillong which is not acceptable as Sri Nath hails from Nawgaon District, Assam only.

From the above facts Sri A.C.Nath committed gross irregularities with ulterior motive intentionally and failed to maintain his devotion to duty and absolute integrity and acted in a manner of unbecoming of a Govt. Servant which contravene the Rule 3(I) (i), (ii) & (iii) of C.C.S.(Conduct) Rule, 1964

Attested
A.C. Choudhury
Addl. Control Govt.
Standing Counsel.

12. Before closing, it is required to be stated that we have not appreciated the stand taken by the appellants. This is for the reason that employers like the appellants, who are required to be model employers, should not take a stand which is unfair. They have to treat both the wings of the Service fairly, as both are equally important in so far as they are concerned. The need for making this observation has been felt because what we find is that despite an incumbent like respondent No.1 having served for more than a decade following his appointment, the stand taken is that he should be taken to have become a member of the Service from 1984 and not from 1972, being oblivious of the fact that for more than 12 years he had discharged the functions of the higher post to the satisfaction of the all concerned. Denial of such long period of service for the purpose of seniority is an unjustified and arbitrary act which a model employer has to eschew.

13. The appeal is disposed of as per direction given earlier. In the facts and circumstances of the case we make no order as to costs.

SUPREME COURT OF INDIA

Civil Appeal Nos. 8561-62 of 1994

[Arising out of SLP (Civil) Nos.14469-70 of 1994]

Decided on 1.12.1994

Transport Commissioner, Madras

Versus

Appellant

A. Radha Krishna Moorthy

Respondent

PRESENT

The Hon'ble Mr. Justice B.P. Jeevan Reddy
The Hon'ble Mr. Justice Suhas C. Sen

(A) Constitution of India, Article 311--Administrative Tribunals Act, 1985--Section 14--Disciplinary Proceedings--Charge Memo--Truth and correctness of the charges--Administrative Tribunal has no jurisdiction to go into the truth of the allegations/Charges particularly at a stage prior to the conclusion of the disciplinary enquiry. (Para 7)

(B) Constitution of India, Article 311--Departmental Enquiry--Appointing Authority--No bar to initiate the departmental enquiry by an officer subordinate to the appointing authority--Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. (Para 8)

(C) Constitution of India, Article 311--Charge Memo--Non supply of particulars of charge or supporting materials--Even the charges were not clear or specific--Charges were unsustainable and not true. (Para 9)

JUDGMENT

B.P. Jeevan, Reddy, J.:- Leave granted. Heard Counsel for both the parties.

This appeal is preferred against the judgment of the Tamil Nadu Administrative Tribunal allowing the Original Application filed by the respondent and quashing the memo of charges communicated to the respondent.

The respondent Radha Krishna Moorthy was working as the Additional Regional Transport Officer, Madras (Central) during the period 20th June, 1984 to 20th March, 1985. In September, 1985, he was promoted as Deputy Transport Commissioner. Sometime in the first half of 1989, a Special Audit Wing of the Transport Department detected and reported misappropriation of a large

Annexure B

page 1

amount of Government money in the office of the Regional Transport Officer, Madras (Central) during the years 1983-84 and 1984-85. On the basis of the said report a memo of charges dated 4.6.89 was communicated to the respondent.

4. The memo of charges first sets out the amounts misappropriated under various heads in the said office during the aforesaid years, and then follow paragraphs 4, 5 and 6, which read as follows:

"4. During the above period, you Thiru. A. Radhakrishnamoorthy were performing the duties and responsibilities in the above office as Additional Regional Transport Officer. Your duties included money transactions and ensuring that accounts were prepared correctly and preserved for production before the audit party whenever necessary. You have failed in your duties. Consequently embezzlement has occurred resulting in loss of revenue to Government to the tune of Rs.5,54,124/- in the year 1983-84. Thus you have committed grave offence. The following charges are therefore framed against you under rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules.

(i) That you indulged along with eight other officials referred to above in the act of misappropriation of Government funds by falsification of accounts by indicating false amounts of fees in the Triplicate copies of cash receipts which were lesser than the amounts which were actually collected from the public and noted in the duplicate copies of cash receipts received along with the respective applications to make it appear that only appropriate permit fees due to Government were collected. You with the connivance of other officials with the malafide intention of cheating the Government have thus misappropriated Government money.

(ii) That by the fraudulent removal of cash receipt books and cash books from the premises of Regional Transport Officer, Madras (Central) and also by your intentional failure in arranging to produce the relevant accounts before the officials from unearthing proof of further misappropriation of Government money.

(iii) And that you and other officials are responsible for pecuniary loss caused to the State Government by above acts of misappropriation and are thus liable for recovery of the amounts i.e. Rs.5,54,124/- in the year 1983-84 and Rs.5,21,914/- in the year 1984-85.

5. You are hereby directed to submit your written statement of defence to this charge memo within 15 days from the date of receipt of this memo of charge. You are also informed that if no written reply is received, it will be presumed that you have no explanation to offer and further action will be proceeded with, on merits.

5. Though the enquiry commenced into the said charges it was not concluded by the year 1992, in which year the respondent approached the Tribunal for quashing the charges. Three grounds were urged by the respondent in support of his prayer aforesaid:

- (1) that the charges communicated are vague and are not elucidated by the statement of particulars or in any other manner;
- (2) the disciplinary proceedings have been initiated by an authority lower than the appointing authority of the respondent and, therefore, incompetent;

(3) the charges are unsustainable and untrue.

6. The Tribunal has recorded that in spite of due opportunity being given to the appellant (respondent in the Original Application) for filing his counter, he did not file any counter. The Tribunal quashed the charges on all the three grounds.

7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into - more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e. where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making process. For the reasons the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.

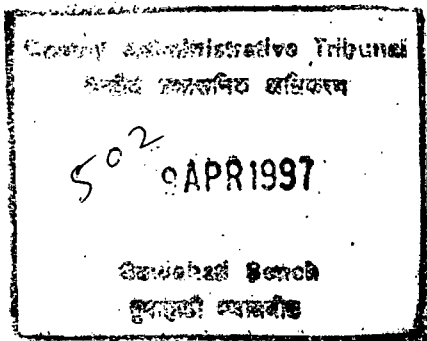
8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal.

9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned counsel for the respondent that except the memo of charges dated 4.6.89, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts, what part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to G.O. Ms. 928, dated 25.4.88, mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf.

10. We are, therefore, of the opinion that the judgment of the Tribunal is right insofar as it holds that the charges communicated to the respondent are vague. In the ordinary course we would have directed the disciplinary authority or the authority which framed the charges to particularise the charges and then to proceed with the enquiry but it appears that the respondent has hardly about seven or eight months to go for retirement. Having regard to the facts and circumstances of the case, we are of the opinion that the matter should end here.

11. Accordingly the appeals are dismissed on the ground indicated above. No costs.

Attested
Chamollu
M. Central Govt.
Appeals Council



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH.

IN THE MATTER OF :-

O.A. No. 88/96.

Shri Anil Chandra Nath.

.... Applicant.

VS.

Union of India & Others.

.... Respondents.

AND.

IN THE MATTER OF :-

Reply to the written statement
filed by the Respondent to O.A.
No. 88/96 by the Applicant.

REPLY TO THE WRITTEN STATEMENT.

I, Shri Anil Chandra Nath, S/O. Late D. Nath, aged about 47 years, presently working as Section Supervisor (A&P) in the Office of the Chief General Manager, Assam Telecom Circle, Guwahati-7, do hereby solemnly affirm and say as follows :-

.....2.

Received
9/4

Copy Received on
Mr. G. S. Nath
9-9-97

Nath

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1. That I am the applicant of the O.A. No. 88/96 and copy of the written statement to my O.A. No. 88/96 has been served upon me. I have perused the contents thereof and have understood the meaning of the contents thereof.

2. That save and except as what is specifically admitted in this reply to the written statement, the rest of the statements and contentions are to be taken as denied.

3. That with regard to the statements made in paragraph 1 of the reply to the portion "Brief History of the case", your applicant begs to state that, it is misleading, misconstrued and wrong interpretation of the provisions. This itself will indicate vindictive attitude of the respondents to deprive your applicant from his legitimate claim.

The Respondent affirms that the D.P.C. considered the promotion case of your applicant and finding was kept under Sealed Cover as the 'Vigilance clearance' was not there. To justify the action the respondent reproduce the para 11.2 of the 'Swamy's Complete Manual on Establishment and Administration'.

.....3.

Handwritten signature

The extract is in fact an selected part of the Govt. of India, Ministry of Personnel, Public Grievence, Pension, Deptt. of Personnel and Training letter No. 22011/4/91-ESTT(A) dated 14.9.1992 which was discussed in para 4.8 of the O.A. and copy thereof was produced as Annexure-E of the O.A.

It is amply clear that the Sealed Cover Procedure will be adopted for those Govt. Servants who fall in any of the following category.

- (i) Govt. Servant under suspension.
- (ii) Govt. Servant in respect of whom a charge-sheet has been issued and the Disc. proceedings are pending.
- (iii) Govt. Servants in respect of whom prosecution for a criminal charge is pending.

The only point that requires to be considered is whether your applicant came under the purview of any of the three circumstances till 1.1.1995 on which date his promotion to Senior Section Supervisor fell due. It is undisputed that the applicant was never placed under suspension nor any criminal case was prosecuted against him. It is also equally true that no charge-sheet was issued to the applicant until 1.1.1995. Apparently, none

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of the three circumstances was existing to justify the adoption of sealed cover procedure.

4. That the averments made in paragraph 4 of the reply to the O.A. makes it crystal clear the motive of the respondents.

It may be pertinent to mention here that the E.B. case was settled after the promotion case was withheld. Your applicant was allowed to cross E.B. after repeated reminders and slept over the whole matter for one complete year.

It is unfortunate the competent officers are now trying pass the inefficiency and ill-motive to procedural and administrative nature. The malafide intention and colourable exercise of power is vented out by the respondents by stating that no sufferings have been cause to your applicant for failure to deliver justice at time by respondents. The whole action lacks norms and procedures established by law and good conscience.

5. That the statement made in paragraph 6 of the written statement is strongly denied by your applicant. It is reaffirmed that no chare-sheet was given to your applicant until 1.1.1995.

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6. That the averments made in paragraph 7 of the written statement is contradictory to the whole stand taken by the respondents.

The respondents categorically stated in paragraph 7 "a vigilance case was contemplated" when the promotion fell due on 1.1.1995 and accordingly the sealed cover procedure was adopted. This is an admission that there was no Disciplinary case pending at that point of time. It was only at the stage of contemplation.

The stand taken by the respondent is contrary to the instructions contained in the G.O.I. letter dated 14.9.92. The reason assigned by the respondent is unheard-of. The respondent has failed to cite any rules/orders which authorise such action on the ground of "contemplated vigilance case".

The action of the respondents smacks capricious and malafide intention which is based on extraneous considerations.

7. That to the averments made in paragraphs 8, 9 and 10 of the reply your applicant begs to state that the in the office Memorendum dated 14.9.92, it has been made clear that it supersedes all earlier instructions on the subject. Thus it becomes fully clear that instruction

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contained in the letter including those relating to the particulars of Govt. servants in whose case sealed cover procedure will be adopted are exhaustive and final. The new additions or subtractions to the same cannot be done by the respondents to the Office Memorandum as it is beyond their administrative capacity and cannot stand legal scrutiny.

8. That your applicant submits that from the reply to the written statement, it is evident that the respondents have functioned against the Principle of Natural Justice and administrative fairplay. The arbitrary, discriminatory malafide intention based on extraneous considerations are reflected from the fact that now the respondents are trying to take shelter of "contemplated" departmental proceedings. The whole action of the respondents in not giving legitimate promotion to your applicant is based on colourable exercise of power and unheard of in the service jurisprudence. The respondents have deliberately flouted all the norms and procedures established by law and service jurisprudence.

9. That your applicant submits that the action of the respondents are not based on good conscience and equity and reasonable classification and as such your applicant is entitled to be promoted to the higher grade on regular basis with effect from 1.1.1995.

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That the statements made in this ~~paragraph~~ written statement and in paragraphs 1, 2, 3, 6 and 7 are true to my knowledge, those made in paragraphs 4, 5 and — are matter of records information derived from which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

Accordingly, I sign this written statement on this 4th day of ~~March~~^{April}, 1997 here at Guwahati.

Anil Ch. Nath

(ANIL CHANDRA NATH)
Applicant.