

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00335/2015

Date of Order: This, the 20th day of February 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Jogesh Das
Son of Late Brojen Chandra Das
Resident of North Guwahati
Rajaduar, North Guwahati
Guwahati – 781030.

...Applicant

By Advocates: Mr. D. Saikia, Sr. Advocate, Mr. B. Choudhury and
Mr. K.K. Dutta

-Versus-

1. Union of India
Represented by Secretary
To the Govt. of India
Ministry of Telecommunication and
Information Technology
Department of Telecommunication
Sanchar Bhawan, 20
Ashok Road, New Delhi – 66.
2. Bharat Sanchar Nigam Limited
Represented by the Chief General Manager
Telecom, Assam Circle, BSNL Bhawan
A.R.B. Road, Panbazar
Guwahati – 781001.
3. Chief General Manager, Telecom
Assam Circle, BSNL Bhawan, A.R.B. Road,
Panbazar, Guwahati – 781001.
4. General Manager
Kamrup Telecom District
BSNL Bhawan, Panbazar, Guwahati – 1.

5. Deputy General Manager
 Finance and IFA, Office of the CGMT
 Assam Circle, BSNL Bhawan
 Panbazar, Guwahati – 1.

...Respondents

By Advocate: Mr. B. Pathak, BSNL Advocate

O R D E R (ORAL

MANJULA DAS, MEMBER (J):

By this O.A., applicant makes a prayer for setting aside the order dated 09.09.2015 as well as 21.09.2015 whereby the applicant's promotion to the post of JAO is declared illegal and he was directed to appear before the competent authority in compliance of the order of this Tribunal.

2. Mr. D. Saikia, learned Sr. counsel assisted by Mr. B. Choudhury, learned counsel appearing on behalf of the applicant submitted that earlier applicant approached this Tribunal vide O.A. No. 040/00082/2015 for setting aside the order dated 21.02.2005 whereby a decision was taken by the respondents to delete the name of previously qualified candidate from the merit list and declared fail in the examination. This Tribunal vide order dated 11.03.2015 while setting aside the order dated 21.02.2015 directed the applicant to place the copy of the OA before the respondent authority within fifteen days and on receipt of the same the

respondents were directed to treat the same as comprehensive representation and disposed of the after affording the applicant an opportunity of being heard within three months thereafter. It is further submitted that despite the above order, the respondents have decided the matter first and then directed the applicant to appear before the competent authority. Thus, according to the learned Sr. counsel, the respondents have violated principles of natural justice as well as the orders of this Tribunal.

3. It was submitted by learned Sr. counsel for the applicant that in fact the applicant declared to be qualified in the review of result of failed SC/ST candidates of JAO Pt-II Internal Competitive Examination under 40% quota held on 4th, 5th and 6th January, 2010 where the applicant was qualified in order of merit against Sl. No. 2 under ST Category vide letter dated 28.07.2010. Thereafter, vide order dated 09.12.2010, the applicant was appointed as Junior Accounts Officer on probation in BSNL subject to successful completion of Phase-I induction training with terms and conditions.

4. Learned Sr. advocate further submitted that thereafter, vide order dated 21.02.2015, the name of the applicant was deleted from the previously qualified candidate from the merit list on the ground that he is not eligible to get benefit under ST category w.e.f. 07.04.1998 as the ST status of Koch-Rajbangshi community to which

he belongs to, lapsed on 02.04.1997. According to the Sr. advocate, there is a procedural lapse on the part of the respondent authority while passing the impugned order dated 09.09.2015 which is not in compliance with the order passed by this Tribunal on 11.03.2015 and against the principle of natural justice. Hence the impugned order is bad in law inasmuch as without affording opportunity of being heard, the respondent authority has passed the impugned order dated 09.09.2015. Passing of the impugned speaking order before affording an opportunity to the applicant clearly demonstrate a pre conceived mind and decision of the BSNL authorities to give post decisional hearing clearly circumvents this Tribunal's order which is not permissible in law. To substantiate his argument, learned Sr. advocate has relied upon the following decisions:-

- (i) **Ram Ujarey Vs. Union of India (1999) 1 SC 685;**
and
- (ii) **Shekhar Ghosh Vs. Union of India and another (2007) 1 SCC 331.**

5. Per-contra, Mr. B. Pathak, learned BSNL counsel appearing on behalf of the respondents submitted that the Hon'ble President of India issued an ordinance vide No. 9/1996 published in the Assam Gezette in 8/3/1996 thereby declaring Koch-Rajbongshi as Schedule Tribe which came into force at once. The said ordinance could not be replaced by any enacted law and the

same was lapsed. The applicant enjoyed the benefit of ST till 07.04.1998 only after which the status of ST is ineffective as per Government of Assam Notification dated 07.04.1998.

6. It was submitted by Mr. Pathak that the speaking order is not a final order to take away the benefits of ST status as stated by the learned counsel for the applicant. According to Mr. Pathak, last para (para 3) directed the applicant Shri Jogesh Das to appear before the competent authority personally and allow him to dispose his statement orally or in writing or in respect of the violations indicated in the speaking order. This was done as per direction of this Tribunal dated 11.03.2015 passed in O.A. No. 040/00082/2015. Accordingly, the applicant was given opportunity to hear personally. The applicant had been given ample opportunity to be heard personally and in writing and finally hearing was concluded on 23.11.2015. According to Mr. Pathak, applicant had already given many opportunities to represent his case and no coercive action has since been taken. As such, this Tribunal shall not interfere with the decision of the authorities passed vide speaking order dated 09.09.2015.

7. Having heard the learned counsel for the parties, perusal of the pleadings and material placed before us, we have gone through the order of this Tribunal passed on 11.03.2015 passed in

O.A. No. 040/00082/2015. Said O.A. was filed by the present applicant in his earlier litigation with a prayer for setting aside the impugned order dated 21.02.2015 whereby a decision was taken by the respondent authority to delete the name of previously qualified candidate from the merit list and declared Fail in the examination.

8. The brief facts of the case is that the applicant belongs to the reserved category of Koch-Rajbangshi community and appointed as Regular Mazdoor on compassionate ground by the Department of Telecommunication, Government of India vide order dated 07.07.1997. In the year 1999, the applicant participated in the Screening Test for entry in the re-structured cadre of Telecom Mechanic. On coming out successful, the applicant and other similarly situated employees were sent for training and on completion, they were appointed as Telephone Mechanic by order dated 14.03.2007. In the year 2006, the respondent authorities decided to conduct departmental examination, which consisted of two parts i.e. part I and II for the post of Junior Accounts Officer (in short JAO). On completion of training, the applicant along with others was appointed and posted as JAO in the office of General Manager, Telecom District, Nagaon vide order dated 09.12.2010.

9. The grievance arose as and when a decision was taken by the respondent authorities vide impugned order dated 21.02.2015

i.e. after long 5 years by which declared the applicant ineligible to get benefit under ST category w.e.f. 07.04.1998 as the ST status of Koch-Rajbangshi community to which he belongs to, lapsed on 02.04.1997. Being aggrieved, the applicant approached this Tribunal vide O.A. No. 040/00082/2015. The basic argument of Mr. D. Saikia, Sr. Advocate assisted by Mr. B. Choudhury, learned counsel for the applicant is that there was a procedural irregularity inasmuch as the order passed by this Tribunal on 11.03.2015 in O.A. No. 040/00082/2015 was not complied with rather directly passed the impugned order dated 09.09.2015 without giving opportunity of being heard rather issued show cause notice to the applicant. Thus the impugned order is bad in law.

10. For coming to a logical conclusion on the basis of argument advanced by the Sr. Advocate for the applicant as well as reply by the learned counsel for the respondents Mr. B. Pathak, we need to go through the decision of this Tribunal dated 11.03.2015 where this Tribunal rendered its decision and relevant portion of the said order is reads as under:-

“15. After taking into consideration the entire conspectus of the case and with the above backdrop, we feel proper that let justice be done by directing the applicant to place the present O.A. before the respondent authority within a period of 15 (fifteen) days from the date of receipt of a copy of this order. We order accordingly to the applicant. On receipt of this O.A., the respondents are hereby directed to treat the same as a comprehensive representation and dispose of the same

after affording opportunity of being heard within a period of three months thereafter."

11. Now explore the impugned order dated 09.09.2015 passed by the respondent authority in terms of the speaking order in compliance of the order passed by this Tribunal on 11.03.2015. In the said order, it appears that the respondent authority has decided to pass the impugned speaking and reasoned order considering the copy of the O.A. as comprehensive representation as directed by this Tribunal. The entire order speaks about the details grounds taken for deletion of the name of the applicant from the merit list of JAO Internal Competitive Examination against 40% quota held on 4th, 5th and 6th January 2010 and lastly the authority issued the show cause to the applicant as to why his promotion to the post of JAO should not be cancelled and be reverted to his original post of Regular Mazdoor. Further directed the applicant to personally appear before the designated authority affording him the personal hearing.

12. Thus, from the reading of the said order, it is easily discernible that the said speaking and reasoned order was passed on 09.09.2015 without affording opportunity of being heard to the applicant although there is a clear direction from this Tribunal to pass the same after affording opportunity of being heard. In **Shekhar Ghosh (supra)**, the Hon'ble Apex Court held that:-

"It is not denied or disputed that even when a mistake is sought to be rectified, if by reason thereof, an employee has to suffer civil consequences ordinarily the principles of natural justice are required to be complied with."

In **Ram Ujare (supra)**, the Hon'ble Apex Court has observed that:-

"If benefit of service rendered by appellant from 1964 to 1972 was intended to be withdrawn and promotion order was to be canceled as having been passed due to mistake, the respondents ought to have first given an opportunity of hearing to the appellant."

Further observed that:-

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

13. It is apparent that the order of this Tribunal dated 11.03.2015 has not been duly complied with in true and spirit manner. Hence, we deem fit and proper to direct the respondent authorities to afford opportunity of personal hearing of the applicant so as to enable the applicant to substantiate his case before the authority which will be fixed for hearing in the month of May 2019 as per convenient of parties in regards to the date, time and venue of the hearing and pass a reasoned and speaking order within a period of one month thereafter and the decision to be arrived, shall be communicated to the applicant forthwith. Order accordingly.

14. Consequently, the impugned order No. ASM/TR/Staff/Jogesh Das/2015-16/18 dated 07/09.09.2015 is set aside.

15. With the above observation and direction, O.A. stands disposed of accordingly. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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