

(2026) 01 JH CK 1885

In the Jharkhand High Court

Case No : Writ Petition (S) No. 830 Of 2025

Bharat Sanchar Nigam Limited through its Managing Director	APPELLANT
Vs	
Ranju Prasad, D/o Late Kapildeo Prasad	RESPONDENT

Date of Decision : 20-01-2026

Acts Referred:

Constitution of India, 1950 — Article 32, 136, 226, 227, 323A, 323A(2), 323B, 371D
Administrative Tribunal Act, 1985 — Section 14, 14(3), 28

Citation : (2026) 01 JH CK 1885

Hon'ble Judges : Sujit Narayan Prasad, J; Arun Kumar Rai, J

Bench : Single Bench

Advocate : Prabhat Kr. Sinha, Mayank Mridul, Amish Lal, Sahibjot Singh, Ajit Kumar, Radha Krishna Gupta, Kiran Shushma Khoya, Shalini

Final Decision : Disposed Of

Judgement

1. Both the writ petitions have been listed together for analogous hearing.
2. The prayers have been made in both the writ petitions for quashing of the order dated 01.10.2024 passed by the learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) in O.A. No. 162 of 2019 and O.A. No. 163 of 2019, whereby and whereunder, the relief sought for in the original applications have been allowed.
3. The reliefs which were the subject matter of the two original applications are as follows:

In. O.A. No. 162 of 2019:

- i. For commanding upon the respondents for promoting the applicant in the IDA pay scale w.e.f. 01.10.2004 under the NonExecutive promotion Policy (hereinafter referred as NEPP) which has arbitrarily and erroneously been given from 03.10.08 instead of 01.10.04 against their own policy decision although the other similarly situated person have been granted the promotional benefits as per the policy framed under

ii. For commanding upon the Respondent not to convert the GPF contribution made by the applicant into EPF contribution which has been erroneously done by the Respondent against the benefits and interest of the applicant.

iii. For quashing of the letter no.ST/MISC/Complain/JKD/DMK/2006/54 dated 19.09.2014 whereby and where under the Presidential Order issued vide letter no. 27/1/JHAR/Dumka/200/2021 dated 06.03.2022 was cancelled in the most arbitrary manner.

In O.A. No. 163 of 2019:

i. For quashing of the office order no. Estt/Relax/JKD/R.Pd/dated 04.08.07 issued under the signature of respondent no.8 whereby and where under the said respondent has rejected the request and representation of the applicant for converting her post from Group/ D to Group C ignoring the fact that the initial appointment of the applicant was approved by the department in Group-C.

ii. For commanding upon the respondents to convert the post of the applicant from Group D to Group C as per the office order dated 12.07.2000 passed by the respondent no.6 wherein sanction and approval was given for appointment of the applicant in Grade C.

iii. For quashing of the letter no. ST/MISC/Complain/JKD/DMK/2006/54 dated 19.09.2014 whereby and where under the Presidential Order issued vide letter no. 27/1/JHAR/Dumka/200/2021 dated 06.03.2022 was cancelled in the most arbitrary manner.

4. This Court, before proceeding with the matter by appreciating the arguments advanced on behalf of the parties, deems it fit and proper to refer the brief facts.

5. The respondent herein, initially had approached to this Court by invoking the jurisdiction conferred to this Court under Article 226 of the Constitution of India by filing two writ petitions being W.P.(S) No. 7714 of 2012 and W.P.(S) No. 7380 of 2012 and in both the writ petitions, positive directions were passed.

6. The writ petitioner, Bharat Sanchar Nigam Limited (BSNL), had preferred letters patent appeal being L.P.A. No. 393 of 2018 and L.P.A. No. 130 of 2018 against the orders passed by the writ court merely on the ground that the writ court was not having jurisdiction to entertain the writ petitions in view of the fact that the respondent was the employee of the Central Government, as such, is coming under the fold of Section 14 of the Administrative Tribunal Act, 1985 and for those litigant, a forum has been carved out by making amendment in the Constitution by insertion of Article 323A in the Constitution of India.

7. The letters patent appellate court primarily relied upon the judgment rendered by the Hon'ble Supreme Court in L. Chandra Kumar vs. Union of India and Ors., (1997) 3 SCC 261 keeping the fact into consideration that for the public servant, who are the employees of the Central Government or if brought under the fold of Central Administrative Tribunal by virtue of issuance of notification time to time,

the Central Administrative Tribunal, having its territorial jurisdiction, is the court of first instance.

8. The letters patent appellate court vide orders dated 29.10.2018 has quashed the order/judgment passed by the writ court dated 13.09.2017 passed in W.P.(S) No. 7714 of 2012 and W.P.(S) No. 7380 of 2012 respectively. However, with the liberty to the respondent to approach before the Central Administrative Tribunal as a court of first instance.

9. The respondent, thereafter, had approached to the learned Tribunal by filing two original applications being O.A. No. 162 of 2019 and O.A. No. 163 of 2019. Both the original applications had been allowed in following terms:

"10. The core issue to be decided in this matter is whether after absorption in BSNL right of the applicant gets extinguished that he had in previous department, i.e. DoT. The issues raised in both the OAs are adjudicated as under:-

(a) The contention of the applicant in both the OAs is that she exercised her option for compassionate appointment in Group 'D' because she was in dire need and her first requirement was to get a job. Applicant is also harping on Annexure A/3 - Minister of Communication note dated 23.09.2000 whereby it was written to CGM, Bihar Telecom Circle, Patna that the applicant's case may be considered sympathetically and as soon as a Group 'C' post is available she may be accommodated preferably at Deoghar even if she joins a Group 'D' post for the time being. It is contended by applicant that when the respondent no. 9, similarly placed to applicant, was granted Group C subsequent to appointment to Group D, the applicant should not be denied that benefit.

The learned counsel for the respondents referred to para 5 of the WS and submitted that the OA is liable to be rejected in view of order dated 31.07.2019 passed by the Ernakulam Bench of CAT in OA No. 504/2013 dismissing the OA in a similar case. However, the said order was set aside by the Ernakulam High Court in OP(CAT) No. 63 of 2017 vide order dated 13.11.2019 while declaring the petitioners to be Government Servants as employed under the DOT, who were transferred and later absorbed in BSNL permanently under Rule 37-A, with all the protections available thereunder.

The contention of the learned counsel for the respondents that once the Division Bench of Hon'ble Jharkhand High Court considered the matter then the order of Single Bench automatically gets set aside is rejected since the Hon'ble High Court had set aside the order of Single Bench on the ground of jurisdiction only and not on merit, giving the opinion that CAT is the court of first instance in such cases.

In view of the above, we hold that since the issue has already been decided by Hon'ble High Court in the above mentioned WPs, the relief sought for by the applicant in para 8.1 of OA No. 162/2019 is allowed with direction to the

respondents to consider granting promotion to the applicant in the IDA pay scale w.e.f. 01.10.2004 under the Non-Executive promotion Policy and not to give effect to the order by which the promotion given from 01.10.2004 has been shifted to 03.10.2008 within a period of three months from the date of this order.

As regards the relief claimed by the applicant in para 8.2 and of 8.3 of OA 162/2019 for direction upon the respondents not to convert GPF contribution made by the applicant into EPF contribution which, according to the applicant, is erroneously done by the respondents and to quash the letter dated 19.09.2014 whereby the presidential order issued vide letter dated 06.03.2002 was cancelled, the same is also granted on the ground that once an employee of DoT is absorbed in BSNL as per rules of BSNL the said employee has to enjoy same facility as he/she was provided being employee of DoT, i.e. he/she he was governed by GPF Rules but employees appointed since 01.10.2000 are being governed by EPF Rules. It is pertinent to mention here that the applicant was granted compassionate appointment against the death of her brother in Group-C cadre on 01.10.2000.

(b) The reliefs claimed by the applicant in OA No. 163/2019 is allowed in line with direction of Hon'ble High Court in WP(S) No. 7380 of 2012. We, accordingly, quash and set aside the Office Order dated 04.08.2007, issued under the signature of respondent No. 8, whereby the representation for consideration of the case of the applicant regarding conversion of the post of the applicant from Group-D to Group-C as per office order dated 12.07.2000, has been rejected with direction to the respondents that if on reconsideration the applicant's case falls under Group-C cadre, where sanction and approval was given to the applicant, the benefits of the same shall be considered to be given to her, if she is found eligible, as per rules within a period of three months from the date of receipt of this order.

11. In view of the above observations and directions, both the OAs are allowed. Miscellaneous Applications, if any, pending are accordingly disposed of. No order as to costs."

10. The orders passed by the learned Tribunal in both the original applications are the subject matter of the present two writ petitions. Submission of the learned counsel for the petitioner:

11. Mr. Prabhat Kr. Sinha, learned counsel for the Bharat Sanchar Nigam Limited, the writ petitioner herein, without going into the merit of the case has primarily raised a ground, that the Central Administrative Tribunal has committed error in not acting as a court of first instance rather the issue has been decided by putting reliance upon the order/judgment passed by the writ court which is evident from the face of the order itself.

12. It has been contended that the reliance which has been put by the learned Tribunal upon the order passed in the writ proceeding cannot be said to be in existence the moment, both the orders passed by this Court in exercise of power

conferred under Article 226 of the Constitution of India had been quashed and set aside by the letters patent appellate court on the ground of availability of the court of first instance, a constitutional machinery. As such, according to the learned counsel, putting reliance upon the orders passed by the learned writ court is absolutely not proper since the said order is no more in existence, hence, the order passed by the learned Tribunal in both the original applications are fit to be quashed and set aside and the matter is to be remitted before the Tribunal for adjudication of the issue by applying its own independent mind without being prejudiced by any observation made in any order passed by the writ court or by the letters patent appellate court.

Submission of learned counsel for respondent:

13. Representing the respondent-writ petitioner, Mr. Ajit Kumar, learned senior counsel has submitted that it cannot be disputed that the learned Tribunal has taken aid of the orders passed by the learned writ court since the same is apparent from the face of the order but even then, the order has been passed by the learned Tribunal on the basis of the consideration so made by the learned writ court of this Court but so far as the issue on merit is concerned, it cannot be disputed that the order which has been passed by the learned Tribunal suffers from an error.

14. It has also been contended that the litigant concerned is contesting the case since the year 2012 and remitting the matter before the learned Tribunal will not only be harsh rather for no fault of the litigant concerned, she will again be put to face the rigour of the proceedings.

Analysis:

15. We have heard the learned counsel for the parties and gone through the materials available on record. The issues which require consideration which this Court has gathered are:

(i) Whether, once the order passed by the learned writ court adjudicating the matter on merit assuming the jurisdiction of the Court of first instance has been quashed and set aside by the letters patent appellate court by remitting the matter before the Tribunal to decide the issue as the court of first instance, will it be proper for the learned tribunal to put reliance upon the observation/finding recorded by the learned writ court while adjudicating the issue.

(ii) Whether the learned Tribunal can be said to have passed a proper order without applying its own independent mind of acting as a court of first instance.

16. Both the issues since are interlinked, as such, both are being taken up together.

17. Herein, the Bharat Sanchar Nigam Limited (BSNL) has been notified to come under the fold of the Administrative Tribunal Act, 1985 by virtue of issuance of notification which fact has not been disputed, hence, the Central Administrative Tribunal is the court of first instance for the employees working under the BSNL.

The department of telecommunication directly comes under the fold of the Central Administrative Tribunal since the department of telecommunication is directed under the control of the Central Government. 18. Before advertng to the aforesaid issues, this Court thinks fit to discuss the core of the Article 323 A of the Constitution which was inserted based on the recommendations of the Swaran Singh Committee, Part XIV-A was added by the Constitution (Forty-second Amendment) Act, 1976, titled as 'Tribunals' which provided for the establishment of 'Administrative Tribunals' under Article 323-A, for ready reference the same is being quoted as under:-

"323A. Administrative tribunals.

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."

19. The Tribunals are institutions established for discharging judicial or quasi-judicial duties. Article 323A of the Constitution stipulates that Parliament may, by law, provide for the adjudication or trial by Administrative Tribunal of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government.

20. The main objective of establishing Tribunals as set out in the Statement of Objects and Reasons of The Constitution (Forty-Second Amendment) Act, 1976 is as under:-

"To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution."

21. Thus, with the enactment of Administrative Tribunals Act, 1985, a large number of cases relating to service matters pending before various Courts were brought within the jurisdiction of the Tribunals. Administrative Tribunals created under Article 323A have been freed from technical rules of Indian Evidence Act, 1872 and procedural shackles of the Code of Civil Procedure, 1908 but, at the same time, they have been vested with the powers of Civil Court in respect of some matters including the review of their own decisions and are bound by the principles of natural justice.

22. The Administrative Tribunals Act, 1985 brings into existence the 'Tribunals' contemplated under Article 323- A(2), to deal with various matters. The Act specifically provides that it will not be applicable to

i. any member of the naval, military or air force or of any other armed forces of the union;

ii. any officer or servant of the Supreme Court or of any High Court, and

iii. any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a legislature, of that legislature. Later on in the year of 1987, even the officers and servants of the subordinate courts were also excluded from the purview of the Act.

23. Thus, from the aforesaid discussion it is evident that the Tribunal constituted under the Administrative Tribunals Act, 1985 acts like the court of first instance in respect of the area of law for which it has been constituted.

24. After enactment of the Administrative Tribunal Act, 1985 by insertion of a

new provision as Article 323A in the Constitution of India, the issue travelled to the Hon'ble Apex Court in the case of S.P. Sampath Kumar vs. Union of India and Others [(1987) 1 SCC 124] wherein the validity of the Act, 1985 was the subject matter and again the said issue has been decided to be considered by the Constitution Bench of the Hon'ble Supreme Court comprising of 09 Hon'ble Judges of the Hon'ble Supreme Court which is in the case of L. Chandra Kumar vs. Union of India and Ors. (supra).

25. The issue which was considered regarding the issue of basic structure of the Constitution on the pretext that how can there be a Tribunal having at par status of the High Court when, in the Constitution, the High Court is supposed to be the apex judicial body having control upon all the tribunals having power of superintendence under the Constitution. The further issue which fell for consideration in the said case was that the order passed by the tribunal was to be assailed before the Hon'ble Supreme Court directly.

26. The same has been dealt with by the Hon'ble Supreme Court by holding therein that the Central Administrative Tribunal will not have at par status of the High Court rather the High Court will have the status of the Apex Judicial Forum across the State. However, a mechanism has been carved out regarding the issue of the challenge of the order passed by the Tribunal whether before High Court or before the Hon'ble Supreme court.

27. The Hon'ble Supreme Court has been pleased to lay down that the order passed by the Central Administrative Tribunal, at the first instance, is amenable to the forum under Article 226 of the Constitution of India so as to exercise the power of judicial review to be exercised by the High Court.

28. It has also been held that the Tribunal will not come into the fold of administrative review so as to have the power of superintendence upon the Tribunal in exercise of power conferred under Article 227 of the Constitution of India. Reference of paragraph-99 of the judgment rendered in the case of L. Chandra Kumar vs. Union of India and Ors. (supra) needs to be made herein, which is as under:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the

competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

29. It is thus, evident that as per the judicial pronouncement, the Central Administrative Tribunal has been given the status of the court of first instance. There is wide difference in between the court of first instance and the forum of alternative remedy as the court of first instance, as per the status given to the Central Administrative Tribunal, is the forum having constitutional status while the forum of alternative remedy is always the statutory one.

30. Once the Hon’ble Supreme court has laid down the proposition that the Central Administrative Tribunal is to act as a court of first instance, then, all the litigations pertaining the employees of the Central Government directly under the control of Central Government or any notification issued under the provision of Section 14(3) of the Administrative Tribunal Act, 1985 is to be entertained by the Central Administrative Tribunal.

31. Adverting to issues of the present case, herein, the respondent-original applicant is admittedly the employee of the Central Government or the employee of the BSNL and the Central Administrative Tribunal is the forum of first instance but the respondent has raised the grievance before the learned single Judge of this Court by filing writ petition directly being W.P.(S) No. 7714 of 2012 and W.P. (S) No. 7380 of 2012 which had been entertained by passing positive direction in favour of the respondent-writ petitioner.

32. However, the said order passed by the learned writ court was challenged by the writ petitioner herein, BSNL, by filing intra-court appeal under Clause 10 and the orders passed by the writ court under Article 226 of the Constitution of India had been quashed and set aside since the orders passed by the writ court had been challenged primarily on the ground that the writ court ought not to have entertained the writ petitions directly once the forum is available, i.e., Central Administrative Tribunal, as a court of first instance.

33. The letters patent appellate court had accepted the said view and quashed and set aside the orders passed by the writ court, however, with the liberty to the respondent-writ petitioner to assail the orders passed by the authority before the Central Administrative Tribunal invoking its jurisdiction as conferred under Section 14 of the Administrative Tribunal Act, 1985.

34. The learned Tribunal had entertained both the original applications as also

invited comment/response from the respondents (writ petitioners herein) but the learned Tribunal had passed the order, by putting reliance upon the order passed by the writ court as would be evident from the face of the order and has allowed both the original applications.

35. Both the writ petitions herein have been filed challenging the order passed by the learned Tribunal on the ground that once the orders passed by the writ court in W.P.(S) No. 7714 of 2012 and W.P.(S) No. 7380 of 2012 had been quashed and set aside by the intra-court appeal vide orders dated 29.10.2018 passed in L.P.A. No. 393 of 2018 and L.P.A. No. 130 of 2018, then, taking aid of the order passed by the writ court W.P.(S) No. 7714 of 2012 and W.P.(S) No. 7380 of 2012 by the Tribunal was not proper.

36. This argument cannot be disputed for the reason that once the order passed by any court of law is being quashed and set aside by the superior forum, then, the order passed by the said court will be said to be not in existence.

37. The letters patent appellate court while quashing the order passed by the writ court dated 13.09.2017 passed in W.P.(S) No. 7714 of 2012 and W.P.(S) No. 7380 of 2012 since has granted liberty to the learned Central Administrative Tribunal to adjudicate the issue in the capacity of court of first instance, then, according to our considered view it was incumbent upon the learned Tribunal to apply its own independent mind so as to act as a court of first instance rather than relying upon the order passed by this Court under Article 226 of the Constitution of India dated 13.09.2017 passed in W.P.(S) No. 7714 of 2012 and W.P.(S) No. 7380 of 2012 which had already been quashed and set aside by the letters patent appellate court.

38. This Court is of the view that if the contention which has been raised on behalf of the writ petitioners will not be accepted, then, the forum which is having the status of court of first instance, will be said to have not acted as a court of first instance by applying its independent mind rather by passing an order on the basis of the order passed by a forum which, as per the law, is having no existence after being quashed and set aside by the higher forum. 39. This Court, in view of the aforesaid discussion, is of the view that the order passed by the learned Tribunal in both the original applications dated 01.10.2024 passed in O.A. No. 162 of 2019 and O.A. No. 163 of 2019 are fit to be quashed and set aside.

40. Accordingly, order dated 01.10.2024 passed in O.A. No. 162 of 2019 and O.A. No. 163 of 2019 are hereby, quashed and set aside.

41. At this juncture, Mr. Ajit Kumar, learned senior counsel appearing for the respondent-writ petitioner has submitted that the litigant concerned is before the judicial forum since the year 2012 and even after lapse of about 13 years, she is still to get the issue adjudicated. As such, submission has been made that there is no difficulty if the matter is remitted before the Tribunal to decide the issue in the capacity of court of first instance but some time frame may be given so that

the matter may be adjudicated as per law.

42. So far as the issue of framing of time is concerned, this Court is conscious that the framing of time for the purpose of conclusion of a proceeding is generally not to be passed as has been held by the Hon'ble Supreme Court in the case of *Rup Bahadur Magar @ Sanki @ Rabin vs. State of West Bengal*, 2024 SCC OnLine SC 5575 as also in the case of *High Court Bar Association, Allahabad vs. State of Uttar Pradesh and Ors.*, (2024) 6 SCC 267 but herein, the litigation is pending since 2012 and it has already taken about 13 years. Although, it is the litigant concerned who has approached to this Court by choosing wrong forum but fact remains that 13 years have passed, but, even on this ground, will it be proper for this Court to give time frame to the learned Tribunal to decide the issue.

43. This Court is of the view that it will not be proper since the learned Tribunal is also a constitutional forum, as such, the learned Tribunal is to take its own call on the expeditious disposal of the lis.

44. In view of the aforesaid discussion/observation, both the writ petitions stand disposed of.

45. The matter is remitted before the learned Tribunal for deciding the issue afresh in accordance with law.