

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

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Original Application Nos. 12, 13 & 14 of 1987.

Date of decision

... March 24, 1988.

O.A. No. 12/87 :

Bhaskar Singh, son of Sri Pratap Singh
Short Duty Telegraphist, Central Telegraph Office,
Bhubaneswar.

O.A. No. 13/87 :

Pitambar Sundray, son of Bhuteswar Sundray,
Short Duty Telegraphist, Central Telegraph Office,
Bhubaneswar.

O.A. No. 14/87 :

Adikanda Nayak, s/o-late Madhu Sundan Nayak,
Short Duty Telegraphist in Reserved Trained Pool Central
Telegraph Office, Cuttack.

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Applicants.

Versus

In all cases :

- (i) General Manager, Telecommunication, Orissa Circle,
Bhubaneswar- 751001, Dist- Puri.
- (ii) Senior Superintendent, Telegraph Traffic Division,
Bhubaneswar, Dist- Puri.
- (iii) S. Marandy, Telegraphist, Central Telegraph Office,
Rourkela, Dist- Sundargarh.
- (iv) R.K. Ghose, Telegraphist, Central Telegraph Office,
Rourkela, Dist- Sundargarh.
- (v) S. Khillar, Telegraphist, Departmental Telegraph Office,
Bolangir, P.O/Dist- Bolangir.
- (vi) P.K. Mohapatra, Telegraphist, Departmental Telegraph
Office, Sambalpur, P.O/Dist- Sambalpur.
- (vii) P.C. Sahu, Telegraphist, Central Telegraph Office,
Rourkela, Dist- Sundargarh.
- (viii) Sarat Kumar Jee, Telegraphist, Central Telegraph Office,
Rourkela, Dist- Sundargarh.
- (ix) Union of India, represented through the Secretary, Ministry
of Communication.

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Respondents.

M/s B.B. Ratho, A. Ratha, B. Ratha
and M. Misra, Advocates

For Applicants.

Mr. Tahali Dalai, Addl. Standing
Counsel (Central)

For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN
A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers have been permitted to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P ACHARYA, MEMBER (J)

All these cases involve common questions of law and fact and therefore we direct that this judgment would govern all the three cases mentioned above.

2. In each of these cases the petitioners have filed applications separately under section 19 of the Administrative Tribunals Act, 1985 challenging the order passed by the competent authority transferring certain incumbents from Sambalpur to Bhubaneswar contained in Annexure-4 so far as O.A Nos. 12 and 13 of 1987 are concerned and Annexure -5 so far as O.A No.14 of 1987 is concerned and thereby not having given appointment to the petitioners.

3. Shortly stated the case of the petitioners is that an advertisement was published for recruitment to the posts of Telegraphists and according to Rules they were asked to stand a test which they did and ultimately they were declared to be successful. According to rules, those successful candidates are to be enlisted in the Reserved Training Pool (for short 'pool') and the petitioners are at present enlisted in the pool for getting appointments as and when vacancy occurs. According to the relevant rules, those candidates who have been enlisted in the pool also get short term appointments when a vacancy occurs. The grievance of the petitioners in all the three cases is that certain posts have been created in Bhubaneswar Division under the Telecommunication General Manager but appointments are not being issued to those candidates who are in the pool namely the petitioners but certain Telegraphists are being transferred from Sambalpur to join the posts created at Bhubaneswar.

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depriving the petitioners of their bread and butter. Hence the orders contained in Annexure-4 of O.A No.s 12 and 13 of 1987 and Annexure-5 of O.A No. 14 of 1987 are under challenge and sought to be quashed with a further prayer that the respondents should be commanded to absorb the petitioners in the regular vacancy arising ~~at~~ Bhubaneswar Division.

4. In their counter, the respondents maintained that on an examination it was found that certain posts of Telegraphists at Sambalpur were not required and therefore those posts, six in number were transferred to Bhubaneswar Division and six incumbents have been transferred to Bhubaneswar Division on their own request to discharge their duties as Telegraphists in those six posts. According to the respondents no illegality having been committed, the petition being devoid of merit is liable to be dismissed.

5. We have heard Mr B.B.Ratho, learned Counsel for the petitioners and Mr Tahali Dalai, learned Addl. Standing Counsel for the Central Government at some length. Mr Ratho learned Counsel for the petitioners vehemently urged before us that according to rules the competent authority has no discretion or choice to transfer the incumbents from Sambalpur to Bhubaneswar Division to discharge their duties as Telegraphists in respect of the posts which have been transferred. The only course open to the competent authority was to terminate their services and appoint new persons at Bhubaneswar from the pool. In order to substantiate his contention, learned Counsel for the petitioners relied upon
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Rule 38 of the Posts & Telegraphs Manual Vol. IV and further contended that since the rule envisages that those persons who have been approved for appointment to the grade as on the date shall be included in the matter of getting preference in regard to appointments. In order to appreciate the contention of Mr Rath, Rule 38(2) need be quoted which runs thus :-

" When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued including also all persons who have been approved for appointment to the grade as on that date ".

Mr Ratho wants to extend the word 'including' to the persons in the pool. Mr Rath contended that the persons enlisted in the pool have been approved for appointment and therefore they should get preference. We are unable to agree with this contention of the learned Counsel because according to us word 'including' persons who have been approved for appointment (emphasis is ours) to the grade as on that date means those persons whose appointment to a regular post has already been approved. Admittedly none of the petitioners had been appointed by them to any regular post. Approved for enlistment in the pool can never amount to approval for appointment to a post. That apart, there is another impediment on the way of the petitioners. Admittedly the petitioners having been enlisted in the pool they have no right to any posts for appointment. Only thing over which the petitioners can stand is the assurance given by the

competent authority in Annexure-1 that whenever vacancy occurs, persons in the pool would be appointed. In their counter, the respondents have not gone back upon their assurance but in the peculiar facts and circumstances of the case the contention of Mr Rath does not hold good especially because the posts in question have been filled up by regular Government appointees who were serving as Telegraphists at Sambalpur. All and above this, Rule 38 contemplates regarding the position of seniority of different incumbents who would come on transfer on their own request and therefore provisions contained in the said rule has no application to the aforesaid contention of Mr Rath. The simple question before us is that whether action of the competent authority transferring the regular employees to join the new posts is justified or preference should be given to the persons enlisted in the pool overlooking the interest and rights of those six regular incumbents who were working at Sambalpur. In our considered view, we cannot but say that regular Govt. servants should get preference to the persons who are in the pool because of their experience and their right to the posts. Mr Ratho contended that those regular appointees discharging their work at Sambalpur have to be discharged because new posts have been created at Bhubaneswar and the persons in the pool should be appointed. We cannot agree with Mr Ratho. In the circumstances stated above, we are of opinion that there is no merit in all the three cases which stands dismissed leaving the parties to bear their own costs.

6. Before we part with the cases, we may state that it was submitted on behalf of the petitioners that

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because they have filed their cases they are not given short term appointment though vacancy occurs and they are entitled to those short term appointments. We have no opportunity to ascertain the correctness or otherwise of this statement made at the Bar but we would only say that the competent authority would be well advised not to take this as a ground to deprive the petitioners from short term appointment whenever such situation occurs and their cases should also be considered for regular appointment whenever vacancies occur.

.....Lalit Agarwal.....
24.3.88
Member (Judicial)

B.R PATEL, VICE-CHAIRMAN

9 agree.

.....B.R Patel.....
24.3.88
Vice-Chairman



Central Administrative Tribunal
Cuttack Bench, Cuttack
March 24, 1988/Roy, SPA.