CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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O.A.Nos.177, 178, and 179 of 1987.

Date of decision : August 8, 1990.

In O.A.177/87	Sri Banamali Patra	...	Applicant.
In O.A.178/87	Sri Janardan Behera	...	Applicant.
In O.A.179/87	Sri Nitai Prasanna Das	...	Applicant.
		Versus	
In all the three case	Union of India and others	...	Respondents.
In all the three cases	For the applicants	...	M/s.B.Patnaik, B.Mohanty, G.K.Mohanty, Advocates.
In all the three cases	For the respondents	...	Mr.P.N.Mohapatra, Addl.S.C.(Central)

C O R A M :

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, The points of law and facts involved being similar we have heard these three cases analogously and passed this common order which would govern the three cases.

2. These cases relate to the alleged illegality of abolition of the separatecadre of ObservationSupervisors, Telecommunications. Inthe cadre there exists 251 posts out of which three are in Orissa Circle, one each at Cuttack, Bhubaneswar and Sambalpur. The applicants have been holding these posts. The duties attached to the posts are to supervise

the work of Telephone Operators. A decision was taken to have a separate cadre of Observation Supervisors as long back as early 1977 vide Annexure-1. The recruitment Rules were notified vide notification dated 21.9.1979 which came into force on the date of their publication in the official gazette, vide Annexure-R/1. The applicants in O.A.177 of 1987 and O.A.178 of 1987 were promoted to the posts of Observation Supervisors on 31.3.1983 vide Annexure-4, in each of these cases. The applicant of O.A.179 of 1987 was however appointed on 19.7.1983 vide Annexure-5 of that case. The separate cadre of Observation Supervisors was abolished vide letter No.5-44/84-N.C.C. dated 4.3.1987 from the Department of Telecommunications, Sanchar Bhavan, New Delhi and the order of abolition came into force from 1.4.1987. The order was communicated to the applicants on 30.6.1987 vide Annexure-8. The grievances of the applicants is that since the cadre of Observation Supervisors, Telecommunications were created by statutory Rules under Article 309 of the Constitution of India, its abolition by an executive order as in Annexure-7 is illegal and that being the legal position they should be allowed to join as Observation Supervisors. They have, therefore, prayed for issuance of orders quashing the executive orders vide Annexures 7 & 8.

3. The respondents have maintained in their counter that the cadre of Observation Supervisors was created by the Posts & Telegraphs Board by an executive order vide Annexure-1. The cadre has been abolished by another

executive order i.e. Annexure-7 and no exception could be taken to the action of the Department on the ground of illegality.

4. We have heard Mr.B.Patnaik, learned counsel for the applicants and Mr.P.N.Mohapatra, learned Additional Standing Counsel (Central) for the respondents and carefully perused the relevant documents. Mr.Patnaik has drawn our attention to Annexure-R/1 which is a copy of the notification notifying the Posts & Telegraphs (Observation Superviros) Recruitment Rules, 1979 and he has referred to Col.2 of the Schedule where the number of posts has been shown to be 180 and has argued that since the posts havebeen specified by those rules which were framed by the President under Article 309of the Constitution an executive order like the one at Annexure-7 cannot abolish the separate cadre of Observation Supervisors. Mr.Mohapatra on the other hand, has contended that it is the prerogative of the Government to create posts and abolish them according to exigencies of administration and in public interest. The recruitment Rules do not create posts, they merely indicate the methods and the manner of recruitment to the posts created by the Government. The number of posts are mentioned in the Rules in order to give an idea about the number of posts for which recruitment is to be made. It has no other significance. In this connection he has brought to our notice a decision in the case of N.Ramanatha Pillai v. State of Kerala, reported in AIR 1973 SC 2641. Inparagraph 14 of the

judgment the Hon'bleSupreme Court has observed as follows:

> " The first question which falls for consideration is whether the Government has a right to abolish a post in the service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public. "

We are in complete agreement with the observations of Their Lordships of the Supreme Court so far as the prerogative of the executive is concerned. However, as the Posts and Telegraphs (Observation Supervisors) Recruitment Rules, 1979 has since been abolished by the Posts & Telegraphs (Observation Supervisors) Recruitment (Repeal) Rules, 1987 which came into force witheffect from 19.1.1988, the question of illegality has become more or less an academic matter and we do not like to further examine this aspect. Moreover, the posts have not in fact been formally abolished as paragraph (1) of the letter dated 4.3.1987 (Annexure-7) would show. This paragraph reads as follows:

> "(1) The separate cadre of observation supervisors should be abolished. All the posts of Observation Supervisors willbe filled by eligible officials in LSG cadres in the revised pay scale of Rs.1400-2300 available in the same station and if sufficient volunteers are not available in same station then from the Circle as a whole. The Observation Supervisor should be a tenure post with a tenure of two years there shall be gap of at least one year between two spells of tenures as Observation Supervisor."

The character of the post has only changed in that the procedure for appointment has been amended and this amendment is necessary as a consequence of the abolition of a separate cadre of Observation Supervisors. This new method has in no way adversely affected the applicants. However, as has been mentioned in the notification of Recruitment (Repeal) Rules, 1987, repeal would not affectany order made or any action taken under the Recruitment Rules when they were in force and this will adequately safeguard the inter st of the applicants prior to the repeal of the recruitment rules.

5. In view of this there is no further relief to be granted to the applicants, and as such these applications are accordingly disposed of but however without costs.

Sd/ N. Sengupta.
Member (Judicial)

Sd/ B. R. Patel
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 8, 1990/Sarangi.

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH