

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

ORIGINAL APPLICATION NO:132 of 1988.

Date of decision : 28th June, 1990.

Gobinda Chandra Patra,
S/o. late Balaram Patra
Village and PO: Baruna,
PS: Aul, District:Cuttack,
at present working as Telegraph
Master, Central Telegraph Office,
Rourkela, PO:Rourkela,
District: Sundargarh.

: Applicant.

- Versus -

1. Union of India,
represented by its Secretary,
Department of Communication,
New Delhi.
2. Director, Telecommunication,
At/Po: Sambalpur,
District:Sambalpur.
3. Shri S.N. Das,
Accounts Officer, Internal Check,
Office of the General Manager,
Telecommunication,
At/Po:Bhubaneswar, District:Puri.

: Respondents.

For the applicant : M/s. A. Deo, R.N.Hota,
Advocate.

For the respondents : Mr. T.Dalei, Addl. Standing
Counsel (Central).

C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordship's wish to see the fair copy of the Judgment ? Yes.

JUDGMENT

B.R.PATEL, VICE-CHAIRMAN The facts alleged in the application are that the applicant was appointed as a Telegraphist against the vacancy reserved for Scheduled Caste Candidates. Before his appointment he submitted a Caste certificate issued by the District Magistrate, Cuttack on 14.6.1955 to the effect that he was a member of "Mala" Community on the basis of which he got the appointment. The Sub-Divisional Officer, Kendrapara in the district of Cuttack had also issued earlier on 15th May, 1981 certificates in favour of Kumari Ahalya Patra and Kumari Jayanti Patra daughters of the applicant that they belong to "Mala" caste recognized as a Scheduled Caste in the Constitution (Scheduled Caste order 1950). Later the S.D.O. Kendrapara instituted an enquiry into whether the applicant belonged to Scheduled Caste through the Tahasildar and the District Welfare Officer. The report submitted by the Tahasildar and the District Welfare Officer after enquiry shows that the applicant belongs to "Mallah" Caste which is not recognized as a Scheduled Caste. As a result of this finding, the Department initiated a disciplinary proceeding as at Annexure-1. The applicant has prayed that initiation of the proceeding against him vide Annexure-1 should be quashed. He has further prayed that Annexure-2 which constitutes modification of the charge should also be quashed. In the counter Respondents have said that there is no justification for quashing the initiation

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of the proceeding against the applicant as by this enquiry actual facts would come to light and there has been no illegality committed by the Department.

2. We have heard the learned Counsel for the applicant and Mr. Tahali Dalei, learned Additional Standing Counsel (Central) and perused all the relevant documents. The learned Counsel for the applicant has vehemently contended that the Authority has no jurisdiction to frame the charge vide Annexure-1 and has no Authority to modify the Memorandum of charge vide Annexure-2. So the entire proceeding has been vitiated and is to be quashed. Mr. T. Dalei, has on the other hand, urged that the Authority who frames charge has also the power to amend. Mr. Dalei also brought to our notice para 2(A) of the counter affidavit and the copy of our judgment in T.A. No. 414 of 1986 (Annexure-R-2) and contended that the application is barred under the principle of resjudicata. The case of the Scheduled Caste certificate did feature in T.A. No. 414 of 1986. In that case the petitioner had prayed for appointment of another inquiry officer to hold the inquiry either at Bolangir or Sambalpur or to allow him the assistance of a member of legal profession. Apart from the issue of resjudicata we have considered this case on merit. In this connection, we have seen Annexure-1 and also Annexure-2. Annexure-1 is the Memorandum dated 29th October, 1984 to which is enclosed a statement of Articles of charge containing the imputations of misconduct or misbehaviour in support of each article of charge and also list of documents by which the articles of charge are proposed to be sustained. This statement

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however, did not contain the list of witnesses. Annexure-2 is only a Memorandum dated 14.2.1988 with list of witnesses and to this extent the charges is said to have been modified. This is not a substantive modification. We therefore, see absolutely no objection to the Department having issued Annexure-2. In view of this we are of the view that by furnishing the list of witnesses no irregularity has been committed in the proceeding. Rather in the absence of the list of the witnesses the applicant would have been handicapped in effectively cross-examining the witnesses. We do not therefore, see any illegality or irregularity in Annexure-2. The apprehension of the applicant that he would be denied justice is un-founded. All reasonable opportunities as required under the Rules should be given to the applicant to defend himself during the enquiry. The application is accordingly disposed of and the parties should bear their respective costs.

3. Stay order passed earlier stands vacated. The Inquiry should be completed within 6 months from today. We had also given six months for completion of the inquiry in our judgment in T.A. No.414 of 1986 delivered on 17.11.1987 and the inquiry would have been completed by now but for this application.

MEMBER (JUDICIAL)



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VICE-CHAIRMAN