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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.312 of 1989.

Date of decision : January 19,1990.

J.L.Debabrata, aged about 29 years,  
son of Shri L.Jena, working as Telegraph  
Assistant, Central Telegraph Office,  
At/P.O.Bhubaneswar, District-Puri.

... Applicant.

Versus

1. Union of India, represented by its  
Secretary, Department of Telecommuni-  
cation, New Delhi.
2. Chief General Manager, Telecommunication,  
Orissa Circle, At/P.O.Bhubaneswar,  
District-Puri.
3. Senior Superintendent,  
Telegraph Traffic Division,  
At/P.O.Bhubaneswar, District-Puri.
4. Inquiry Officer-cum-Officer on Special  
Duty, (D.I.), Eastern Region, (D.I.),  
G.M.T's Office, Patna, Bihar State.

... Respondents.

For the applicant ... M/s.Devanand Misra,  
Deepak Misra,  
R.N.Naik,  
A.Deo, B.S.Tripathy, Advocates.

For the respondents ... Mr.P.N.Mohapatra,  
Addl. Standing Counsel (Central)

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C O R A M:

THE HON'BLE MR.P.S.HABEEB MOHD., MEMBER (ADMN.)

A N D

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

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1. Whether reporters of local papers may be allowed  
to 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.

J U D G M E N T

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N. SENGUPTA, MEMBER (J)      The applicant in this case is a Telegraph Assistant of Central Telegraph Office, at Bhubaneswar. It is his duty to book trunk calls to different outlying stations from Bhubaneswar. According to him, there was an error regarding charging trunk call and in consequence of the error an extra amount was collected but the same was refunded by him. Even though that was an inadvertent mistake on his (applicant's) part a notice under rule 14 of the Central Civil Services ( Classification, Control & Appeal) Rules, 1965 was issued to him on 6.2.1989 and a Departmental Proceeding was initiated in which respondent No.4 was appointed as the Enquiring Officer. With regard to the appointment of Respondent No.4, the applicant had earlier filed an application challenging the said appointment and that was numbered as Original application No. 223 of 1989 which was disposed of with an observation that the enquiry should be conducted at Bhubaneswar and not at Patna. During the course of enquiry he asked for copies of some of the relevant documents i.e. the original and the duplicate copy of Engineering VIII Book No. AH 959 Receipt No. 84, Register of S.T.D.Call Maintenance Book (Relevant portion), AC 106 Challan of 17.12.1987 of the Central Telegraph Office, Bhubaneswar, his out turn slip dated 17.2.1987 and relevant portion of the cash book but those copies were not supplied to him, as the copies were not supplied he was prejudiced in his defence and the enquiring officer on 21.7.1989 passed an order closing the oral hearing and asked the department and him (applicant) to submit written

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statements giving copies to the opponents. Making these allegations, the applicant has prayed for the reliefs of setting aside the order of the enquiring officer dated 21.7.1989 (Annexure-1), for a direction to Respondent No.3 to revoke the appointment of Respondent No.4 as the enquiring officer and to appoint a fresh enquiring officer, and direction to supply the copies of the documents mentioned above and to supply the copies of the statements of witnesses as asked for by him.

2. The respondents in their counter have stated that the applicant collected the amount of Rs. 142.90 but credited only Rs. 129.50 paise to Government account and in preparing the bill he did not follow the departmental rules regarding public trunk calls. They have denied the refund of the amount of Rs. 13.40 as alleged by the applicant. Their case further is that the applicant by his letters dated 10.6.1989 and 25.7.1989 wanted copies of documents and statements of two witnesses, he was allowed to inspect the documents but however as no witnesses were examined before the commencement of the enquiry no such copy of statements of witnesses could be given. The applicant after taking notes and extracts of the documents mentioned in his application granted a receipt copy of which is annexed to the counter as Annexure-R/3. Therefore, he cannot make a grievance that he was not given adequate opportunity to make out his defence or meet the charges levelled against him.

3. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. P.N. Mohapatra, learned Additional

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Standing Counsel (Central) for the respondents. Whether or not there was a refund of the excess amount is a matter which cannot be enquired into by this Tribunal, the fact remains that there was a mistake, whether deliberate or inadvertant, therefore the departmental proceeding did not lack a basis. <sup>In view of judgment of this bench in O.A. 223 of 189 the appointment of R. 4 can not be challenged</sup> In these circumstances, the only question that calls for an answer is whether by not giving copies as applied for by the applicant, if any prejudice was caused to him. The idea of giving copies to a person against whom a departmental proceeding is initiated is to enable him to be in possession of materials to make out his defence. The copies may either be prepared by the Department or even by the charged officer himself but all that is required is that the copies of the documents on which the department would seek to rely on in the proceeding must be available to the applicant. From Annexure\_R/3 it would be found that on 22.5.1989 the applicant himself granted a receipt acknowledging that he inspected and took extracts of the documents listed in Annexure-3 of the charge-sheet issued on 6.2.1989. The documents mentioned in Annexure-R/3, i.e. the receipt granted by the applicant, are original copy of Engineering 8 receipt book No. AH-959, Receipt No. 84, office copy of Engineer 8 receipt book No. AH 959 and Receipt No. 84, Register of STD calls maintained in the S.T.D. PCO counter at C.T.O., Bhubaneswar. ACE-106 challan of 17.12.1987 of C.T.O., Bhubaneswar, out turn slip of the applicant dated 17.12.1987 and the cash book maintained at public counter

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of C.T.O. Bhubaneswar on 17.12.1987. From this list it would be apparent that the applicant prepared copies of all the documents, copies of which he applied for to be supplied to him. Once the applicant was really in possession in whatever manner it might have been, there was no necessity to supply those copies over again. Therefore we are not impressed by the argument advanced by learned counsel for the applicant that by non-supply of any copy any prejudice was done to the applicant.

4. It has not been contended by Mr. Mishra that the applicant was not given an opportunity to cross-examine the witnesses but from the copy of the order at Annexure-1 we find that the applicant really did not choose to, or was advised by his defence assistant not to, cross-examine the witnesses and insisted on supply of copies of the documents mentioned above. We have found that the applicant was really in possession of the copies of the documents. Therefore, it is not a case where no opportunity was given to the applicant to cross-examine the witnesses for the department. But it is a case where the applicant did not cross-examine. It is an accepted principle that if a person under a mistaken notion does not avail of an opportunity, it should not be proper to debar him from availing of that opportunity after he discovers or is made known of his mistake. We would, accordingly, observe that though the applicant might not have cross-examined the witnesses for the department, it would be open to the enquiring officer to give the applicant an opportunity to

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cross-examine the witnesses but however it would not be permissible for us to give a specific direction in that regard, though we hope that the enquiring officer would take a sympathetic view.

5. This application is accordingly disposed of leaving the parties to bear their own costs.

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Member (Admn.)



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Member (Judicial)