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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 412 of 1990

Date of Decision: 25. 11. 1994

Rabindranath Kand~~l~~

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ^{no}
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? ^{no}


(D.P. HIREMATH)¹⁰
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:

Original Application No. 412 of 1990

Cuttack this the 25th day of November, 1994

C O R A M:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

Sri Rabindra Nath Kandi,
aged about 42 years,
S/o. Late Bhabagrahi Kandi
Coaxial Station
Telephone Bhavan, Berhampur
Dist: Ganjam

... Applicant/s

By the Advocate: M/s. P.V. Ramdas
B.K. Panda
D.N. Mohapatra

1. Versus

1. Union of India, represented by
Chief General Manager,
Telecommunication, Orissa
Bhubaneswar-751001

2. Telecom District Engineer,
Telephone Bhavan
Berhampur (Ganjam)
Pin-760 001

3. Sub-Divisional Officer
Telegraphs
Telephone Bhavan
Berhampur (Ganjam)
Pin - 760 001

... Respondent/s

By the Advocate: Shri D.N. Mohapatra,
Addl. Standing Counsel (Central)

O R D E R

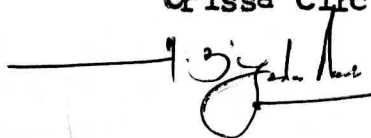
H. RAJENDRA PRASAD, MEMBER (ADMN): The Telecommunications District

Engineer, Berhampur Engineering Division, Berhampur (Ganjam),

vide his letter No.E-4(12)/287 dated 1st August, 1990

(Annexure 8) conveyed a decision of the Chief General Manager,

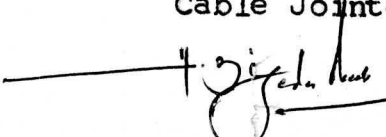
Orissa Circle, that the request of Shri Rabindra Nath Kandy



for the 'regularisation' of his seniority as Cable Jointer between 26th February, 1976 and 9th December, 1980, - and to sanction all financial and service benefits flowing out such regularisation, - had not been found acceptable. The recipient of this communication, Shri Rabindra Nath Kandy, thereupon filed this application ^{on} 30th September, 1990, under Section 19 of the Administrative Tribunals Act, 1985, seeking the very same relief(s) and praying for the quashing of the impugned orders referred to above. The application was admitted on 14th November, 1990, and heard (in part) on 26th October, and 27th October, and finally on 9th November, 1994.

2. Shri Rabindra Nath Kandy entered the Telecommunications Department as Lineman in 1966, was selected as Cable Jointer (since re-designated Cable Splicer) and despatched for training on 1st March, 1973 (Annexure-R/2) prior to being 'appointed' Cable-Jointer with effect from 1st September, 1973 (Annexure-1), granted a special pay of Rs.30/- per month from the same date (Annexure-2), and was relieved from the post of Cable-Jointer with effect from 29th February, 1976 (Annexure-3). The applicant thus held the post of Cable Jointer (Splicer) from 1st September, 1973 to 29th February, 1976.

3. The order of his 'appointment' as Cable Jointer (Annexure-1) pointedly mentioned that the applicant would be on probation for two years. It is his grievance in the present application that he was not only not confirmed as Cable Jointer at the end of the two-year probation, but



was actually 'reverted' to his original post of Lineman after a little over two years. The applicant emphasises that this was an unfair action on the part of the authorities, violating the principles of natural justice and rights guaranteed under Article 311 of the Constitution.

4. Aggrieved by his 'reversion' from the post of Cable Jointer the applicant seems to have represented to the Sub Divisional Officer, Telegraphs, Berhampur. The actual contentions or contents of this representation are not known since a copy thereof has not been annexed to the application, but it may be deduced from the reply given by the latter, i.e., Sub-Divisional Officer Telegraphs, Berhampur, dated 13th July, 1977 (Annexure-4) that Shri Kandy had protested against the subsequent appointment of some of his juniors as Cable Jointers in regular vacancies ignoring his own seniority. To this, the SDOT replied that appointments of Cable Jointers against vacant posts had been made strictly according to seniority as clarified (determined) by the General Manager. Not satisfied with this 'explanation', Shri Kandy submitted a further representation, this time to the Divisional Engineer, Telegraphs, Berhampur, on 3rd February, 1978. A reply was received five days later, elucidating the fact that the inter-se seniority of the applicant and other officials from the same batch of recruitment was determined on the basis of marks obtained by them at the end-of-the-training examination. It was further clarified that he could not possibly have been

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considered for appointment against one of the then arising regular posts of Cable-Jointers in the Division since there were others from his batch who had scored higher marks in the said examination (Annexure-5), and were therefore reckoned senior to him.

5. Still dissatisfied with the clarifications given by the authorities, the applicant represented again, this time to the Chief General Manager, Telecommunications, Orissa Circle, on 6th September, 1988 and 21st April, 1990 (Annexures 6 and 7). The Chief General Manager disposed of the representations and communicated his decision on 16th July, 1990, to the District Engineer who in turn conveyed it to the applicant on 1.8.1990 (Annexure-8). This is the impugned order in the present application.

6. The salient arguments forming the basis of the applicant's contention, as extracted from the record, and urged during the hearing of the case by his learned counsel, Shri P.V.Ramdas, are as under :

- i) He had been substantively appointed Cable-Jointer in 1973 and continued as such till 1976, and should not, therefore, have been reverted to a lower post.
- ii) He was promoted to a higher grade and post after proper selection by a duly constituted DPC, and his subsequent reversion was ipso facto unlawful.
- iii) The fact that he was not discharged at the end of the two-year probationary period (specified in his 'appointment' order) leads to the natural presumption that he had not been found wanting in any manner to continue in the higher post which he was working in from 1973 to 1976, and his return to a lower post was indefensible on this score as well.
- iv) Some of the officials who were similarly



placed, and junior to him, were retained in higher posts whereas he was singled out for reversion to a lower post.

7. The respondents in their counter-affidavit explain the position thus :

- a) The applicant, along with some other Linemen/Wiremen of Berhampur Telegraph Engineering Division, were selected to fill a portion of vacancies which had been allotted to its territorial segment, specifically and exclusively for deployment in the Coaxial Cable Project which covered the entire length from Madras to Calcutta. The precise share of the Division was ten cable jointers.
- b) Since the applicant's unit (Berhampur, Telegraph Engineering Division) did not have any surplus-approved-willing Cable Jointers who could be spared for this project, it was decided to select ten suitable officials from among volunteers from the cadre of Linemen/Wiremen/Batterymen below 35 years of age. It was clearly specified that their services in the Coaxial Project would be needed for no more than five years, and that, additionally, they would merely be on deputation to the Project (Annexure-R/1)
- c) (i) The Coaxial Project, to which the applicant and some other volunteers were deputed after selection and training, was itself a temporary, time-bound project without the usual complement of permanent posts or cadres available to other permanent, ongoing units/establishments.
(ii) The cadre of Cable Jointers is a divisional asset and the selection/training/appointment of these personnel are regulated on a Divisional basis in regular/permanent Divisions. The task of finding suitable manpower had, therefore, to be entrusted, among others, to Berhampur Telegraph Engineering Division, which was a permanent and regular Division, unlike the Coaxial Project which was not vested with similar powers on account of its temporary, time-bound character.

— 13/12/62

- d) On being asked to clarify the actual rank or status of Cable Jointers vis-a-vis Linemen, etc., it was stated that Cable Jointers are not in a superior status or higher cadre, and no 'promotion' as such is therefore involved in the selection and/or appointment of Linemen/Wiremen/Batterymen as Cable Jointers. All are in Group D cadre and none is 'promoted' from one post to the other. A lineman, on selection as Cable Jointer, is merely sanctioned a special pay (which was Rs.30/- per month at the relevant time) and this was duly given to the applicant and other selected officials along with him.
- e) Asked to state the actual mode of selection of Cable Jointers, and whether or not the applicant was duly subjected to the normal procedures of selection, it was explained that a lineman/wireman/batterymen is required to satisfy the criterion of service seniority first, and then, to successfully compete in a written and also an aptitude-test. In the instant case, the service-seniority was not insisted upon as it was not a regular selection which he was called to participate in. Also, the mandatory written-test was dispensed with for the same reason. The volunteers were instead asked to face only an aptitude test.
- f) Asked to explain as to why it was decided to convene a DPC if two of the usual criteria were done away with and when it was not a regular selection, it was submitted that it was considered advisable to have a DPC to handle the selections since the question of payment of Special Pay to selected volunteers was involved in this case.

8. It would be necessary to spell out the actual position emerging, upto this point, from the contentions of both parties. It is seen that -

- a) the selection of the applicant and 9 of his colleagues was necessitated by the temporary requirements of a time-bound Project outside the routine needs and normal jurisdiction of Berhampur Telegraph Engineering Division. To that extent it was indeed not a regular selection of senior-most eligible and successful officials for a regular posting within the Division on the basis of usual selection procedures, but the exercise was



more in the nature of an **ad hoc exercise of an offer** to volunteers for a limited period in a temporary task against temporary posts.

- b) The selection was on the basis of a clearly abbreviated procedure in view of the ad hoc nature of deployment in limited, time-bound assignments.
- c) The seniority of volunteers was determined on the basis of their performance at the training course - not by any means an unfair yardstick.

Under the circumstances it has to be held that, considering the nature of the task and the method of selection, the applicant cannot stake his claim for continuation, regularisation or seniority in the post on the sole strength of his ad hoc, temporary appointment in the Coaxial Project.

9. The next grievance of the petitioner is that some of his juniors were retained as Cable Jointers in the Project whereas he was singled out for reversion to Lineman's cadre.

It is to be noted here that inasmuch as there basically was no 'promotion' involved in these ad hoc appointments, the question of 'reversion' would also, logically, not arise; nor has Respondent 2 used the expression 'reversion' in his Order (No.E-3/Decx/BBS dated 26.2.1975: Annexure 3) while recalling the officials from the Coaxial Project.

is,
The allegation/nevertheless, answered by the respondents by explaining that since all the officials were ad hoc appointees in an ongoing project, they were only released one after other as soon as the need for their

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presence ceased with the gradual progress and completion of the Project along its axis, and no order of seniority was necessary to be followed or could indeed be followed in returning them to the permanent unit. If the work on a particular section of the Project in which a particular Cable Jointer was deployed came to an end he was released regardless of seniority. Thus, even some officials who were seniors to him were relieved from their adhoc posts before the applicant. Likewise, one Cable Jointer who was junior was released from the Project at a date later than the applicant. The actual release was thus related to work-needs and not to the incumbent's place in the seniority list. This is not found to be an unsatisfactory explanation and is accepted.

Thus, the grievance of the applicant regarding his alleged earlier release, vis-a-vis some of his juniors, is misadvised and not established.

10. The petitioner's next complaint concerns the "regularisation", or what he chooses to call the 'retention' of some juniors while his case for similar 'retention' was unjustly overlooked. He has cited two names - Sarvashri Brundaban Routray and Lakshmidhar Sethi - in this context.

There seems to enter some confusion in the mind of the petitioner while voicing a grievance on this particular aspect of the case. What he calls regularisation or 'retention' of some of his colleagues is actually the subsequent appointment on permanent basis in a regular

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post in the parent Division of senior, eligible officials after the volunteers had returned from the posts of Cable Jointers in the Coaxial Project. In other words, the later appointments were regular appointments in permanent vacancies which arose in Berhampur Telegraph Engineering Division in routine course from time to time. These have no link or relevance to earlier adhoc deputations in temporary vacancies outside the Division.

Be that as it may, the Respondents elaborate the position and the manner of the released officials' reappointment as Cable Jointers thus :

When the applicant and his colleagues were selected for deputation to the Project, there were no unfilled vacancies of regular Cable Jointers in the Division. And by the time the different portions of the Project got completed gradually and the deputationists successively returned to it, vacancies did arise in which the returned officials could be absorbed one after the other as per their normal turn. And in absorbing them, the criterion of inter-se seniority of these erstwhile deputationists was kept in view, which, as explained earlier, was based on the marks obtained by them at the end-of-the training examination. And where the number of marks secured by two officials was equal, then their seniority in the basic cadre of Linemen was taken into consideration. It was thus that although Brundaban Routray and the applicant Rabindranath Kandy both scored the same number of marks (220) in



training-end examination, the former who had joined as Lineman on 8.10.1966 was absorbed as Cable Jointer earlier than the petitioners who joined later, i.e., 22.10.1966. On the other hand, Bhabagrahi Muduli who scored more marks than the applicant naturally got his turn for absorption roughly a month earlier than the latter. It is the case of the respondents that Shri R.N.Kandi got absorbed as per his turn and seniority on both counts - of marks at the training-end examination as well as entry in the basic cadre.

11. The foregoing discussion establishes the fact that, purely on facts and merit, the applicant's contentions are **not** acceptable, and that the actions and decisions of the respondents prior to the selection-and-deputation of the applicant, or following it, are not in themselves objectionable or impermissible.

12. Shri P.V.Ramdas, learned counsel for the petitioner, drew our attention to the fact that the original order of deputation pointedly stated the applicant would be on probation for a period of two years. This fact alone proved that the post for which he was selected was a permanent one and he had, for that very reason, **acquired** a vested right on the post after two years. The question as to whether or not the posts in the Project were permanent or temporary, and the nature of deployment of the applicant, have all been extensively discussed and it is not necessary to repeat the arguments **heretofore** enumerated or the findings already arrived at. It is

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sufficient to note that while no probation is normally prescribed for adhoc postings, it is still permissible to lay down a period of probation where even a temporary post is likely to continue for not less than three years. (cf. Jee Rama Jois: Services Under the State, Bombay, N.M.Tripathi Pvt.Ltd., 1987, Chapter III, P.391, foot-note no.3).

Inasmuch as the posts of Cable Jointers in the Coaxial Project were expected to last for five years in the instant case, the stipulation of two-year probation for the applicant in this case, and of his colleagues, was not wholly incorrect or objectionable.

13. There remains only one issue that needs to be addressed - the question of limitation, raised by Shri P.N. Mohapatra, learned counsel for the Respondents. It was pointed out by him that the original order of release of the petitioner from deputation was issued by Respondent 2 as long back as February, 1976, whereas the present application was filed in September, 1990. Shri Mohapatra contended that the cause of action having arisen in the year 1976, it was not open to the applicant to agitate any grievance against it fourteen years later. It was pointed out moreover that this Tribunal is precluded from entertaining any application which pertained to any event or action occurring prior to 1st November, 1985. Shri P.V.Ramdas strongly opposed this plea and pointed out that the cause of action in this case had arisen, not in 1976 but on 1st September, 1990, the date on which the Divisional Engineer, Berhampur, communicated the final decision

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of the General Manager, Telecommunication, Orissa Circle, turning down his request.

14. In terms of Section 20 of Administrative Tribunals Act, 1985, an application has to be ordinarily admitted where the Tribunal is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of his grievance; clause (a) of sub-section (2) under the same Section specifies that a person is deemed to have availed of all the remedies if a final order has been made by a competent authority rejecting any appeal or representation made to him. Sub-section (1)(a) of Section 21 of the Act lays down that an application shall not be admissible unless it has been made within one year from the date of passing such a final order by the competent authority. Sub-Section (2) of the same Section extends the period for filing of the applications relating to any order passed at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal became exercisable under the Act.

15. While this is the basic position in the Act as regards Limitation, the various facts^e of the question relating to the orders passed by authorities, and appeals and representations submitted by Government Servants, have been elucidated in a number of judicial pronouncements by the Principal Bench of this Tribunal. The limitation runs, not from the date of passing such order by the competent

— 13 July 1985

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authority but from the date of communication of that order (Bamidev Vs. UOI - (1988) 8 ATC 387). If an appellate order is passed in the matter, the limitation shall run from the date of communication of the appellate order and not of the original order appealed against (Karsanbhai Vs UOI, (1989) 11 ATC 446). For the purposes of computation of limitation, even a non-statutory representation submitted by a Government servant to his superiors is to be regarded as a part of his effort to avail of the remedies available to him. (Ordnance Clothing Factory Workers' Union vs Secretary, Ministry of Defence, (1990) 12 ATC 246 (Madras)). However, by merely filing repeated or successive representations, an aggrieved Government Servant cannot secure a fresh lease of life to a time-barred remedy (Raghavan Vs Secretary, Defence Ministry, (1987) 3 ATC 602). Casual representations, or ^{representations} ~~representations~~ not provided for in the service rules, even if submitted, cannot extend the period of limitation (Magan Vs Chief Security Officer, RPF, Southern Railway, 1986 3 SLJ 136 CAT). If an aggrieved Government servant enters into ^{it} ~~repetitive~~ correspondence with the authorities in respect of any order passed by them, and if the authorities merely reaffirm the earlier decision, the period of limitation runs from the date of original order (Manindra Chakraborty Vs UOI, ATR 1986 2 CAT 299). Repeated representations against a decision already taken and communicated cannot extend the period of limitation. (B.C. Lakshminarasimhaiah Vs Railway Board, 1990 11 ATC 137). However, it was held (B. Kumar Vs UOI, ATR 1988

— 7. Jy. 1988

1 CAT 1) that where the authorities themselves consider a fresh representation on merits before rejecting it, the same could well provide a fresh cause of action and an application in such circumstances cannot attract the bar of limitation. The following are the observations of the Principal Bench in this regard :

" In regard to the second part of Shri Gupta's argument regarding limitation, while it is true that limitation is to run from the date of rejection^{of} a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and redress the grievance or grant the relief, even though earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it. This is what exactly has happened in the present case."

16. No discussion of Limitation, specially in its applicability to Service Law, can be complete without a mention of atleast two pronouncements by Hon'ble Supreme Court :

- (1) In C.A. No.460 of 1987 arising out of Special Leave Petition(Civil) No.12980 of 1986 (Collector, Land Acquisition, Anantanag and another vs. Katiji and Others, in AIR 1987 SC 1353, the Hon'ble Supreme Court laid down as under :

— "When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred" for the other

"There is no presumption that delay is occasioned deliberately, or on account of culpable negligence. A litigant by resorting to delay runs a serious risk."

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because "Judiciary is respected not on account of its power to legalize injustice on technical grounds but it is capable of removing injustice and is expected to do so."

(2) In C.A. No.207 of 1984 (S.S. Rathore vs State of Madhya Pradesh, AIR 1990 SC 10) The Apex Court observed as under :

" The question for consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-ss. (2) and (3) of S. 20 of the Administrative Tribunals Act. There, it has been laid down :

"20.(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, -

(a) if a final order has been made by the Government or other authority or officer or other persons competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (a) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Government of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

" We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months'

— J. L. —

period from the date of preferring of the appeal of making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

"It is appropriate to notice the provision regarding limitation under S: 21 of the Administrative Tribunals Act, Sub-section (1) has prescribed a period of one year of making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

17. In the instant case, the applicant was released from the post of Cable Jointer on 29th February, 1976. He submitted the first representation to the Sub-Divisional Officer, Telegraphs, against this between 29th February and 17th July, 1976 (the exact date is not available). His second representation addressed to the Divisional Engineer Telegraphs, was submitted on 8th February, 1978. The applicant submitted the third and fourth representations on 6th September, 1988 and 21st April, 1990. The last-cited representation was disposed of by the Chief General Manager on 16th July, 1990. In all these successive representations, the applicant was voicing his grievance about the rejection of his claim in the context of the position of some of his colleagues who, according to him, were his juniors.

18. No statutory provision exists in the service rules applicable to the petitioner for submission of an appeal against

— 9. Singh



Section 21, (1) (a) of the

submitted with

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rejection, were in any way casual, mechanical or routine in nature. As for their obvious repetitiveness, by the very nature of the perceived 'injustice' the petitioner was protesting against, a measure of recurrence and a certain reiteration of the elements of his grievance could not altogether be avoided. It was the petitioner's persistent belief, which almost assumed the form of conviction by the time he submitted his last representation to the C.G.M.T., that his seniority had been ignored in the matter of 'regularisation'. And he kept repeating his discontent on this score. It is another matter that his grievance was not well founded. But that is not a reason enough to dismiss the case on the ground of successively repetitive representations. At any rate, since the Head of the Department, C.G.M.T., who is the highest authority in the Circle, himself chose not merely to entertain the representation but to dispose it of on merits by a speaking order, the plea of limitation raised on behalf of the respondents cannot be admitted or accepted. We hold, therefore, that this application is not barred by limitation.

Whatever the strength (or lack of it) of the respondents' plea of limitation, we propose, in any case, to dispose of this application on merits of the case, to the exclusion of any other fact or consideration.

20. Against the background of the foregoing discussion, we hold, on the basis of facts of the case as well as the arguments urged before us, that -

— J. G. Ch. Ind

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- a) the deputation of Shri Rabindranath Kandy, Lineman, Beshampur Engineering Postal Division, to the Coaxial Project as Cable Jointer was in the nature of an adhoc assignment;
 - b) the recall of the petitioner from the Coaxial Project was quite in order, necessitated as it was by the altered or altering requirements of the Department;
 - c) his subsequent appointment as Cable-Jointer/ Splicer in 1980 was wholly in accordance with rules and in keeping with his seniority.
 - d) He is not entitled to count the period spent on deputation for reckoning his seniority in the post of Cable Jointer; and
 - e) there is no need or justification to quash any order, decisions or communication passed, made or conveyed by any of the respondents.

Thus the original application is disposed of.

No costs.


(D.P. HIREMATH)
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

25 NOV 94

B.K.Sahoo//