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Central Administrative Tribunal,
Cuttack Bench: Cuttack.

Original Application No.177 of 1991

Date of decision: July 16, 1992

Abhimanyu Panda ... Applicant

-Versus-

Union of India and others Respondents

For the Applicant : M/s. Ganeswar Rath, P.K. Mohapatra,
A.K. Patnaik and J. Sahoo,
Advocates.

For the Respondents : Mr. Ashok Mohanty, Sr. St. Counsel
(Central)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

A N D

THE HONOURABLE MR. M.Y. PRIOLKAR, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see? Yes.
2. To be referred to the reporters or not? ~~Yes~~. No.
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of Respondent No.2 dated 24.5.1991 contained in Annexure-3 and to ~~issue~~ a direction to Opposite Party No.2 to count the service rendered by him as Lower Division Clerk in the Ministry of Communication for reckoning the qualifying service of five years for the purpose of promotion to the grade of Upper Division Clerk in the Office of the Respondent No.2.

2. Shortly stated the case of the Petitioner is that he was appointed as ^{Lower} Division Clerk in the Ministry of Communication. The Petitioner made an application to the General Manager, Telecommunication, Bhubaneswar which is a Unit under the Ministry for being transferred to his Office and application was allowed with effect from 3rd September, 1985. The Chief General Manager, Telecommunication in his Circular dated 31st May, 1990 contained in Annexure-1 called for the willingness of different incumbents of his office to appear at the Departmental Examination for promotion to the Post of Upper Division Clerk. After receipt of such application, Opposite Party No.2 ^{was} provisionally permitted to appear in the departmental examination subject to the condition that his result will be declared only after receipt of clarification from telecom Directorate regarding completion of five years experience in the Lower Division Clerk Grade. On 24.5.1991, Opposite Party No.2 informed the Petitioner that his past services rendered in the Ministry of Communication cannot be taken into account for permitting him to appear in the examination. This ^{is} contained in Annexure-3. Hence this application has been filed with the aforesaid prayer.

7

3. In their counter, the Opposite Parties maintained that the petitioner is not eligible to appear in the Departmental Examination for the Post of Upper Division Clerk as his past services in the Ministry of Communication prior to joining the office of the Chief General Manager, Telecommunication, Orissa cannot be taken into account because one of the conditions laid down in the order of transfer is that he has to be treated as new recruit and his appointment will be treated as a fresh one and he will be accommodated against ~~a~~ ^{an} outside quota of vacancies in the Office of the Chief General Manager, Telecommunication, Orissa. Accordingly the petitioner submitted his resignation from the Post of LDC in the Ministry of Communication and also gave an undertaking that he will not claim benefit of the past service and therefore, rightly he was held to be ineligible and therefore, the petitioner has absolutely no case for appearing in the Departmental Examination .

4. We have heard Mr. Ganeswar Rath learned Counsel for the Petitioner and Mr. Ashok Mohanty , learned Standing Counsel(CAT) at a considerable length.

5. The admitted facts of the case are as follows; The Petitioner was appointed as Lower Division Clerk through Staff Selection Commission on 25th October, 1984 in the Ministry of Communication New Delhi and he was transferred on his request to the Office of the General Manager, Telecommunication with effect from 3rd September, 1985. The Petitioner was provisionally permitted to appear in the Departmental Examination for promotion to Upper Division Clerk subject to the condition that if the

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Directorate would count his past services as LDC and then only he will be held to be eligible to sit for the examination.

6. With this admitted case of the parties, we would now proceed to consider whether the petitioner is eligible to appear in the examination. In the Circular Annexure-1 dated 31st May, 1990, it was notified on behalf of the Chief General Manager, Telecommunication Orissa Bhubaneswar that the next examination of the LDC of Circle Offices and Subordinate offices for promotion to the post of UDC (Clerical) cadre in the Circle Office will be held on 27th August, 1990, those who satisfy the eligibility criteria may sit for the examination. One of the prescribed eligibility criteria at para 3 of the circular is that a LDC must have a minimum experience of five years in that trade. The Departmental authorities have held that the petitioner does not possess five years experience in the LDC Grade and therefore, he is ineligible. From Annexure-1 dated 20th May, 1985, issued from the Office of the Director General of Posts and Telegraphs, addressed to the General Manager, Telecommunication Orissa Bhubaneswar, it appears that the present petitioner who was working as Lower Division Clerk in the Ministry of Communications (main) has been allowed to join in the Office of the General Manager, Telecommunication on his own request and that he may be accommodated in the office of the General Manager, Telecommunications with certain conditions. Apart from other conditions, the relevant condition governing the present case is that the petitioner will be deemed to be a new recruit in the unit to which he was ordered and would be accommodated against outside quota of vacancies and he will not claim benefit of past service. These conditions were accepted by the Petitioner in his letter dated 26th June, 1985 addressed to the under Secretary

Ministry of Communication, contained in Annexure-R/2. After these conditions were accepted by the Petitioner, he was transferred and had joined the office of the Chief General Manager, Telecommunications on 3rd September, 1985 as stated in para 7 of the counter. Mr. A. Mohanty learned Standing Counsel rightly contended that in view of the undertaking given by the Petitioner and having agreed to be treated as fresh recruit and the petitioner not having completed five years experience in the LDC Grade in the office of the General Manager, Telecommunication by 27th August, 1990, he is not eligible to appear in the Examination for promotion to the grade of UDC and therefore, he was provisionally permitted to appear subject to the condition that relaxation would be accorded by the Directorate and such relaxation ~~is~~ not having been done by the Directorate in favour of the petitioner, rightly the General Manager, held the Petitioner is ineligible to appear in the Examination. We have absolutely no dispute with the contentions advanced by Mr. Mohanty which is well founded but in the peculiar facts and circumstances which would be indicated hereunder we propose to give the benefit to the petitioner. Admittedly the petitioner had joined his new appointment on 3.9.1985 and necessarily he would have completed five years experience on 2nd September, 1990. The examination having been held on 27th August, 1990, the petitioner runs short of experience in LDC Grade by 7 days ^{only} to complete five years in the LDC Grade. Therefore, to meet this most unfortunate situation we would relax the shortfall of seven days only in favour of the petitioner as a special case and this should not be treated as a precedent. We therefore, direct that the result of the petitioner be published and in case the petitioner has been successful orders according to law be passed in favour of the petitioner regarding his promotion to the UDC Cadre. Vide order dated 2nd July, 1991

learned Single Judge (Member Judicial) of this Bench stated that result may be published and it is made clear that any promotion is made subject to the result of this case. Hence it is directed that further action be taken by the Opposite Parties according to law.

7. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

K. Mohanty
-16-7-92
MEMBER (ADMINISTRATIVE)

K. Mohanty
16-7-92
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.