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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 444 of 1991.

Date of decision: January 19, 1993.

Akshaya Kumar Misra ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. Ashok Misra,  
H.P. Rath, Advocates.

For the respondents ...

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

C O R A M:

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

A N D

THE HONOURABLE MR. S. R. ADIGE, MEMBER (ADMN.)

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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 ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, V.C., The applicant was appointed on 10.2.1976 as a Time Scale Clerk in the Telecommunication Department and this post was subsequently redesignated as Telecom Office Assistant. An examination was held to give promotion to the suitable candidates from the feeder post i.e. Telecom Office Assistant to the post of Junior Telecom Officer. The applicant turned out successful but his position was at such a place that he could not be appointed according to the vacancy position. The applicant apprehends that his answer papers in paper III has not been correctly valued and if revalued then the position of the applicant would be at a higher place. Hence, this application has been filed with a prayer for issuance of appropriate directions to the respondents namely to reassess the answer paper III of the applicant by another examiner and to further direct the respondents to declare the applicant successful in the event of enhancement of marks.

2. In their counter, the respondents maintained that the answer paper of the applicant has been correctly valued and there is no question of re-examination. The applicant cannot be given promotion because his position was down below the list. Hence, this case being devoid of merit is liable to be dismissed.

3. We have heard Mr.H.P.Rath, learned counsel for the applicant and Mr.P.N.Mohapatra, learned Addl. Standing Counsel (Central) for the respondents. Mr.Rath submitted that a petition had been filed for giving direction to the respondents to cause production of the answer paper in respect of Paper III. This prayer was allowed. Despite the direction given by this Hon'ble Tribunal no such paper has been

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produced. Hence, according to Mr.Rath adverse inference should be drawn against the respondents and the law of presumption should work out in favour of the applicant. In support of his contention Mr.Rath relied upon a judgment of the Calcutta High Court reported in AIR 1993 Calcutta 1 (University of Calcutta and others vrs. Sm. Gopa Chakraborty and another). We have carefully gone through the judgment. It is clearly distinguishable. One of the papers was lost and therefore the presumptive section was attracted, in the present case, the applicant prays for re-examination of the paper apprehending that the answer papers had not been correctly valued. Apprehension on the part of the applicant is not at all reasonable. No presumption could arise in favour of the applicant that the examiner has not correctly and properly valued the papers in the absence of any allegation of malafide or bias. Therefore, we are of opinion that the principles laid down by Their Lordships of the Calcutta High Court is confined to the peculiar facts and circumstances of the case dealt with by Their Lordships and the facts being clearly distinguishable the principles have no application to the facts of the present case. We find no justifiable reason to give any such direction to the respondents because of the reasons stated above.

For the subsequent vacancies, if the applicant is eligible for appointment according to the existing rules, then such promotion order should be issued in favour of the applicant.

Jm.

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

*Arifolia*  
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MEMBER (ADMINISTRATIVE)

*K. S. 19.1.93*  
.....  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench, Cuttack.  
January 19, 1993/Sarangi.

