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 CENTRAL ADMINISTRATIVE TRIBUNAL  
 CUTTACK BENCH: CUTTACK.

Original Application Nos. 67 & 112 of 1991.

Date of decision : July 16, 1992.

In O.A. 67/91      All India Telecommunication  
 Administration Officers Employees  
 Union and another ...      Applicants.

versus

Union of India and others ...      Respondents.

For the applicants...      M/s. Ganeswar Rath,  
 P.K. Mohapatra,  
 A.K. Patnaik, G.C. Sahoo,  
 Advocates.

For the respondents ...  
 1 and 2      Mr. P.N. Mohapatra,  
 Addl. Standing Counsel (Central)

For the respondents 3 to 9 ... M/s. A.K. Bose,  
 P.K. Giri, Advocates.

In O.A. 112/91      Bharatiya Telecommunication Adminis-  
 trative Officers Employees  
 Union and another ...      Applicants.

versus

Union of India and another ...      Respondents.

For the applicants. ...      M/s. A.K. Bose,  
 P.K. Giri, 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. M. Y. PRIOLKAR, 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 ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K. P. ACHARYA, VICE-CHAIRMAN, In O.A.67 of 1991, the applicants (two in number) pray for a declaration that 13 vacancies existing (including anticipated vacancies) before the 30 % quota examination was held for the Circle Office and as such 5 posts of Upper Division Clerks are to be filled up from the examination quota and to direct the respondents to declare ~~and~~ the names of the 5 qualified persons under the 30 % examination quota and to order their promotion from the cadre of Lower Division Clerks to the cadre of Upper Division Clerks.

This application has been filed by two applicants out of whom applicant No.1 is the All India Telecommunication Administrative Officers employees Union, Group C and D represented by its Circle Secretary Shri Baishnaba Charan Barik and applicant No.2 is Pramod Kumar Das officiating as Upper Division Clerk on ad hoc basis in the Office of the Chief General Manager, Telecommunication, Orissa.

2. Shortly stated, the case of the applicants is that as per Rules for promotion from the cadre of L.D.Cs. to the U.D.Cs. 50 per cent of the vacant posts are to be filled up from the Circle Office and the Administrative Offices and the rest 50 per cent from other Offices of the Telecommunication Department. In the present case, we are not concerned with the 50 per cent quota allotted to other Offices of the Telecommunication Department. So far as the present case is concerned, the dispute centres around the 50 per cent quota to be filled up from Circle Office and administrative Offices and therefore we confine ourselves to the said 50 per cent quota and this 50 per cent

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is to be divided into two parts. 30 per cent of the existing vacancies has been allotted to the successful L.D.Cs. who have sat for the competitive examination and the rest 20 per cent goes to the L.D.Cs. for promotion by seniority. The grievance of the present applicants is in regard to the vacancies existing for promotion from L.D.Cs. to U.D.Cs. for the year 1990 in respect of 30 per cent quota to be filled up resulting from the competitive examination. According to the applicants, in June, 1990 the higher authorities were moved for creation of 8 U.D.Cs. posts. Those 8 posts were sanctioned on 7.9.1990. According to the applicants in addition to these newly sanctioned 8 posts, 4 incumbents had retired on superannuation and therefore there were four vacancies during the said year and one person had already been promoted to the cadre of U.D.Cs.

Hence, according to the applicants, there were 13 posts of U.D.Cs. remaining vacant to be filled up by promotion from the cadre of L.D.Cs. pertaining to the 30 per cent quota. Further case of the applicants is that taking into account, the total number of posts falling vacant owing to the newly sanctioned posts, 5 posts of U.D.Cs. are to be filled up from the examination quota but very unfortunately, the Chief General Manager, Telecommunications, held that only one post remains vacant out of the 30 per cent quota, which is not so according to the facts stated above. Due to wrong calculation this figure has been arrived at and therefore this application has been filed with the aforesaid prayer.

3. M/s. Maheswar Nayak, Kishore Kumar Chatter, Tarun Kumar Ghhatoi, Enam Ali Khan, Ashok Mishra, Kamaraj Sethi

and Krushna Chandra Behera who are said to be the employees in the Office of the Chief General Manager, Telecommunications, Orissa, Bhubaneswar had filed a petition ( forming subject matter of M.P.131 of 1991) praying for permission to contest the averments of the applicants in O.A.67 of 1991 as intervenors. Vide order dated 9.5.1991 the Bench allowed the application and therefore the above mentioned employees are arrayed as parties to this original application as intervenors.

4. In their counter the respondents admit about the quota allotted to different groups (stated above) for promotion to the cadre of U.D.Cs. It is maintained that the new posts likely to be filled during the year 1990 was not taken into account and such new posts of U.D.Cs. were subsequently created on 7.9.1990 which were 8 in number. It is further maintained that in addition to the same, another vacancy occurred as one of the H.D.Cs. had already been promoted to the cadre of J.T.O. but before the examination was held. It is also further maintained that the Director, Telecom(Hqrs), New Delhi vide Annexure-R/1 dated 14.3.1991 was moved to modify/alter vacancy position and according approval for this modification. The Director, Telecom(Hqrs.) in his reply dated 6.5.1991 contained in Annexure-R/2 refused to make any modification/alteration. As such, the case being devoid of merit is liable to be dismissed.

5. We have heard Mr. Ganeswar Rath, learned counsel for the applicants, Mr. A. K. Bose, learned counsel for the intervenors and Mr. P. N. Mohapatra, learned Addl. Standing Counsel (Central) for the respondents on the merits of the case.

6. Before we go into the merits of the case it is worthwhile to mention that the intervenors through Bharatiya Telecommunication Administrative Offices Employees Union have filed an original application under section 19 of the Administrative Tribunals Act, 1985, praying that posts notified under Annexure-2 to have been vacant should be acted upon and such number of vacancies should be filled up without making any revision in regard to the same. We have also heard Mr. A. K. Bose, learned counsel for the applicants and Mr. P. N. Mohapatra, learned Addl. Standing Counsel (Central) for the respondents in O.A. 112 of 1991. Both O.A. 112 of 1991 and O.A. 67 of 1991 were heard separately (one after the other) and this common judgment will govern both the cases mentioned above.

7. The undisputed position before us is that  
(i) Promotions are given from the posts of L.D.Cs. to the cadre of U.D.Cs. as per the quota allotted to different groups and by competitive examination to the extent of 30 per cent and by seniority to the extent of 20 per cent, out of the 50 percent posts to be filled up from Circle Office and administrative Offices;

ii) further admitted case of the parties is that on 27.8.1990 an examination was held for the 30 per cent quota and on 7.9.1990 Respondent No.2, Chief General Manager, Telecommunications, announced 8 additional posts of U.D.Cs. to have been sanctioned and created;

iii) Next admitted position is one U.D.C. was promoted to the cadre of J.T.O. and thereby another post of U.D.C. remains vacant.

iv) Further undisputed position is there are four more vacant posts in the cadre of U.D.Cs. as four incumbents from the said posts have retired.

8. In view of the above mentioned averments and pleadings of the parties, almost all the facts are admitted except in regard to retirement of four incumbents from the cadre of U.D.Cs. The other dispute centres around the fact that whether these newly created posts should be filled up or be counted or be taken into account as vacancies occurring in the year 1990. At this stage, it is appropriate to mention that in O.A.112 of 1991 relying on Annexures-5, 6, 7 and 9 Mr. Bose contended that there cannot be any recalculation because the said 8 posts were created after the examination was held and therefore rightly the D.O.T. had refused modification which should not be unsettled. Along with these submissions Mr. Mohapatra learned Addl. Standing Counsel (Central) strongly refuted about the four persons having retired thereby four more posts in the cadre of U.D.Cs. have remained vacant. In the counter submitted in connection with O.A.67 of

of 1991 it is stated in paragraph 5 as follows:

" That while calculating the UDC vacancy position, the new posts likely to be created during the year 1990 were not taken into account. "

We are of opinion that rightly it was not taken into account because nobody could have anticipated the creation of these 8 posts. In the same paragraph it is mentioned that one post is vacant in the cadre of U.D.Cs. as one U.D.C. has got promotion to the cadre of J.T.O.. In the said paragraph it is further mentioned;

" It is felt in the larger interest of staff that the vacancies announced need modification."

But such modification was not done because the competent authority i.e. B.T. New Delhi vide letter No.203-9/91-STN dated 6.5.1991 rejected the proposal for modification. The Bench is now called upon to answer as to whether this modification should be done. We cannot lose sight of the fact that the 8 posts have been created only 11 days after the examination of 1990 was held. Such posts having been created on 7.7.1990 they are bound to pertain to the year 1990. The concerned authority has been restrained from publishing the results in regard to the examination held on 27.8.1990. Therefore, we are of opinion that the newly created 8 number of posts be taken into account for the year 1990 and such vacancies having related to the entire 100 per cent vacancies, appropriate number of posts should be allotted to the 30 per cent quota adding the same to the vacancies already notified. In addition to the above, the vacancy occurring on promotion of one U.D.C. from the U.D.C. cadre to the cadre of J.T.O. be added to the total number of vacancies as indicated above.

So far as the disputed position of retirement of the 4 U.D.Cs. from the cadre of U.D.Cs. is concerned, in second sub-paragraph of paragraph 5(E) it is mentioned by the applicants that since 4 persons retired in the higher rank of U.D.Cs. automatically 4 posts of U.D.Cs. have remained vacant. There is absolutely no denial of the averments made by the applicants. Moreover, this is a matter of record. 'Men may lie, but the documents will not'. We leave this matter open to the Chief General Manager, Telecommunications, Orissa Circle, to verify the records and in case 4 posts have become vacant in the cadre of U.D.Cs. owing to the retirement of 4 incumbents, then these four posts must be added to the guidelines/directions given above. After the Chief General Manager, Telecommunications, Orissa Circle comes to a conclusion regarding the number of vacancies for the year 1990 as per the indications given above, such number of posts be taken into account and out of such total number of posts, 30 per cent should be allotted to the examination quota in the cadre of U.D.Cs. and accordingly appointment orders be issued as per the merit list resulting from the examination held on 27.8.1990 keeping in view the roster points.

9. Thus, both the applications namely O.A.67 of 1991 and O.A.112 of 1991 are disposed of accordingly.

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MEMBER (ADMN.) (67-82)  
Central Administrative  
Cuttack Bench, Cuttack.  
July 16, 1992/Sarangi.

