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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.86 of 1991

Date of Decision: 12.2.1993.

Balaram Ojha

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s .R.B.Mohapatra  
N.J.Singh  
S.C.Mohanty  
Advocates

For the respondents

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

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C O R A M:

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

AND

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

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

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JUDGMENT

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MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act,1985, the petitioner prays for a direction to the opposite parties to fix up the pay of the petitioner at the rate of Rs.1025/- as on 19.1.1984, and arrear thereof from 20.5.1986.

2. Shortly stated the case of the petitioner is that he was initially appointed as a Group 'D' employee in the Central Telegraph Office, Bhubaneswar. The petitioner was deputed to Army Postal Services and while working as such he appeared at the departmental competitive examination for promotion to the cadre of telegraph assistant which was held on 13.3.1983. The petitioner stood first as per the merit list, as unfolded from G.M.T.Memo No.RE/30-2/83.Con. dated 16.5.1983 and the result was communicated to the petitioner vide Annexure-1. Vide letter No.ST-28-5/23, the Senior Superintendent, Telegraph Traffic Division issued a letter to the Assistant Incharge, D.T.O., Berhampur and to A.P.S. Centre, Kamptee (where the petitioner was serving) to relieve the petitioner Shri Balaram Ojha to join the Special Training Class. Neither the petitioner was relieved nor any such communication was received by the petitioner. The petitioner was relieved on 29.11.1985. After completion of the training, the petitioner was ordered to join as a Telegraph Assistant in C.T.O., Bhubaneswar in the scale of Rs.260 to 480/. Due to delay in undergoing the training, the pay of his juniors is more than pay of the petitioner and the petitioner is working under them which is illegal,unjust and improper and therefore this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties do not disput  
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the fact that the petitioner had stood first in the departmental competitive examination. The opposite parties not further maintain that because of the petitioner was relieved in due time by the authorities in A.P.S.Centre, Kamptee, the petitioner did not undergo the training along with others and therefore those other persons <sup>were</sup> have been successfully undergone the training prior to the petitioner having been successful in the training, they were naturally given the appointment of Telegraph Assistants prior to the appointment of the petitioner and consequently those persons are drawing a higher pay than the petitioner. No illegality having been committed by the concerned authority, the petition is liable to be dismissed. In addition to the above it is maintained by the opposite parties that the case is bad for the nonjoinder of necessary parties and therefore the case is liable to be dismissed.

4. We have heard Mr.R.B.Mohapatra, learned counsel for the petitioner and Mr.P.N.Mohapatra, learned Standing Counsel.

5. The case does not suffer from the infirmity of nonjoinder of necessary parties, because A.P.S.Centre, Kamptee has no say in the matter as practically most of the important facts are admitted, viz. A.P.S.Centre did not relieve the petitioner in time so as to enable him to join the training. The petitioner was relieved at a later date than his juniors is not disputed. There is absolutely no evidence before us that the petitioner was given notice to join the training camp and that he was relieved in due time. In such a situation the petitioner cannot be blamed. It is also admitted before us that later the petitioner had undergone the training

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and turned out successful. It is against all canons of justice, equity and fairplay that for <sup>no</sup> fault on the part of the petitioner, he would be serving under his juniors and would be earning lesser pay than his juniors. Since the petitioner has been successful in the training, his appointment should date back to the date on which his juniors were given the post in question and the higher scale of pay. The pay of the petitioner would accordingly be fixed notionally and he would draw the higher scale of pay from the date on which he actually worked as a telegraph assistant. Benefit regarding notional pay fixation would be given to the petitioner as per rules.

6. Thus the application is accordingly disposed of leaving the parties to bear their own cost.

*Anjali*  
MEMBER (ADMINISTRATIVE)

*Leg. 12-2-93*  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
dated the 12-2-1993/ B.K.Sahoo

