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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.176 OF 1992
Cuttack, this the 25th day of January 1999

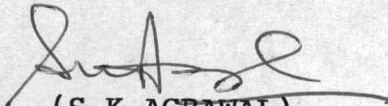
Ananta Khatua Applicant

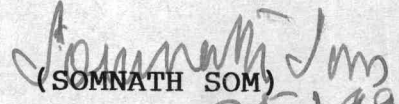
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K.AGRAWAL)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN - 1.99

19

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ORIGINAL APPLICATION NO.176 OF 1992
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRawal, MEMBER(JUDICIAL).

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Sri Ananta Khatua, aged 31 years,
son of Golakh Khatua,
Village-Bachapur, Post-Majipur,
Via-Tirana, P.S-Erasama,
District-Cuttack,
at present working as Mazdoor (Term),
Telephone Exchange, Gondia Applicant

By the Advocates - M/s B.B.Ratho,
B.N.Rath,
B.Senapati,
K.R.Mohapatra,
J. N.Rath,
M.K.Panda &
S.K.Jethy.

Vrs.

1. Union of India,
represented by the Secretary,
Department of Telecommunications,
New Delhi.
2. Office of the Telecom District Engineer,
Dhenkanal-759 001.
3. Officer-in-charge, Telephone Exchange,
Gondia, District-Dhenkanal.
4. General Manager, Telecom,
Orissa Circle,
Bhubaneswar.
5. Chhabindranath Swain,
C/o S.D.O.(T),
Dhenkanal.
6. Nepal Chandra Rana,
C/o S.D.O.(T),
Dhenkanal.

7. Sadasiba Hota,
c/o S.D.O(T),
Dhenkanal.
8. Fakir Mohan Naik,
C/o A.E.Gr.Exchange,
Talcher.
9. Ratnakar Sahoo,
c/o A.E.Gr.Exchange,
Nalco Nagar.
10. Sudhakar Rout,
c/o S.D.O(T),
Dhenkanal

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Respondents

By the Advocate - Mr.U.B.Mohapatra,
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for issuing a direction to the respondents to treat him as one of the appointees for the post of regular Mazdoor (Non-test category). He has also prayed for a direction for his permanent absorption/regularisation and for equal pay for equal work at par with the regular employees doing the same job. At the time of admission of the O.A., as against the prayer for interim relief, it was ordered on 22.4.1992 that result of the application would govern the future service benefits.

J. Som . 2. The case of the petitioner is that he belongs to Scheduled Caste and on being sponsored by Employment Exchange, Dhenkanal, for the post of Mazdoor under Indian Posts & Telegraphs Department, he was found suitable and was engaged as an N.M.R. Mazdoor in August 1983. His record of employment is at Annexure-1. While he was working as a Mazdoor, the Department of Telecommunication issued a notice dated 7.3.1992 for recruitment to the cadre of Group-D (Non-test Category) in

11

21

Dhenkanal Telecom District. It was mentioned that the eligible desirous Casual Mazdoors/Part-time Mazdoors working in Dhenkanal Telecom District, should submit their applications through proper channel by 20.3.1992. It was also mentioned that the selection of the candidates would be made from amongst the Casual Mazdoors working in Dhenkanal Telecom District on or before 30.3.1992. It was also stated that those Casual Mazdoors/Part-time Casual Mazdoors who have been employed through Employment Exchange and have rendered 240 days of service in each of the year of the preceding two years for Casual Mazdoors and four years for Part-time Casual Mazdoors, would be considered and broken period of service would be taken into consideration, provided the period of service is not separated by 6 months or more. It was further laid down that for drawing up the eligible list, the Casual Mazdoors and Part-time Casual Mazdoors would be assigned position on the basis of number of days of service as Casual Mazdoors and half of the total number of days of service as Part-time Casual Mazdoors as on 30.6.1991. The total number of vacancies was 38 of which 23 were for General Category, 5 for S.C. and 10 for S.T. In response to the advertisement, the petitioner applied for the post and was called to attend the Selection Committee for recruitment. A provisional allotment of the names of 25 Casual Mazdoors, 20 in the General Category and 5 amongst the S.C. was issued. The petitioner's name was not included in the panel. This order dated 10.4.1992 is at Annexure-3. On being aggrieved, the applicant has come up with the aforesaid prayer. He has also stated that he is discharging same and similar duties like regular Mazdoors and as such he is entitled to the pay equal to them.

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3. Respondents in their counter have stated that the applicant was recruited as a Casual Mazdoor on 1.8.1983 and his total number of days of work as on 30.6.1991 is 2787. He was called for interview for selection to the post of regular Mazdoor on 27.3.1992. The persons were put in the panel strictly according to the number of days of work as Casual Mazdoor. The applicant was not included in the panel on the basis of the number of days worked by him. He has been kept as No.1 in the waiting list. In support of this, the respondents have enclosed minutes of the Selection Committee ^{which} met on 27.3.1992 along with the enclosure showing the list. According to the respondents, the last person in the waiting list for the general candidates has put in 2788 days of work as against 2787 days of work put in by the petitioner. As regards the Scheduled Caste candidates, four persons were selected and the last person one Sudhakar Roul has put in 3192 days of work. The respondents have stated that as the selection was made strictly on the basis of number of days of work done by the Casual Mazdoor and the petitioner could not be included in the panel because of less number of days of work done by him, there is no merit in his prayer which has been opposed by the respondents.

4. We have heard Shri B.B.Ratho, the learned Senior Counsel appearing for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents, and have also perused the records. Through a memo filed on 22.4.1992 the applicant has submitted a seniority list of Casual Mazdoors prepared on 17.1.1989 on the basis of number of days of work from November 1977 to October 1988. Copy of this has also been given to the other side. We have also taken note of this seniority list.

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5. The only point urged by the learned counsel for the petitioner is that in the notice dated 7.3.1992 calling for applications (Annexure-2) the total number of vacancies was shown as 38, of which five vacancies were reserved for S.C. According to the counter as also the minutes of the Selection Committee, only four S.C. persons have been taken and therefore, the next vacancy which is available for S.C. should go to the petitioner. Thus, the first point for consideration is whether S.C. vacancies were 5 and total vacancies were 38 or the total vacancies were 37 of which S.C. vacancies were 4. The minutes of the Selection Committee indicate that total vacancies were 37, of which general vacancies were 23, S.C. vacancies were 4 and S.T. vacancies were 10. The learned counsel for the petitioner has relied on Annexure-2 according to which total vacancies were 38 and S.C. vacancies were 5. Because of this factual discrepancy, on the date of hearing, the learned counsel for the petitioner undertook to give a copy of the memo dated 7.3.1992 (Annexure-2) to the learned Additional Standing Counsel to enable him to obtain instructions about the correct number of total and Scheduled Caste vacancies. Later on, a xerox copy of the notice dated 7.3.1992 was also filed by the learned counsel for the petitioner. But in spite of two adjournments, the learned Additional Standing Counsel was not able to obtain instructions on this point and file the original of the notice at Annexure-2. For considering this point, another fact has also to be taken into consideration. At Annexure-3 is an order dated 10.4.1992 in which 20 General candidates and five S.C. candidates were appointed. Learned counsel for the petitioner had also submitted later on a xerox copy of this order. Comparing this order with the minutes of Selection Committee, we find that

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the Selection Committee recommended 20 persons belonging to General Category and kept the applicant as no.1 in the waiting list of General Candidates and they recommended 4 persons in the S.C. category. The Selection Committee also noted that no S.T. candidate appeared before them. In the order of appointment which is at Annexure-3 we find that instead of 24 candidates recommended by the Selection Committee, the total number of candidates appointed is 25. The additional name is one Sibanarayan Naik who has been shown as the S.C. candidate. His name does not find place in the minutes of the Selection Committee. The respondents in their counter have specifically averred that only 4 persons belonging to Scheduled Castes were selected by the Selection Committee and were appointed whereas in Annexure-3 to the O.A. of which the respondents had notice, it is clearly mentioned that 5 persons belonging to Scheduled Castes were appointed and the additional name is that of Sibanarayan Naik. As Sibanarayan Naik is not a party, it is not necessary for us to go further into the matter as to how his name was included in the order of appointment when his name was not recommended by the Selection Committee. Be that as it may, the first point to be considered is whether S.C. vacancies were five or four. The applicant has enclosed at Annexure-2 which is the notice inviting applications and in this notice, it is clearly mentioned that the S.C. vacancies were five and the total vacancies were thirty-eight. The respondents in their counter have not controverted this assertion. The learned counsel for the petitioner has subsequently filed the xerox copy of Annexure-2 showing five S.C. vacancies. But learned Additional Standing Counsel has not been able to obtain instructions on this point even after that. In view of this, we hold that the Scheduled Caste vacancies were five and not four, as has been

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mentioned by the Selection Committee. As against the five S.C. vacancies, four S.C. persons were recommended by the Selection Committee, but in the appointment order there are names of five Scheduled Caste persons.

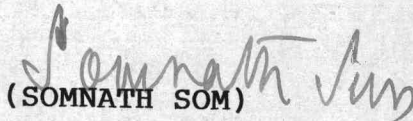
6. The applicant has specifically averred in paragraph 4(i) of his application that he belongs to Scheduled Caste. On this point, the respondents in their counter have not said anything. From the minutes of the Selection Committee, it is seen that the applicant has been kept as no.1 in the waiting list for general candidates, even though according to him, he belongs to Scheduled Castes, which assertion has not been denied by the respondents in their counter. In view of the above, it is ordered that the respondents should hold another meeting of Selection Committee and consider the candidature of the applicant as a Scheduled Caste candidate after obtaining from him a Scheduled Caste Certificate.

J. Jm.
7. The petitioner has prayed that a direction should be issued to the respondents to give him appointment as regular Mazdoor. But it is not possible to issue such a direction because it does not appear from the pleadings of the parties that between Sudhakar Roul, the last Scheduled Caste person taken in who has put in 3192 days of work and the applicant who has put in 2787 days of work, there were no other Scheduled Caste Casual Mazdoors who have put in more number of days of work than the applicant. While holding another meeting of the Selection Committee the respondents should also check up how appointment order was issued to Sibnarayan Naik shown as Scheduled Caste in annexure-3 and what was the number of days of work put in by him. This exercise should be completed by the respondents within a period of 90 (ninety) days from the

16
date of receipt of this order and the result thereof should be intimated to the applicant within 15 days thereafter.

8. With the above direction, the Original Application is disposed of. There shall be no order as to costs.


(S.K.AGRAWAL)
MEMBER (JUDICIAL)

26

(SOMNATH SOM)
VICE-CHAIRMAN 25.1.99

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