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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.531 OF 1992
Cuttack, this the 27th day of February, 1998

Shri Balaram Parida Applicant

Vrs.

Union of India & others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(S.K.AGARWAL) 27/2/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
27.2.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 531 OF 1992
Cuttack, this the 27th day of February, 1998

CORAM:

HON'BLE SHRI SOMNATH ^{AND} SOM, VICE-CHAIRMAN
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

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Shri Balaram Parida,
aged about 32 years,
son of Shri Dhruba Charan Parida,
Vill-Sailo Ranipada,
PO-Sailo-Govindpur,
PS-Sailo-Govindpur,
District-Cuttack,
now working as Daily Rated Mazdoor Telecom in Talcher
Telephone Exchange,
At/PO-Talcher, District-Dhenkanal ... Applicant

By the Advocates -

M/s Antaryami Rath &
A.C.Rath.

Vrs.

1. Union of India,
represented through the
Secretary to Government of India,
Ministry of Communications,
Department of Telecommunications,
New Delhi-110 001.
2. Telecom District Engineer,
Dhenkanal,
At/PO/Dist.Dhenkanal.
3. Sub-Divisional Officer,
Telegraphs Dhenkanal,
At/PO/Dist.Dhenkanal

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 quashing the final order in the enquiry against him, which

*Somnath Som
27.2.98*

-2-

is at Annexure-7 and for directing respondent no.2, Telecom District Engineer, Dhenkanal, to give regular appointment to the petitioner with effect from the date his junior, according to the length of service, has been regularised against Group-D post. There is also a prayer to consider the candidature of the applicant for the post of Lineman Learner against the vacancies of 1987 and to give him appointment as Lineman from the date his juniors have been appointed, with all service benefits arising therefrom.

2. Facts of this case, according to the applicant, are that being sponsored by the Employment Exchange, he was engaged as a Casual Mazdoor under Sub-Divisional Officer, Telegraphs, Dhenkanal, and has been working as such from 16.8.1977. According to the decision of the Hon'ble Supreme Court in the case of Bharatiya Dak Tar Mazdoor Manch v. Union of India, AIR 1987 SC 2342, the Department prepared a Scheme for absorption of Casual Mazdoors in Group-D posts. A gradation list as on 31.3.1987 was prepared and this is at Annexure-1/l. In this list the applicant's name is shown against serial 13. The applicant has pointed out that even though in the gradation list on the top it is written that it shows the position as on 31.3.1987, but in the forwarding letter at Annexure-1 it has been mentioned that this shows the position as on 31.3.1989. The applicant has put in 3000 days

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27.2.98*

of work as Daily Rated Mazdoor by 31.3.1987 and 3700 days by 31.3.1989. In the gradation list it has been shown that he has put in 2923 days by 31.3.1987. But taking the correct number of days, according to the applicant, at 3700 days as on 31.3.1989 his position should have been after serial no.3 in the gradation list. For absorption of Casual Mazdoors in Group-D posts, the District Selection Committee conducted an interview on 10.3.1989. The applicant along with others attended the interview, but he was not selected and 34 Casual Mazdoors were absorbed in Group-D posts out of which 31 Casual Mazdoors (from serial nos. 4 to 34) were far junior to the applicant. The applicant's case is that even though he faired well in the interview, he was not selected as respondent no.3 did not recommend his name for absorption. The Telecom District Engineer in his letter dated 19.9.1989 called for applications from the candidates for recruitment as Lineman Learner. The applicant was eligible and submitted his application. But he was not called to the entrance examination and many of his juniors and even some people who have not worked in Line Construction or Cable Laying were called to the interview and were interviewed. Being aggrieved by this, the applicant filed O.A.No.513 of 1989, in which the departmental authorities in their counter submitted that the applicant was not selected because of a domestic enquiry for bad work and misconduct

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27.2.98*

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pending against him. By order dated 14.2.1992 this O.A. was disposed of and the Tribunal observed as follows:

7. In the circumstances, we direct the respondents to complete the pending enquiry within a period of two months from the date of receipt of a copy of this order. Thereafter the suitability of the applicants will be adjudicated, and if the allegation against them are not substantiated, the respondents will consider regularisation of their services within one month of the completion of enquiry.

8. In view of this order, the second prayer of the applicants to give them seniority above the juniors who have been selected by order dated 10.3.1989, is kept open till the enquiry is completed and thereafter the appropriate authority may consider the matter and pass necessary orders. If the petitioners feel aggrieved by the order of the respondents, they are given liberty to reagitate the matter. xx xx"

The applicant's case is that the above order was forwarded to the respondents on 12.3.1992 and therefore, the enquiry should have been completed by 15.5.1992 at the latest. The Assistant Engineer (Estimates), who was the Inquiring Officer, issued a letter dated 30.3.1992 to attend the enquiry on 8.4.1992. In this letter two items of charge were levelled against the applicant vide letters dated 10.9.1987 and 6.3.1987. These three letters are at Annexures-4,5 and 6. No formal chargesheet was issued and the Inquiring Officer completed the enquiry on one day. The request of the applicant to adjourn the enquiry and to take the help of a Defence Assistant was not accepted on the ground that there is no such rule or prescribed procedure against a Daily Rated Mazdoor. The

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27.2.98*

applicant has further stated that the findings of the enquiry and the conclusions arrived at are against the weight of evidence and on that ground, he has prayed for quashing the enquiry. The applicant has stated that the enquiry report has been submitted on 2.6.1992. Final order is without any date and must have been passed beyond the date fixed by the Tribunal. As such holding the enquiry and arriving at the findings are illegal and should be struck down.

3. Respondents in their counter have submitted that for absorption of Casual Mazdoors in Group-D posts, a Committee comprising of Telecom District Engineer as Chairperson and Sub-Divisional Officer, Telegraphs as Member, conducted the interview. They considered the suitability and past experience and also took note of past performance, discipline, obedience and attitude towards duty. The applicant was found to be delinquent for dereliction of duties and disobedience of orders. The respondents have denied that the applicant made any written request to engage any Defence Assistant. The enquiry was conducted taking into account the material on record. The enquiry was fairly done. The report of enquiry has been enclosed to the counter and basing on the enquiry report, the disciplinary authority passed the order which is at Annexure-7 to the O.A. On the above grounds, the respondents have opposed the prayer of the applicant.

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27.2.98*

4. We have heard the learned lawyer for the applicant and the learned Additional Standing Counsel, Shri U.B.Mohapatra appearing on behalf of the respondents and have also perused the records.

5. The learned lawyer for the applicant has submitted that in Annexures 5 and 6 certain lapses were alleged against the petitioner and he was warned for such lapses. But the same lapses were included in the enquiry report and no formal chargesheet was issued to him. Once for certain lapses he has been warned, the matter has ended there and the same lapses could not have been included in the charge. In the letter at Annexure-5 the charge is that while working in the party under Sri A.N.Satpathy, S.I., Dhenkanal, the applicant instigated others to work leisurely and left the spot leaving the work half done. This item was not included in the charge. Secondly the letter at Annexure-6 is a general warning and no specific allegation has been made against him in this. Thus the contention of the learned lawyer for the petitioner that the same lapses have been included in the enquiry cannot be accepted. As regards the grounds on which the enquiry report has been challenged, the first point to be noted here is that a Daily Rated Mazdoor is not holder of a civil post and he is not governed by Central Civil Services (CCS) Rules. The enquiry which has been conducted and the report of which has been enclosed to the counter is in the nature

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27.2.98*

of an administrative enquiry and strict procedural rules of CCS (CCA) Rules cannot be said to be applicable in case of this enquiry. Moreover, the enquiry was conducted in pursuance of the direction given by the Tribunal in OA No.513/89. The enquiry was also conducted in presence of the applicant. We have gone through the enquiry report and we do not find that the conclusions are unjust and against the weight of evidence. Of the five charges, charge no.4 of unauthorised absence has been held to be not proved. It is well known that the Tribunal cannot act as an appellate authority in case of departmental enquiry. From the enquiry report as also the order of the disciplinary authority at Annexure-7, it is clear that the charges of disobedience, indiscipline conduct and instigation to others to slow down the work have been proved against the applicant. In consideration of this, the disciplinary authority in his order at Annexure-7 has severely warned him and held that the D.P.C. had rightly acted in not considering the case of the applicant. It has also been ordered that his case will be considered in the next D.P.C. depending upon his performance in coming days. The contention of the learned lawyer for the petitioner that the order of the disciplinary authority having been passed beyond the period of two months, as ordered by the Tribunal, should be struck down, cannot be accepted. The disciplinary authority in the

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27.2.98*

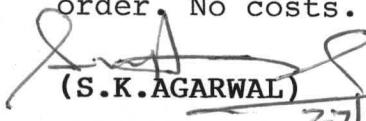
concluding portion of the memo has prayed to the Tribunal for condonation of delay in finalising the enquiry within a period of 60 days. In any case the report of enquiry has been submitted on 10.5.1992 which is within that period of sixty days and this contention, therefore, must be rejected. In consideration of the above, we hold that the applicant has failed to make out a case for quashing the order of the disciplinary authority. We also hold that as the Selection Committee did not find the applicant suitable and did not recommend his name for absorption in a regular Group-D post because of the enquiry pending against him and in the enquiry certain charges were proved against him, he has no claim for getting absorbed in a regular Group-D post from the date his junior has been so absorbed. It, however, requires to be stated that in paragraph 3 of the order of the disciplinary authority, it has been mentioned that the case of the applicant will be considered in the next D.P.C. for absorption in a regular Group-D post. In case this has not been done so far, his case must be considered within a period of 90 (ninety) days from the date of receipt of copy of this order, in case a Group-D post is lying vacant. In case he has already been absorbed, no further action requires to be taken in this regard.

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6. The last prayer relates to his selection for the post of Lineman Learner. This examination was apparently held in November 1989. The applicant's case is that he was eligible to appear at this examination and he applied, but he was not called to this examination. This happened in 1989 and he has come up only in 1992. At this distant date, no relief can be given to him in this regard. This prayer is also, therefore, liable to be rejected.

7. In view of the above, we hold that the application is without any merit and the same is rejected subject to the direction given in paragraph 5 of this

order. No costs.


(S.K. AGARWAL) 27/2/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 27/2/98
VICE-CHAIRMAN

AN/PS