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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.532 OF 1992

Cuttack, this the 27th day of February, 1998

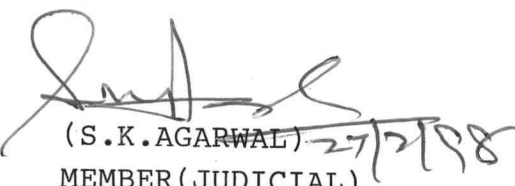
Sri Prafulla Kumar Dehury ..... Applicant

Vrs.

Union of India and 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) 27/2/98  
VICE-CHAIRMAN

(12)

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.532 OF 1992  
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CORAM:

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

.....

Shri Prafulla Kumar Dehury,  
aged about 30 years,  
son of late Budhimanta Dehury  
Village/PO-Gunadei, P.S-Motanga,  
Dist.Dhenkanal,  
now working as Daily Rated Mazdoor Telecom  
in Talcher Telephone Exchange, At/PO-Talcher,  
Dist.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 is at Annexure-5 and for a direction to the  
respondents to absorb him in a regular Group-D post from

*Somnath Som*  
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the date his immediate junior, according to the length of service, has been so absorbed and to consider his candidature for the post of Limeman Learner in the vacancies of 1987 from the date his juniors have been so appointed.

2. The facts of this case, according to the applicant, are that being sponsored by Employment Exchange, he was engaged as a Casual Mazdoor and has been working as such from 1.1.1978. In accordance with 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 departmental authorities prepared a scheme for regularisation of Casual Mazdoors in Group-D posts. In the gradation list of Casual Mazdoors circulated at Annexure-1 his name appears against serial no.18 and it has been shown that by 31.3.1987 he has completed 2829 days. The applicant's case is that even though on the top of the gradation list it has been mentioned that this shows the position as on 31.3.1987, in the forwarding letter it has been mentioned that the gradation list indicates the position as on 31.3.1989. According to him, he has completed 3000 days by 31.3.1987 and 3500 days by 31.3.1989 and accordingly, as on 31.3.1989 his name should have been just after serial no.6. The District Selection Committee considered the casual workers for absorption against

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regular Group-D posts. The applicant was also interviewed, but he was not selected and 28 Casual Mazdoors who are juniors to him had been appointed in Group-D posts ignoring his claim. His case is that even though he did well in the interview, he was not selected as the Sub-Divisional Officer, Telegraphs (respondent no.3) did not recommend his name for absorption. Being aggrieved by this, the applicant filed O.A.No.515 of 1989 before the Tribunal. In that O.A., the departmental authorities in their counter submitted that the applicant was not selected on account of a domestic enquiry for his bad work and misconduct pending against him. The Tribunal in their order dated 14.2.1992 gave the following direction:

"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 the 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."

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According to the applicant, copy of this order was received by the respondents on 12.3.1992 and therefore, the enquiry should have been completed by 15.5.1992 at the latest. In pursuance of the above order of the Tribunal, in letter dated 30.3.1992 (Annexure-4) the applicant was directed to attend the enquiry on 9.4.1992 to answer the charges for negligence of duty and disobedience of orders, but no formal chargesheet was issued to him. The applicant attended the enquiry, but he was never informed of the charges. The report of the Inquiring Officer was against the weight of evidence. The enquiry report was submitted on 2.6.1992 beyond the time allowed by the Tribunal and on that ground the applicant has prayed that the enquiry report should be quashed. Even though in the notice to him two charges were mentioned, in the enquiry report five charges have been referred to. The disciplinary authority considering the report of enquiry held that the action of the D.P.C. in not recommending his name for regular absorption was justified. It was also ordered by the disciplinary authority that the applicant should be kept under observation for a period of one year from July 1992 and if his conduct and work are found satisfactory, his case will be considered by the D.P.C. to be held after July 1993. The report of the enquiry and the order of the disciplinary authority have been challenged on the ground that these are mala fide, arbitrary and without authority

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of law. The second limb of the prayer of the applicant is that for entrance examination for recruitment of Lineman Learner against vacancies of 1987 applications were called for in letter dated 19.9.1989. The applicant was eligible and he applied. But he was not allowed to appear at the examination which was held on 12.11.1989 and certain other persons who never worked in Line Construction and Cable Laying were allowed to appear. In view of this, he has prayed that he should be considered for appointment as Lineman Learner against the vacancies of 1987 from the date his junior was selected.

3. Respondents in their counter have submitted that by 31.3.1987 the applicant had completed 2829 days of work as Casual Mazdoor. His seniority has been correctly mentioned in the gradation list. For absorption of Casual Mazdoors against regular Group-D posts the Selection Committee with Telecom District Engineer as Chairperson and Sub-Divisional Officer, Telegraphs as Member interviewed the candidates. They considered not only suitability and past experience, but also took into consideration the past performance, discipline, obedience and attitude towards duty, etc. The applicant was found delinquent for dereliction of duty and for disobedience of orders, and accordingly his name was not recommended for absorption. Because of his insubordinate conduct and unsatisfactory work he was not allowed to appear at the recruitment test

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held on 12.11.1989 for the posts of Lineman Learner. In pursuance of the order dated 14.2.1992 of the Tribunal, the enquiry was completed. The Inquiring Officer submitted his report on 10.5.1992 and basing on that the disciplinary authority passed the order which is at Annexure-5. The enquiry was done fairly and he was given opportunity to defend his case. The enquiry was conducted in his presence. The applicant did not ask for engagement of Defence Assistant and the question of denial of his request does not arise. On the above grounds, the respondents have opposed the prayers of the applicant.

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. Admittedly, there is a Scheme for absorption of Casual Mazdoors in Group-D posts. But this does not mean that every Casual Mazdoor irrespective of his performance has a right to get absorbed. They have to be screened through the Selection Committee. The Selection Committee considered the case of the applicant, but found him unsuitable because of his insubordinate and delinquent conduct for which an enquiry was pending against him. This action was challenged before the Tribunal in OA No.515/89

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13 and the order extracted above was passed. The Tribunal kept open the question of the applicant's absorption and seniority from the date his juniors were absorbed and directed completion of enquiry within sixty days.

6. Coming to the question of enquiry, the first point to be noted is that a Casual Mazdoor is not holder of a civil post and CCS (CCA) Rules do not apply to him. The enquiry, therefore, is <sup>not</sup> strictly in terms of the procedure laid down in CCS (CCA) Rules. This was only an enquiry to consider the suitability of the applicant with reference to the charges alleged against him. In a matter of enquiry against a departmental person, the Tribunal does not act as an appellate authority and cannot substitute its judgment for the conclusions arrived at by the Inquiring Officer and the disciplinary authority. We have perused the report of the Inquiring Officer, which is at Annexure-R/3. Charges were that while working as a Casual Mazdoor in the party of Shri K.C. Mohapatra, S.I., he was not staying in the tent and was not working properly for which a warning was issued to him. There is also an allegation from a Line Inspector, Shri Laxmidhar Swain that while the applicant was working in his party, he was not working properly and was instigating the other Mazdoors not to work. The Inquiring Officer has looked into contemporaneous documents <sup>and</sup> examined Shri Laxmidhar Swain who has stated that the applicant was

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working satisfactorily but at the same time admitted that he has submitted the report against the applicant. Considering all the materials on record, the Inquiring Officer came to the finding that certain charges have been partly proved against the applicant. We are unable to hold that the findings of the Inquiring Officer are perverse or against the weight of evidence. The disciplinary authority in his order at Annexure-5 has held that the action of the D.P.C. in not considering the case of the applicant was justified, but ordered that his case would be considered for absorption in the meeting of the D.P.C. to be held after July 1993. The learned lawyer for the petitioner has submitted that since the order of the disciplinary authority has been passed beyond the period of sixty days, the same is without any authority and should be quashed. We find no merit in this submission because the Inquiring Officer did give his report within the period of sixty days and the disciplinary authority in the memo to his order has sought permission of the Tribunal to condone the delay in passing the final order. As the enquiry was completed within a period of sixty days, we see no reason for quashing the enquiry report and the order of the disciplinary authority. In consideration of the above, we hold that the applicant has not been able to make out a case for his absorption in a Group-D post from the date his

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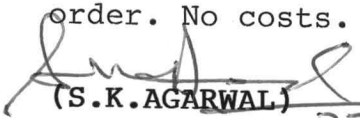
immediate junior was so absorbed. He was not recommended and in our view, rightly because of the pending domestic enquiry against him in which certain lapses of his were held proved. The disciplinary authority, however, has mentioned that his case should be considered after July 1993. Another four and half years have passed after that. In view of this, we order that in case the applicant has not been absorbed in a Group-D post by now, the departmental authorities should consider his case for absorption against a vacant Group-D post within a period of 90 (ninety) days from the date of receipt of copy of this order. In case the applicant has been so absorbed already, no further action is necessary to be taken in this regard. The case of the applicant to show him as senior to the persons who have been absorbed earlier on the basis of longer period of service as Casual Mazdoor is held to be without any merit because those persons have been found suitable in an earlier ~~XXXX~~ Selection Committee and therefore, this prayer is rejected.


7. As regards the applicant's prayer for being appointed as Lineman Learner against the vacancies of 1987 from the date his juniors as Casual Mazdoors have been so appointed, we find this prayer to be without any merit.

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For appointment as Lineman Learner, one has to appear at a test and has to be successful in the test. In the instant case, even though the petitioner applied for appearing at the test, he was not called to the test because of allegation of insubordinate and delinquent conduct for which a domestic enquiry was pending against him. It cannot be said that the action of the respondents in not calling him to the recruitment test is capricious or arbitrary. This prayer is, therefore, held to be without any merit and is rejected.

8. In the result, therefore, we hold that the application is without any merit and the same is rejected subject to the direction given in paragraph 6 of this order. No costs.

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

  
(SOMNATH SOM)  
VICE-CHAIRMAN 27.2.98

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