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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.533 OF 1992

Cuttack, this the 27th day of February, 1998

Shri Pandaba Charan Sahoo ...

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

(14)

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NO.533 OF 1992
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CORAM:

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

.....

Shri Pandaba Charan Sahoo,
aged about 32 years,
son of Shri Purna Chandra Sahoo,
Village-Badasuanlo,
PO-Badasuanlo,
PS-Kamakhyanagar,
Dist.Dhenkanal,
now working as Daily Rated Mazdoor Telecom,
Telephone Exchange, Talcher,
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 of the disciplinary authority in the departmental enquiry against the applicant and

has also prayed for a direction to respondent no.2 to consider his candidature for the post of Lineman Learner against the vacancies of 1987 and to give him appointment in the post from the date his junior has been so appointed, with all consequential service benefits.

2. Facts of this case, according to the applicant, are that on being sponsored by the Employment Exchange, he was engaged as a Daily Rated Mazdoor under Sub-Divisional Officer, Telegraphs, Dhenkanal and has been working as such from 9.2.1979. In accordance with the decision of the Hon'ble Supreme Court in the case of Bharatiya Dak Tar Mazdoor Manch vrs. Union of India, AIR 1987 SC 2342, the Department had prepared a Scheme for absorption of casual mazdoors in Group-D posts. The Department has circulated a gradation list at Annexure-1. In the forwarding letter it has been mentioned that this shows the position as on 31.3.1989, but on the top of the tabular statement at Annexure-1/1, it has been mentioned that this shows the position as on 31.3.1987. The applicant's name appears against serial no.14 in that list and it has been mentioned he has completed 2902 days of work as on 31.3.1987. The applicant's case is that by 31.3.1987 he had completed more than 3000 days and by 31.3.1989 he had completed more than 3700 days and on that basis, his name should have been immediately after serial

*Somnath Jm
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No.11 and above serial no.12. For absorption of Casual Mazdoors in regular Group-D posts, the Selection Committee conducted an interview on 10.3.1989. The applicant along with others attended the interview. As a result of the interview, 34 Casual Mazdoors were absorbed in regular Group-D posts out of which 22 were 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. Respondent no.2 in letter dated 19.9.1989 called for applications for entrance examination for recruitment of Lineman Learner against the vacancies of 1987. The petitioner submitted an application and even though he was eligible, he was not allowed to appear at the examination which was held on 12.11.1989. Many of his juniors were allowed to appear and some persons who have never worked in the Line Construction or Cable Laying were shown favouritism on extraneous consideration. The applicant filed O.A.No.514/89 before the Tribunal. In the counter to that O.A., the departmental authorities submitted that the applicant was not selected for getting absorbed against a regular Group-D post because of a domestic enquiry pending against him for his bad work and misconduct. The Tribunal in their order dated 14.2.1992 issued the following direction:

*Somanath J.M.
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" 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."

According to the applicant, the copy of the order was forwarded to the respondents in letter dated 12.3.1992 and therefore, the enquiry should have been completed by 15.5.1992 at the latest. By a letter dated 30.3.1992, which is at Annexure-5, certain charges were communicated to the applicant and he was asked to attend the enquiry on 9.4.1992 at 11.00 hours. The applicant attended the enquiry and wanted to be supplied with relevant documents as also to be afforded an opportunity to engage a Defence Assistant. The Enquiring Officer permitted him to engage a Defence Assistant but did not cause supply of documents. But the applicant's case is that he was not given adequate time to engage a Defence Assistant. The enquiry was made and certain charges against the applicant were held proved. The disciplinary authority on receipt of the enquiry report passed the impugned order at Annexure-6. After taking into

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account the enquiry report, the disciplinary authority held that action of the Departmental Promotion Committee in not recommending the applicant for his absorption as regular Mazdoor in a Group-D post was right. The disciplinary authority also ordered that the applicant's work should be kept under observation for three years starting from July 1992 and he should be considered for regularisation in the D.P.C. to be held after July 1995. Against the background of the above facts, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have submitted that the gradation list has been prepared correctly and the place of the applicant has been shown correctly in the gradation list. The Selection Committee with Telecom District Engineer as Chairperson and Sub-Divisional Officer, Telegraphs, as Member conducted interview and selected the candidates for regular absorption in Group-D posts. They took into consideration past performance, discipline, obedience and attitude towards duty. The applicant was found delinquent on account of dereliction of duties and disobedience of orders and as such the Committee did not recommend him for absorption as regular Mazdoor. Because of the applicant's misbehaviour and delinquent conduct, a domestic enquiry was initiated against him and during the pendency of the domestic enquiry he was not

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allowed to sit for the recruitment test for Lineman Learner.

Respondents have stated that in the next meeting of the D.P.C. the applicant's case for absorption as regular Mazdoor in Group-D scale of pay would be considered.

Respondents have stated that in pursuance of the order of the Tribunal in OA No.514/89, Assistant Engineer (Estimates) took up and completed the enquiry. A copy of the enquiry report has been enclosed. The applicant did not make any written request before the Inquiring Officer to engage a Defence Assistant. As regards supply of documents asked for, it has been submitted that the applicant is not governed by CCS (CCA) Rules. Respondents have stated that the enquiry has been conducted properly and the Inquiring Officer submitted the report within the time fixed by the Tribunal. The conclusion of the Inquiring Officer and the

*Somnath Jariwala
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report of the disciplinary authority are based on evidence on record and as such, they have opposed the prayers of the applicant.

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

5. The admitted position is that the applicant was working as a Daily Rated Mazdoor and there was a Scheme

in the Department for absorbing them as regular Mazdoors in Group-D posts in the Department. But that does not mean that a Daily Rated Mazdoor has a right to be regularised irrespective of his record of performance. He has only a right to be considered and in this case, the admitted position is that his case was considered by the Selection Committee, but because of his alleged insubordinate conduct and lapses for which a departmental enquiry was pending against him, his case was not recommended. The Tribunal in their order dated 14.2.1992 directed that the enquiry should be completed within a period of two months and in case the applicant is exonerated in the enquiry, then his case for regularisation should be considered within a period of one month thereafter. His prayer for showing him senior to the Daily Rated Mazdoors who had been regularised but who are junior to him on the basis of their length of service as Daily Rated Mazdoors, was kept open by the Tribunal in their order. The learned lawyer for the petitioner has challenged the enquiry on a large number of grounds. He has also filed written submissions which have been taken note of. It has to be noted that a Daily Rated Mazdoor is not holder of a civil post and CCS (CCA) Rules are not ipso facto applicable to him. The enquiry in case of the applicant is in the nature of a domestic enquiry for the purpose of ascertaining his suitability for

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regularisation and all the procedures laid down in the CCS (CCA)Rules cannot be said to be applicable in case of such an enquiry. In the instant case, we have gone through the copy of the report of enquiry and other connected papers. From the enquiry report, it appears that the allegations were communicated to the applicant. On several dates the applicant did not attend the enquiry in spite of notice. He attended the enquiry on 26.5.1992. The statements of all the witnesses recorded were shown to him. His statement was also recorded and he admitted the charges against him. On the basis of documents taken note of by the Inquiring Officer and the statements of witnesses, the Inquiring Officer found some of the charges as proved. It cannot be held that the findings are against the weight of evidence and/or based on no evidence. The well settled position is that in an enquiry, the Tribunal does not act as an appellate authority and cannot reappraise the evidence and interpose his conclusion in place of the conclusion arrived at by the Inquiring Officer and the disciplinary authority. The Inquiring Officer and the disciplinary authority have held that some of the charges have been proved against the applicant and we find no reason to differ from that. Learned lawyer for the petitioner has submitted that the enquiry was completed after the date fixed by the Tribunal.

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Even though this has been denied by the respondents, we find from the copy of the enquiry report that it was submitted on 1.6.1992 which is beyond the period fixed by the Tribunal. The order of the disciplinary authority is obviously also beyond the date fixed. But the disciplinary authority in the memo to the order at Annexure-6 has prayed to the Tribunal to condone the delay in finalising the enquiry. The delay here is for a few days less than a month and this cannot be a ground for quashing the enquiry report and the order of the disciplinary authority. The disciplinary authority has taken into account the enquiry report and has held that the Departmental Selection Committee was right in not recommending the applicant for absorption as regular Group-D Mazdoor. It has also been ordered by the disciplinary authority that his case should be considered for regularisation in the next D.P.C. held after July 1995. In case this has not been done so far,

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then the departmental authorities must consider the case of the applicant for his absorption as a regular Group-D Mazdoor against a vacant 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, then no further action on the part of the respondents in this

regard would be necessary.

6. As regards the applicant's prayer to show him as senior to those persons who have been regularised and who were junior to him in the rank of Daily Rated Mazdoors on the basis of length of service, we are not inclined to allow this prayer because those persons have been selected through a selection procedure. The applicant's case was cosidered and he was not recommended. As such he cannot claim seniority over the persons who have been regularised earlier.

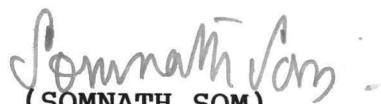
7. As regards the prayer of the applicant for appointing him as Lineman Learner against the vacancies of 1987 from the date his juniors have been so appointed, it has to be mentioned that Lineman Learner is appointed on the basis of a recruitment test in which the candidate has to come out successful. The applicant was not allowed to appear at the test because of his insubordinate conduct and lapses for which an enquiry was pending. It cannot be said that action of the departmental authorities in not allowing him to appear at the recruitment test is illegal. As he has not passed the recruitment test, it is not possible to allow his prayer to give him the job of Lineman Learner from the date his junior got the post. This prayer is, therefore, held to be without any merit and is rejected.

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8. In view of the above, we hold that the application is without any merit and the same is rejected subject to our direction in paragraph 5 of this order. No

costs.

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


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

AN/PS