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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 78 OF 1992
Cuttack, this the 23rd day of August, 1999

Shri Prafulla Kumar Bhuyan ... 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 .

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Prafulla Kumar Bhuyan,
aged about 49 years,
son of late Dibakar Bhuyan,
at present working as UDC,
(Spl.Pay), Office of the Chief
General Manager, Telecom, Orissa Circle,
At/PO-Bhubaneswar, District-Puri ...Applicant .

Advocate for applicant - Mr. Antaryami Rath

Vrs.

1. Union of India, represented by its Secretary,
Department of Telecommunication, Sanchar Bhawan, New
Delhi-110 001.
2. Chief General Manager, Telecom,
Orissa Circle, At/PO-Bhubaneswar-761 001.
3. Shri Mahendranath Sahoo, at present working as
Section Supervisor (O), Office of the Chief General
Manager, Telecom, Orissa Circle, At/PO-Bhubaneswar-751
001, District-Puri.
4. Bhagabat Mallik, Section Supervisor.
5. N.Hui, Section Supervisor
6. S.K. Mohapatra, Section Supervisor
7. A.C. Singh, Section Supervisor
8. B.K. Liangi, UDC (Spl. Pay).

Sl.Nos. 4 to 8 are at present officiating as Section
Supervisor (O) Office of the Chief General Manager,
Telecom, Orissa Circle, At/PO-Bhubaneswar-751 007,
District-Puri Respondents

Advocate for respondents - Mr. J.K. Nayak,

ACGSC for R-1 -3

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the seniority list for temporary officials (UDC) at Annexure-5 and as also for quashing the order at Annexure-6 promoting respondent nos. 3. He has also prayed for quashing the order promoting respondent nos. 4 to 8. The next prayer is for a direction to the respondents to fix his seniority in the cadre of UDC as per the gradation list of LDC which is at Annexure-5. The last prayer is for a direction to the departmental respondents to promote him to the post of Section Supervisor from the date of promotion of his juniors, respondent nos. 3 to 8.

2. Facts of this case, according to the applicant, are that he joined as L.D.C. in the office of Post Master General, Orissa, Bhubaneswar, on 1.4.1973 and in view of bifurcation of the Department, he was transferred to the office of Chief General Manager, Telecom. In Memo dated 29.8.1978 of respondent no.2 at Annexure-1 he was promoted to the level of UDC purely on temporary and ad hoc basis. While working as such, the applicant was regularised in the post of UDC against 20% seniority quota with effect from 14.9.1983 in order dated 29.12.1986 (Annexure-2). In order dated 21.3.1988 (Annexure-3) he was confirmed in the post of UDC from 1.3.1986. The applicant's case is that according to Director General, P & T's letter dated 2.8.1968 (Annexure-4) UDCs promoted against 20% quota are senior in rank to other UDCs promoted against 50% quota by qualifying in examination from subordinate units and also senior to UDCs promoted against 30% quota meant for LDCs

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of Circle Office who are promoted by getting qualified in examination. In order dated 5.5.1986 at Annexure-5, Circle Gradation List and seniority list of temporary officials (cadrewise) corrected upto 1.1.1986 has been issued for circulation. In the gradation list amongst the LDCs, the applicant is shown against serial no.4 and he has been shown senior to respondent nos. 3 to 8. He has further stated that although names of his juniors are appearing at Serial Nos. 7 to 10 in the seniority list of UDCs, the name of the applicant has been omitted from the seniority list of temporary officials (UDC) prepared upto 1.1.1986. Because of omission of the name of the applicant in the seniority list of UDCs, respondent no.3 has been promoted to officiate in the post of Section Supervisor in order dated 28.1.1992 which is at Annexure-6. He has also stated that respondent nos. 4 to 8 have been promoted ignoring the case of the applicant. It is stated that as the name of the applicant has not been shown in the seniority list, he made several representations to respondent no.2 but without any result. One such representation dated 7.1.1992 is at Annexure-7. He sent several reminders but that also did not yield any result and that is why he has come up in this petition with the prayers referred to earlier.

3. Respondent nos. 1 and 2 in their counter have opposed the prayers of the applicant. They have stated that the gradation list at Annexure-5 showing the position as on 1.1.1986 was circulated on 5.5.1986. In the forwarding memo of this gradation list which is at Annexure-5 officials were advised to submit representations by 31.5.1986 and it was indicated that failing which it would be presumed that no official has got any objection so far as his position in the gradation list/seniority list is concerned. It is further stated

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that admittedly respondent no.3 Mahendranath Sahoo is junior to the applicant in the cadre of LDC. But respondent no.3 became senior to the applicant at the level of UDC by virtue of his passing the Departmental Competitive Examination in the year 1982 against 30% quota and consequently occupying point 3 of the second cycle of 10 point cycle for promotion to UDC cadre in the Circle Office. The applicant did not qualify in the said examination meant for 30% quota for the year 1982 and he has been promoted against 20% seniority-cum-fitness quota in the same year 1982 and thereby the applicant rightly occupied the first point of the third circle of 10 point cycle. The departmental respondents have stated that seniority in the cadre of UDC having been correctly fixed there is no case for claim of seniority over respondent no.3. Copy of 10 point cycle for promotion to UDC for the 3 cycles (for 1976 to 1987 Examinations) has been enclosed at Annexure-R/1. The departmental respondents have also stated that the applicant joined as LDC in the erstwhile P.M.G.office on 27.4.1973 and not on 1.4.1973. He was never promoted to the post of UDC on regular basis. The order at Annexure-1 makes it clear that this is an officiating arrangement on temporary and ad hoc basis and shall not confer any claim on the official for regular absorption. The departmental respondents have also stated that the circular dated 2.8.1968 relied upon by the applicant to say that the 20% seniority quota staff in the rank of UDC will rank senior to the 50% examination quota UDCs from subordinate offices and 30% examination quota of UDCs from Circle Office is not correct. This circular at Annexure-4 relied upon by the applicant in support of his contention that seniority-cum-fitness quota promotee UDCs will rank higher in seniority than the other two categories does

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not deal with this subject at all. This circular deals with the decision of Director General, P & T, that the LDCs who have completed the prescribed period of 5 years in the grade may be considered for promotion to the UDC grade to the extent of vacancies in this quota. But while doing so vacancies will be reserved and kept unfilled for their seniors who have not completed the prescribed 5 years service period. The departmental respondents have pointed out that this decision has disposed of a question whether LDCs in Circle Offices, etc., who have completed the prescribed service limit of 5 years and fulfil all other conditions may be promoted to UDC cadre in the quota of vacancies reserved for promotion on the basis of seniority-cum-fitness even if their seniors have not completed the prescribed service limit of five years. It has also been decided that earlier promotion of junior officials to UDC cadre will not confer on them any benefit of seniority over their seniors. In Annexure-4 the applicant has printed certain other matters which are not connected with this circular. The departmental respondents have stated that these portions of Annexure-4 refer to Appendix 18 which has been enclosed at Annexure-R/2. They have stated that in 1982 there were six vacancies of UDC in the Circle Office and the break-up of this was 2 under seniority-cum-fitness 20% quota, 3 under 50% quota meant for LDCs of field units, and ^{one} for 30% quota for LDCs in Circle Office. These are to be filled up on the basis of 10 point cycle which has been enclosed at Annexure-R/1. It has been stated that Mahendranath Sahoo (respondent no.3) was appointed as UDC after passing the examination for 30% quota for the year 1982. Similarly respondent no.4 Bhagabat Mallik as SC candidate was promoted as UDC under 20% quota in roster point A against recruitment year 1977 whereas the

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applicant was promoted to the cadre of UDC under 20% seniority-cum-fitness quota during the third circle and he has occupied the first position in the third circle and that is how he is junior to respondents 3 and 4. It is further stated that respondent no.4 Bhagabat Mallik was initially appointed as LDC on 17.5.1965 and was declared quasi permanent on 17.5.1968. The applicant was working as Class IV since 5.10.1962 and was promoted as LDC on 27.4.1973. The recruitment years of the applicant and respondent no.4 are different and therefore the claim of applicant for seniority over respondent no.4 is untenable. The departmental respondents have further stated that respondent no.3 qualified in the examination for 30% quota of UDCs in the recruitment year 1982. The applicant could not qualify in the examination along with respondent no.3. He became eligible for promotion under 20% seniority-cum-fitness quota meant for LDCs in Circle Office subject to availability of vacancies. In the 10 point second cycle there was no vacancy under 20% quota although there were three vacancies under 30% quota for the successful examinees. The departmental respondents have pointed out that no official junior to the applicant has ever been promoted under 20% quota. The applicant was promoted in the third cycle and occupied the first position in the third circle and on this basis they have stated that the seniority of the applicant has been correctly fixed vis-a-vis private respondents. Therefore, they have opposed the prayer of the applicant to quash the seniority list. As the private respondents have been correctly shown as senior to the applicant, they have naturally got the next promotion earlier than the applicant and the submissions and the prayer of the applicant to quash their promotion have also been opposed

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by the departmental respondents. The departmental respondents have further stated that the names of the applicant and his juniors in the LDC cadre have been correctly shown in the gradation list which is at Annexure-5. In the UDC cadre because of the 10 point cycle this seniority has undergone change. The departmental respondents have stated that this is because in the seniority list enclosed to Annexure-5 names of Mahendranath Sahoo and B.K.Liangi have been shown against serial nos. 8 and 10 of UDCs. The applicant being the first person in the third cycle his name would come after S.K.Patnaik and S.Nayak who have occupied the 9th and 10th position in the second cycle above the applicant who has occupied the first position in the third cycle. On the above grounds, the departmental respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has stated that the vacancies and the 10 point cycle have not been calculated properly. The carry forward vacancies have not been taken separately. The carry forward vacancies of the previous year have been added together with the next year vacancies as a whole. He has also stated that his promotion to the rank of UDC was on a long term and on continuous basis and therefore that period would count towards fixation of his seniority. The petitioner has given calculations of carry forward vacancies and next year vacancies and has argued that the cycles have not been worked out correctly. The basic point made by him in the rejoinder is that working out of 10 point cycle has been done incorrectly. Because of this he has reiterated his prayers in his OA.

5. In this case notices were issued to the private respondents, but they neither appeared nor filed counter.

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6. We have heard Shri Antaryami Rath, the learned counsel for the petitioner and Shri J.K.Nayak, the learned Additional Standing Counsel for the departmental respondents and have perused the records. The learned counsel for the petitioner has submitted written note of submissions which has been taken note of.

7. The admitted position is that in the level of LDC the applicant is senior to respondent no.3. But in the rank of UDC respondent no.3 has become senior to him because he has passed the examination for promotion to UDC cadre under 30% quota in 1982 and the applicant has been promoted under seniority-cum-fitness 20% quota in 1982. At the bottom of Annexure-4 the applicant has quoted the provisions of Appendix 18 (page 139) which is at Annexure-R/2 filed by the departmental respondents. But as only a portion of the rule has been filed by the departmental respondents at Annexure-R/2 we have necessarily gone by the copy filed by the applicant at Annexure-4. Before examining the correctness of fixation of seniority of the applicant and respondent nos. 3 and 4 in the rank of UDC, it must be noted that we have gone through Annexure-4 given by the applicant carefully and we cannot agree with the applicant that in the circular dated 2.8.1968 there is any provision for giving overriding seniority to the 20% UDCs promoted under seniority-cum-fitness quota over the other two categories. This contention of the applicant is obviously without any basis and is rejected.

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8. In the OA the petitioner has not mentioned anything about 10 point cycle or that the 10 point cycle has been wrongly worked out. It is only after getting the counter that in the rejoinder he has raised this point. In any case we have not taken note of any new fact raised by the applicant in the rejoinder because the

respondents have not got any opportunity to counter those facts. Even then we have looked into the provisions mentioned by the applicant himself regarding roster in Circle Office. The first point in the roster called "A" category is for seniority-cum-fitness quota, the second point called "B" category is for 50% quota, and the third point called "C" category is for 30% quota. After that 4th to 10th point would be gone into as per the roster given at Annexure-4. On going through the roster and 10 point cycle for UDCs given by the departmental respondents at Annexure-R/1 we find that the departmental respondents have given the roster of 10 point cycle for six cycles. Bhagabat Mallik promoted under 20% quota has come under "A" category rightly under the 5th point because the first point has gone rightly to another person U.C.Mohapatra under 20% quota, i.e., under category "A". In the 10 point cycle the first and fifth points are for 20% quota of seniority-cum-fitness. In the next cycle the first point has gone to D.K.Naik and the fifth point has gone to Susant Kumar Nayak both under "A" category, i.e, under 20% seniority-cum-fitness quota. All these four persons U.C.Mohapatra, Bhagabat Mallik, D.K.Naik and S.Nayak have been appointed as UDCs much earlier than the applicant. Susant Kumar Nayak's year of recruitment is 1980. In the third cycle point nos. 1 and 5 are for 20% quota and the petitioner has occupied point no.1 in the third cycle. In other words, all the private respondent nos. 3 to 8 have become senior to the applicant on the basis of operation of this 10 point cycle and the applicant can have no grievance about that. It is also to be noted that the seniority list and gradation list at Annexure-5 was circulated on 5.5.1986 and officials were asked to file representation by 31.5.1986. The applicant has vaguely stated that he made

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representations one after another but without any result. He has stated that his last representation is dated 7.1.1992 which is at Annexure-7. Law is well settled that repeated representations will not save limitation. When his earlier representations were not acceded to or not disposed of, he should have approached the Tribunal within the period of limitation then. He cannot be allowed to raise the question of seniority vis-a-vis the private respondents six years after the time for filing of objection was over. Moreover, we have carefully gone through the departmental instructions and the 10 point cycle as has been worked out and we find no reason to hold that this has been worked out incorrectly. The applicant's contention that carry forward vacancies should be taken to the next cycle is without any basis because the roster itself lays down, of the 10 points in a cycle, which particular point will go to "A" category, which to "B" category and which to "C" category. There is no question of carrying forward of the vacancies in a particular category to the next cycle because thereby in the next cycle the composition of the three categories will get changed. This contention is also without any merit and is rejected.

9. In consideration of all the above, we hold that the applicant's contention that the seniority list should be quashed and he should be declared senior to the private respondents is without any merit and the same is rejected. Necessarily therefore his prayer to quash the promotion of the private respondents to the next higher grade is also held to be without any merit and is rejected.

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10. In his rejoinder the applicant has made certain averments as to how he was illegally deconfirmed. As we have already noted these new facts indicating a totally different line of building of his case disclosed for the first time cannot be accepted. We have therefore not taken note of these aspects.

11. In the result, therefore, we hold that the application is without any merit and the same is dismissed but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
23.8.99
VICE-CHAIRMAN

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