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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 108 OF 1993

Cuttack, this the 12th day of August, 1999

Sri Ananta Narayan Panigrahi 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
12.8.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Ananta Narayan Panigrahi, aged 38 years,
son of late Laxman Prasad Panigrahi,
Office of S.D.O. Telegraph,
Keonjhar-758 001 Applicant

Advocate for applicant - Mr.P.C.Acharya

Vrs.

1. Union of India, represented by the Secretary, Ministry of Telecommunication, New Delhi.
2. Chief General Manager, Telecom, Orissa, Bhubaneswar-7.
3. Director, Telecom (Headquarters), Orissa Circle, Bhubaneswar-7
4. Telecom District Engineer, Dhenkanal ... Respondents

Advocate for respondents - Mr.S.B.Jena
A.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.S.M. In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to implement the order of appointment dated 11.8.1992 at Annexure-2 immediately with consequential financial benefits. He has also asked for seniority from the date of Annexure-2.

2. The applicant's case is that he is presently serving as Telecom Office Assistant (TOA) in the office of S.D.O.T., Keonjhar. In order dated 6.2.1992 at Annexure-1 he was informed that he had qualified for promotion to the cadre of UDC in the Circle Office on temporary basis in the scale of Rs.1200-2040/- against 50% quota. He was asked to give a declaration before joining the new post indicating certain conditions. This letter however did not specify the date by which the applicant should join the new post. This order of appointment was superseded by a subsequent order dated 11.8.1992 which is at Annexure-2. In the order at Annexure-2 it was mentioned that he is appointed as UDC from the date of actual assumption of the charge. The applicant has stated that this order was issued on the basis of the judgment passed by the Tribunal in OA Nos. 117, 112 and 67 of 1991. In this order also there was no mention about the date by which he was required to join his new post. The applicant has stated that from the letter dated 23.11.1992 at Annexure-3 it is clear that the applicant wanted some time to join his new post and he submitted his declaration letter 11.11.1992. He was not intimated any result regarding his request despite his representation at Annexure-4 and his telegraphic reminder at Annexure-4/1 and another representation vide Annexure-4/2. The applicant came to know from a subsequent memo dated 7.12.1992 (annexure-5) that a fresh group of seven persons who have qualified for promotion to UDC subsequent to the case of the applicant, in the test held on 10.8.1992, have been appointed as UDC and out of them one Kailash Chandra Hota has joined his new assignment in January 1993. The appointment letter of Kailash Chandra Hota is at Annexure-6/2. The applicant has stated that he has been informed by a letter dated 11.1.1993 of the Telecom District Engineer, Dhenkanal (respondent no.4) that

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as the pattern of UDC has been abolished, there is no provision to take the applicant as UDC for which post he had qualified. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant was one amongst twenty officials who were permitted to appear at the UDC Examination for the Circle Office. The examination was held on 27.8.1990 and the applicant was declared to have been selected for promotion to the grade of UDC against 50% competitive quota. He was issued with appointment order on 6.2.1992. In the appointment order, which is at Annexure-1, there was a condition that the applicant cannot seek reversion to his parent cadre on accepting to join the promotional post of UDC in the Circle Office. The Telecom District Engineer, Dhenkanal, under whom the applicant was serving, was directed to obtain a declaration from the applicant before relieving him. The applicant on receipt of the above order from the Telecom District Engineer, Dhenkanal, requested him to allow time upto 15.8.1992. Some other candidates who appeared at the said UDC Examination filed applications before the Tribunal, OA Nos.67,112 and 177 of 1991 disputing the vacancy position for the year 1990. These O.As. were disposed of in two orders dated 16.7.1992 and in pursuance of the judgments, the Chief General Manager, Telecommunications issued a revised order dated 11.8.1992 (Annexure-2). In this order also the promotion of the applicant was mentioned. But the applicant did not submit his willingness along with the required declaration and remained silent. It is only on 11.11.1992 that he submitted an application to be relieved by giving a declaration as

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called for earlier that he will not seek reversion to his parent cadre. On receipt of the declaration dated 11.11.1992, Telecom District Engineer, Dhenkanal, sought for certain clarifications. The representation of the applicant for allowing him to join the post of UDC in the Circle Office was rejected by the Chief General Manager, Telecommunication, Orissa Circle, in his letter dated 29.12.1993 stating that the pattern of UDC has been abolished in the meantime and pattern of Telecom Office Assistant has been introduced and therefore there is no post of UDC available to consider him. The order dated 9.9.1992 of the Department of Telecommunication, New Delhi, regarding conversion of clerical staff from LDC/UDC pattern to TOA pattern is at Annexure-R/1. In view of the above, the respondents have pointed out that the applicant is not entitled to be appointed in the Circle Office, Bhubaneswar as there is no such post. The respondents have also pointed out that the delay is entirely attributable to the applicant himself. Had he come before the introduction of TOA pattern in the Circle Office without requesting for extension of time upto 15.8.1992 and remaining silent subsequently without giving any declaration upto 10.11.1992, there was scope to appoint him as UDC. But after the conversion of the post of UDC to TOA there is no scope. Moreover the applicant is already working as TOA in the office of Telecom District Engineer, Dhenkanal and at present he is barred by rules to switch over from one unit to another unit except under Rule 38. The Circle Office is a separate cadre and the Telecom District Engineer, Dhenkanal's office is a separate cadre and this will remain so till completion of five years from the date of introduction of TOA pattern in the Circle Offices after which the Circle Office unit will be merged with the local SSA Unit of Telecom District Manager, Bhubaneswar. The

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respondents have pointed out that if the applicant is interested in transfer to Circle Office as TOA he can as well apply under Rule 38 and his case will be considered. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has stated that even though the order under Annexure-2 was issued on 11.8.1992 the applicant received the same on 5.12.1992. The applicant had given his declaration on 11.11.1992. He has also taken the plea that in the promotion order no specific date of joining was indicated. It is further stated that the plea of abolition of the post of UDC and delay in giving declaration is not sustainable because the respondents have given appointment to one Kailash Chandra Hota as UDC after 31.12.1992. On the above grounds, the applicant has reiterated his prayer in the OA.

5. We have heard Shri P.C.Acharya, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

6. In the OA reference has been made to the orders of the Tribunal in OA Nos. 67, 112 and 177 of 1991 and these have also been perused. At the outset it is necessary to note that OAs 67 and 112 of 1991 were disposed of by a common order dated 16.7.1992 in which in paragraph 2 of the order the Tribunal have specifically mentioned the following:

".....In the present case, we are not concerned with the 50 per cent quota allotted to other offices of Telecommunication Department....."

In the present case, the applicant qualified for the post of UDC in Circle Office against 50% departmental quota and therefore the above decision is of no relevance for the present purpose. OA No.177/91 was disposed of in another

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order dated 16.7.1992. In that case the point for consideration was whether the applicant who was serving in the Ministry of Communication, was eligible to apply and sit for the examination against the outside quota and this decision is also not relevant for the present purpose. The admitted position is that the applicant qualified in the departmental examination for the post of UDC in the Circle Office against the 50% quota. Appointment order was issued to him on 6.2.1992 requiring him to submit a declaration that after his joining in the post of UDC in the Circle Office, he will not seek reversion to his parent cadre and he would be liable to serve anywhere in Orissa. On getting this letter the applicant did not join but requested the Telecom District Engineer, Dhenkanal, to allow him time upto 15.8.1992. In other words, he asked for time for about six months to join the new post. The applicant has taken the plea that in the appointment order it was not mentioned as to when he should join. This plea is without any merit. Once the appointment order was issued it was his duty to get relieved from his original post by submitting the declaration and join as quickly as possible. In any case he had asked for six months time for joining his new post. Subsequently, when another order dated 11.8.1992 was issued in which his name found mention he kept quiet for about another three months and gave the required declaration only on 11.11.1992. Therefore, it is clear that for this delay the applicant is alone and squarely responsible. In the meantime in order dated 9.9.1992 the posts of clerical staff in the administrative offices were converted from LDC/UDC pattern to TOA pattern. From the circular at Annexure-R/1 it appears that this was a demand of the staff

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unions. Paragraph 4 of the circular clearly lays down that the cadre of LDC/UDC will henceforth be abolished with the introduction of the conversion scheme from LDC/UDC cadre to TOA cadre and there will be no recruitment to the cadre of LDC/UDC departmentally or from outside. From this it is clear that with the coming into force of this circular dated 9.9.1992 no further recruitment would have been possible to the post of UDC in the Circle Office. The applicant by his own lapses, therefore, has missed the chance to join as UDC in the Circle Office and for this, the Department cannot be held responsible in any way.

7. The applicant has taken the stand in the OA as also in his rejoinder that notwithstanding the abolition of the cadre of LDC/UDC in pursuance of the circular dated 9.9.1992, one Kailash Chandra Hota has been allowed to join as UDC in the Circle Office in order dated 26.12.1992 at Annexure-6/2. The respondents in their counter have pointed out that another group of seven persons qualified for promotion to the rank of UDC in the Examination held on 10.8.1992 and were appointed as UDCs vide order dated 7.12.1992 at Annexure-5. The respondents have pointed out that these seven persons qualified in the Examination for the vacancies in the post of UDC for subsequent years and not for the vacancies of the year 1990 for which the applicant had appeared and qualified. These seven persons were not asked earlier to join as UDCs. The seven posts meant for them were kept uncovered by the TOA pattern and the Department of Telecommunications permitted these persons to join as UDC. In the case of these seven persons there is nothing on record that they had delayed their joining. In the instant case the applicant, in spite of getting an order of appointment, delayed in giving his declaration by more than nine months and in the meantime

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the posts of UDC in the Circle Office as well as in the office where he was working then were converted to the posts of TOA. In view of this, the applicant cannot claim for appointment to the non-existent post of UDC in the Circle Office. The respondents have rightly pointed out that in case he wants to come over to the Circle Office cadre he can always apply under Rule 38 and his application will be considered in accordance with rules.

8. In consideration of all the above, we hold that the applicant has not been able to make out a case for the relief asked for by him. The Original Application is held to be without any merit and the same is dismissed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
12.8.99
VICE-CHAIRMAN

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