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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 125 OF 1993
Cuttack, this the 27th day of June, 1997

Shri Satrughna Mallik

....

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.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27/6/97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO. 125 OF 1993
Cuttack, this the 27th day of June, 1997

CORAM:

HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN

...

Shri Satrughna Mallik,
son of Shri Kamadev Mallik,
Vill/PO-Kapila, Via-Binjharapur,
P.S-Binjharapur, Dist.Cuttack

.... Applicant

-versus-

1. Union of India, represented by the
Secretary to Government of India,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan, New Delhi-110 001.
2. Chief General Manager, Telecommunication,
Orissa Circle, Bhubaneswar-751 001.
3. Telecom District Engineer,
At/PO/PS/Dist-Dhenkanal

.... Respondents

Advocates for applicant -

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

Advocate for respondents -

Mr.Ashok Mohanty,
Sr.Central Govt.Standing
Counsel.

O R D E R

Somnath Som
27.6.97
SOMNATH SOM, VICE-CHAIRMAN

In this application, the prayer is for a

direction to the respondents to absorb the applicant as Lineman
from the date his junior has been so appointed and to give
him all service benefits which he would have got, had his
services as daily rated Mazdoor not been terminated, without
notice, on 31.1.1978.

2. According to the applicant, he worked as daily rated Mazdoor for 902 days under Telecom District Engineer, Dhenkanal (respondent no.3) from 1974 to 1978 and his services were illegally terminated on 31.1.1978. According to him, he had qualified himself for the post of Lineman in the recruitment test held on and from 6.8.1975 to 9.8.1975. He was initially recruited as a daily rated Mazdoor through Employment Exchange and was within the age limit. His services were illegally terminated and his juniors had been provided with work as daily rated Mazdoors and some of them have also been appointed as Linemen. In view of that, he has come up with the above prayers. At Annexure-1 to the application he has filed copy of letter dated 29.9.1992 from Telecom District Engineer, Dhenkanal, to Assistant General Manager (Administration), in the office of Chief General Manager, Telecommunication, Bhubaneswar. In this letter, the Telecom District Engineer has reported that two old files dealing with recruitment of Linemen (learners) have at last been discovered from the debris of old records after a vivid search. Letter No.X-3/ Lineman Learners, dated 22.5.1976 in File No.E-3(12)73-76 shows the name of Sri Satrugna Mallik (the applicant) to have been placed at serial No. 335 in a list of 341 eligible candidates who appeared in the departmental test conducted on 6.8.1975 to 9.8.1975 for recruitment of Lineman Learners. It is further reported that this letter has been signed by the then District Engineer, Telecom, Cuttack. It is also reported that similarly from another letter No.E-3(12)/26, dated 20.1.1982, in File No.E-3(12)/80, it is revealed

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that Sri Satrughna Mallik, son of Sri Kamadev Mallik has worked in the Department for a period of 902 days and his name appears at serial No. 78. This letter along with the list has been signed by the then District Engineer, Telecom, Cuttack. This Annexure has been produced by the applicant in support of his contention that he worked for 902 days and also appeared in the Linemen(Learners) Departmental Test from 6.8.1975 to 9.8.1975.

3. The respondents in their counter have submitted that the applicant worked as a daily rated Mazdoor, but no termination order was issued to him. He gave up engagement voluntarily in 1978 and after passage of fifteen years has come up with this application for being taken back. It is also submitted by the respondents that the applicant had earlier come up to the Tribunal in O.A.No.266/90, which was disposed of in order dated 9.7.1992, with a direction that the applicant should file a detailed representation before the Telecom District Engineer, Dhenkanal, who would dispose of the representation on the basis of records available in his office. It was also mentioned that if any adverse order was passed against the petitioner, he would be at liberty to approach the Tribunal again. In the present application, it has been submitted by the applicant that in pursuance of the above order of the Tribunal in OA No.266/90 he submitted a representation on 20.7.1992 before the Telecom District Engineer, Dhenkanal, but as no orders were passed on his representation, he has come up in this O.A. On this point, in paragraph 3 of the counter the respondents have stated that the representation

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filed by the applicant in pursuance of the order of the Tribunal in OA No.266/90 has not been disposed of as the Telecom District Engineer, Dhenkanal, does not have the authority to condone the break in engagement of the applicant for more than six months. The respondents have also submitted that the applicant put in 902 days of work from 1974 to 1978. He appeared in the Linemen(Learners) Test in 1975 but could not qualify himself and as such he is not entitled to be appointed as Lineman (Learner). The respondents have also submitted that as the applicant has come up more than a decade after what he has styled as illegal termination of service, the application is barred by limitation and no relief can be allowed to him.

4. I have heard Sri Antaryami Rath, the learned lawyer for the applicant and the learned Senior Standing Counsel appearing on behalf of the respondents.

5. From Annexure-1 to the application, which is a report given by the Telecom District Engineer, Dhenkanal, it is clear that the applicant had worked for 902 days as daily rated Mazdoor from 1974 to 1978. This is also admitted in paragraph 6 of the counter. The applicant further states that his services were illegally terminated on 31.1.1978. The respondents in their counter have stated that the applicant voluntarily stopped coming for his engagement in 1978 and no order of termination was ever issued to him. The applicant has not filed any order terminating his services on 31.1.1978. It is, therefore, difficult to hold that his engagement was terminated by the respondents. From Annexure-1 to the

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application, it further appears that the respondents did make a thorough search with regard to the records relating to the applicant in pursuance of the order of the Tribunal in OA No.266/90. Had his services been terminated, then some reference to that would have been found in the records pertaining to him in the office of respondent no.3. In view of this, I hold that the applicant has not been able to prove that his engagement was illegally terminated by the respondents on 31.1.1978.

6. As regards his prayer for appointment to the post of Lineman, it is admitted by the respondents that he did appear in the Lineman Test in August 1975, but, according to the respondents, he could not qualify. The applicant has not produced any evidence in support of his contention that he qualified in the test. Therefore, it must be held that the applicant has not been able to prove that he had qualified in the Lineman-Learners Test and is eligible to be so appointed.

7. Lastly, it must be noted that even going by the case of the applicant, that his engagement as daily rated Mazdoor was terminated on 31.1.1978 and he came up in OA No.266/90 on 14.3.1990, the learned Senior Standing Counsel has brought to my notice the decisions of the Hon'ble Supreme Court in the case of Bhoop Singh v. Union of India and others, AIR 1992 SC 1414, case of Ratan Chandra Samanta and others

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v. Union of India and others, AIR 1993 SC 2276, and a recent case of S.Jaffar Sahib v. Secretary, A.P.P.S.C. & ors, 1997 (1) SLJ 177. In all these decisions, the Hon'ble Supreme Court have laid down that delay itself deprives a person of his remedy available in law. It has been submitted by the learned Senior Standing Counsel that there is no reasonable explanation as to why the applicant came up in OA No.266/90 and subsequently in the present O.A. more than one decade after 1978. The learned lawyer for the applicant has referred me to the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag and another v. Mst.Katiji and others, AIR 1987 SC 1353, wherein the Hon'ble Supreme Court have laid down that technical ground of delay should give way to cause of substantial justice in appropriate cases. In this case, it has been held by me that the applicant has not been able to prove that his engagement was terminated by the respondents. He has also not been able to prove that he qualified in the Lineman (Learners) Test. Even passing a test would not confer on him a right to be appointed as Lineman (Learner). When he has no right to be re-engaged or appointed as Lineman (Learner), the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag (supra) cannot be pressed into service in support of the claim of the applicant.

8. In view of the above, I hold that the application is without any merit and the same is rejected, but, under the circumstances, without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 27/6/97