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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 368 OF 1994
Cuttack, this the 21st day of July 2000

Kartik Chandra Das Applicant

Vrs.

The Secretary, Department of Telecommunications
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
21.7.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 368 OF 1994
Cuttack, this the 2nd day of July 2000

CORAM:

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

Kartik Chandra Das, son of late Bharat Chandra Das,
working as a Technical Supervisor, office of S.D.O.,
Phones, Ashoknagar, BhubaneswarApplicant

Advocate for applicant - Mr.D.N.Mishra

Vrs.

1. The Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecom, Orissa Circle, Bhubaneswar-751 001.
3. Telecom District Manager, PO-Bhubaneswar-751 007, Dist.Khurda.
4. Pahilu Dip, Sr.Technical Supervisor, Switch Room, Telephone Exchange, Sambalpur.
5. Jagannath Behera, Sr.Technical Supervisor, Office of the S.D.O.II, Saheednagar, Bhubaneswar.
6. Balaram Mallick, Sr.Technical Supervisor, Trunk Maintenance, Telephone Bhavan, Cuttack.
7. Harihar Singh, Sr.Technical Supervisor, Telephone Exchange, Baripada.
8. Netrananda Singh, Sr.Technical Supervisor, Telephone Exchange, Balasore.....Respondents

Advocate for respondents - Mr.S.Behera
ACGSC.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a direction to the respondents to allow him to hold higher selection grade from 1981 from which date he was suitable and not from 1984 with all consequential service benefits. He has also prayed for quashing the

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seniority list at Annexure-A/2 and declaring the applicant senior to respondent nos. 4 to 8.

2. The applicant's case is that he initially joined as Telephone Technician and in the year 1983 was transferred to Bhubaneswar Telephone Bhawan. According to the applicant, in the year 1981 he along with four others was eligible to appear at the selection test for higher selection grade (Technical Supervisor) against one-third quota. He has stated that for appearing at the test eligibility is completion of 10 years of service. The applicant came out successful and was placed at serial no.5 in the result which is at Annexure-A/1. Though he was successful in the test he was never given any promotion to such a grade. In March 1984 he was again considered for promotion and found suitable against 20% quota for Higher Grade Technician (Technical Supervisor) cadre but he was not given promotion and his juniors were promoted. He made representations, but no reply was given to his representation. Ultimately, in November 1984 he got Higher Selection Grade. In 1993 while the applicant was working as Technical Supervisor he came in possession of a seniority list of Technical Supervisors of Orissa Telecom Circle as on 1.1.1986 in which private respondent nos. 4 to 7 who were actually junior to the applicant, were shown above the applicant. This seniority list is at Annexure-A/2. In the seniority list of Technicians showing the position upto 1.7.1985 the applicant's position was at serial no.100 and respondent nos.4 to 7 were shown against serial nos.102,109,110 and 167 respectively. In the seniority

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list at Annexure-A/2 of Technical Supervisors respondent nos.4 to 7 have been shown against serial nos. 57,58,59 and 60, and the applicant has been shown against serial no. 61. The applicant has stated that while enquiring into the matter he came to know from reliable source that he was not given promotion due to adverse entry in his CR for the period from 1.4.1982 to 31.3.1983. This entry made on 30.9.1983 was communicated to the applicant on 1.12.1983. In August 1984 the adverse entry has been expunged. But even then his case was not considered for promotion from the date his juniors were promoted. In the context of the above facts he has come up in this petition with the prayers referred to earlier.

3. The departmental respondents in their counter have opposed the prayers of the applicant. They have stated that in 1981 a departmental examination for promotion to Lower Selection Grade in Technician cadre under 20% Scheme under which one-third has to be filled up through departmental qualifying examination and two-thirds by seniority-cum-fitness was held on 15.2.1981. The applicant along with others was permitted provisionally to appear at the said examination and the result of the examination is at Annexure-1 showing the name of the applicant. The applicant initially joined as a Technician in the office of S.D.O., Phones, Sambalpur on 26.8.1971. The departmental respondents have stated that the eligibility condition for taking the examination was completion of 10 years of service. The applicant had not completed ten years of service as on 1.7.1980 and he was only provisionally allowed to appear at the

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examination. This fact was intimated to the Department of Telecommunications, New Delhi and the name of the applicant was deleted from the list of successful candidates in accordance with the order dated 25.8.1983 at Annexure-R/2. Before proceeding further it has to be mentioned that the departmental respondents have also stated that this examination was for promotion to Lower Selection Grade and not to the rank of Higher Selection Grade. They have mentioned in page 3 of the counter that this examination was for promotion to LSG and not to HSG, as incorrectly stated in the application. It is stated that the applicant was considered for promotion to LSG cadre (Technical Supervisor) under two-thirds quota meant for promotion by way of seniority-cum-fitness and on the recommendation of DPC, which met on 23.11.1984, he was promoted to the rank of Technical Supervisor in LSG cadre. The departmental respondents have further stated that the seniority list of Technical Supervisors has been correctly drawn up and the applicant has been correctly shown junior to private respondent nos. 5 to 8. They have further stated that the seniority list of Technical Supervisors as on 1.1.1986 was circulated on 11.5.1987. Adequate time was also given to the staff concerned to make representations against their position in the seniority list. The applicant has not filed any representation against the seniority list which has become final and as such he cannot be permitted to challenge the seniority list after a passage of seven years when he has filed the OA in 1994. The departmental respondents have further stated that in this seniority

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list the private respondents have been rightly shown senior to the applicant because they were promoted to the rank of Technical Supervisor on the recommendation of DPC which met on 14.11.1983 and they were promoted in order dated 19.3.1984 at Annexure-R/6. The applicant's case was considered in the DPC meeting held on 14.11.1983 but he was not recommended for promotion due to adverse entry in his CR for the year 1982-83. But a Review DPC met on 29.10.1984 and recommended the case of the applicant and he was issued the order of promotion on 23.11.1984 at Annexure-R/3. Therefore, the private respondent nos. 4 to 8 have been rightly shown in the seniority list as senior to the applicant. The departmental respondents have stated that the recommendation of DPC cannot be challenged in a Court of law. With regard to promotion to the rank of HSG, i.e., to the post of Technical Supervisor Grade-III under the BCR Scheme, the departmental respondents have stated that the applicant's case was not taken up for consideration because of non-availability of adequate number of vacancies against the quota reserved for SC and ST. There were four vacancies, three for SC and one for ST, and private respondent nos. 4,5 and 6 belong to SC category and private respondent nos.7 and 8 belong to ST category. As there was no vacancy to accommodate another SC person and as the private respondents are senior to the applicant, they were promoted to HSG. In the context of the above facts the departmental respondents have opposed the prayers of the applicant.

4. We have heard Shri D.N.Mishra, the learned counsel for the petitioner and Shri S.Behera, the

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learned Additional Standing Counsel for the departmental respondents. The learned counsel for the petitioner has filed a written note of submission with leave of the Tribunal and with copy to the other side, and this has also been taken note of.

5. The first point to be noted in this connection is that the applicant appeared at the departmental examination in 1981 provisionally and even though he cleared the examination it was later on found that he had not put in required period of service of 10 years by 1.7.1980, having joined on 26.8.1971. Accordingly, his result was cancelled in the order dated 25.8.1983 at Annexure-R/2. In view of this, the applicant was not entitled to get promotion under the one-third quota meant for candidates who had qualified in the departmental examination. The second aspect of the matter is that he was considered for LSG Supervisor grade under the two-thirds quota of promotion on the basis of seniority-cum-merit. His case was considered along with respondent nos.4 to 7 in the meeting of the DPC held on 14.11.1983. But his case was not recommended by the DPC because of adverse entry in his CR for the year 1982-83.

It has been submitted by the learned counsel for the petitioner that in order dated 16.8.1984 at Annexure-R/10 most of the adverse remarks except one item were expunged and therefore the applicant should have been promoted along with respondent nos. 4 to 8. We are unable to accept this contention because the promotion of respondent nos.4 to 7 and the applicant was considered in

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the meeting of the DPC held on 14.11.1983 when the adverse entries had not been expunged and the DPC recommended private respondent nos. 4 to 7 and did not recommend the applicant. Most of the adverse remarks were expunged only in order dated 16.8.1984 and in the DPC meeting held on 29.10.1984 the case of the applicant was recommended and he was given promotion in order dated 23.11.1984 at Annexure-R/3. The proceeding of the Review DPC which met on 29.10.1984 is at Annexure-R/8. From this we find that after the adverse entries were mostly expunged his case was taken up for consideration and the DPC recommended his case for promotion on 29.10.1984 and he was promoted with effect from 23.11.1984. As all the adverse entries were not expunged and one item (item no. 4 in the letter communicating the adverse entries) was allowed to stand, the applicant cannot claim that he should have been promoted from the date his juniors have been promoted. In any case the petitioner in this OA has asked for holding HSG from 1981 and not from November 1984. This promotion given to him in November 1984 is to the Lower Selection Grade and we find no infirmity either in the recommendation of the DPC or in the order giving him promotion from 23.11.1984.

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6. As regards promotion to the rank of HSG, because of his promotion to LSG cadre after the private respondents he became junior to private respondents in the LSG cadre. The petitioner has not agitated the matter of his supersession by the DPC in 1983 at that time and he cannot therefore be allowed to raise the matter after a lapse of eleven years.

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7. Because of his late promotion to the rank of LSG, he became junior to the private respondents. The seniority list also reflected this. This seniority list as on 1.1.1986 was circulated in 1987 and the petitioner did not challenge the same. Thus, the seniority list has become final. At the time of promotion to the rank of HSG, the private respondents, who were senior to the applicants, have been given promotion against SC and ST quota and because of absence of adequate number of SC vacancies to accommodate the applicant at that time, he was not promoted. This is also strictly in accordance with rules and no injustice has been caused to the applicant.

8. In the result, therefore, we hold that the O.A. is without any merit and the same is rejected, but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
 (SOMNATH SOM)
 21.7.2000
 VICE-CHAIRMAN