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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 135 OF 1996
Cuttack, this the 6th day of September 2002

Sushant Kumar NayakApplicant

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?

6th Sept 2002
(M.R.MOHANTY)
MEMBER (JUDICIAL)

V. Mohanty
(V.SRIKANTAN)
MEMBER (ADMN.)

For Mr. Mohanty

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9 Aug 2002
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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 135 OF 1996
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CORAM:

HON'BLE SHRI V.SRIKANTAN, MEMBER(ADMN.)
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

....

Sushant Kumar Nayak, son of Harekrushna Nayak, aged about 47 years, at Type III/3, Unit 8, P.O-Microwave Colony, District Khurda, Bhubaneswar, at present working as TOA Gr.II, O/O the Chief General Manager, Telecommunication, Orissa Telecom Circle, Bhubaneswar 751 001..... Applicant

Advocate for the applicant - M/s Dr.D.B.Mishra
N.C.Mishra

Vrs.

1. Union of India, represented through the Secretary, Department of Telecom, Sanchar Bhawan, Sansad Marg, New Delhi 110 001.
2. Director General, Department of Telecom, Sanchar Bhawan, Sansad Marg, New Delhi-1.
3. Chief General Manager, Telecommunication, Orissa Telecom Circle, Bhubaneswar 751 001.
4. Mrutyunjay Hui, TOA Grade-II (Gen.), office of the Chief General Manager, Telecom Orissa Circle, Bhubaneswar 751 001..... Respondents

Advocate for the respondents-Mr.S.Behera, ACGSC.

O R D E R

V.SRIKANTAN, MEMBER(ADMN.)

Heard Dr.D.B.Mishra, learned counsel for the applicant and Shri S.Behera, learned Additional Standing Counsel, appearing for the official respondents and perused the materials on record.

2. The applicant joined as LDC on 25.3.1971 whereas his junior Mrutyunjay Hui joined as LDC on 1.3.1978 and another junior Pitambar Parida joined as LDC on 1.3.1975. Thereafter the applicant was promoted as UDC on 3.11.1980 prior to the promotion of his juniors. However, in the gradation list notified in the year 1991, the applicant

was shown as junior to the above two persons as the name of the applicant appeared at serial no.5 whereas the two juniors appeared at sl.nos. 2 and 3 respectively, with the dates of entry into the cadre being shown as 12.10.1981 and 4.10.1981 respectively. Being aggrieved by the seniority assigned to him, the applicant had represented on 15.4.1991, but no satisfactory reply was forthcoming. Meanwhile, respondent no.4 was promoted to LSG cadre and being aggrieved, the applicant had again represented on 25.6.1991, 27.4.92 and 6.4.92, but did not receive any reply to these representations. Consequent upon introduction of OTBP/BCR Schemes in 1992, respondent no.4 was promoted as Section Supervisor on 23.10.1991 whereas the applicant was promoted as Section Supervisor on 21.8.1992 because of the defective gradation list. The applicant submitted a representation to respondent no.1 on 12.1.1996 in this regard, and being aggrieved, the applicant has filed this Original Application seeking a direction to be issued to respondent no.3 to rectify the gradation list published as on 1.7.1991 and to promote the applicant and place him at par with his juniors and grant him consequent seniority, promotion and financial benefits.

3. Official respondents have filed their reply contesting the claim of the applicant. It has been pointed out by the official respondents that the applicant was promoted as UDC on 3.11.1980 under the 20% quota meant for Circle Office staff which is required to be filled up by seniority-cum-fitness whereas respondent no.4, who joined as LDC on 3.3.1976, was promoted to the grade of UDC with effect from 12.10.1981 under 30% quota by passing the

✓ departmental examination of 50% quota meant for Circle Office staff in the year 1980 against the vacancy recruitment of 1980. Further, though the applicant could have also appeared at the said examination for the grade of UDC in 1980, he did not choose to do so. Accordingly, the applicant and respondent no.4 had been promoted to the UDC stream under different quotas and in such a situation, the seniority list is required to be maintained as per the 10 point cycle described in the Recruitment Rules and the officials on promotion to the grade of UDC are required to be placed in the appropriate vacant place of respective quota. Accordingly, respondent no.4 was placed in the 9th point of the 10-point cycle of first cycle and the applicant was placed in the fifth point of 10-point cycle of 2nd cycle and the applicant became junior to respondent no.4 in the grade of UDC accordingly. The official respondents have argued that the seniority assigned to the applicant in the UDC cadre is correct and as per Rules. This being the position, the applicant being junior to respondent no.4, has no claim for promotion to the grade of Section Supervisor ahead of respondent no.4 who is senior to him and the applicant has been given promotion to the grade of Sectioni Supervisor as per his turn and hence in the gradation list prepared in the cadre of Section Supervisor, respondent no.4 correctly stands senior to the applicant.

4. However, during argument, the learned counsel for the applicant put forth the stand that respondent no.4 could not have been promoted to the Section Supervisor cadre on 4.2.1991 as he had not completed the basic criterion of 10 years of service in the UDC cadre. This argument is being raised for the first time and the

respondents have not been given an opportunity to have their say in this matter and the same cannot be entertained at this stage of hearing.

5. On the basis of reply of the official respondents, it is clear that respondent no.4 having passed the departmental examination for UDC under the 50% quota for the year 1980 and his seniority having been fixed in terms of the 10-point cycle and the applicant having not chosen to appear for the very same examination and having been promoted under the seniority quota and being placed lower than respondent no.4 in terms of the 10 point cycle, the action of the official respondents cannot be faulted.

6. It is seen that the applicant has sought for rectification of the seniority list of 1.7.1991 pertaining to seniority in the UDC cadre. However, on going through his representation dated 15.4.1991, it is seen that the applicant was aware as far back as in 1986 that respondent no.4 had been shown as senior to the applicant as there is a reference to the gradation list of 1986. This being the position, the applicant should have challenged the seniority list of 1986 but has not chosen to do so.

7. His first representation, even as per the letter of 15.4.1991, is dated 30.11.1990. Viewed from this angle, the present Original Application is also hit by delay and laches and this Tribunal cannot be expected to upset a seniority list which was drawn up as far back as in 1986 and especially when it is lacking in merit.

8. For the above reasons, we do not find any merit in this Original Application which is accordingly dismissed. No costs.

(M.R.MOHANTY)
06/09/2002
MEMBER(JUDICIAL)
AN/PS

V.SRIKANTAN
V
MEMBER(ADMN.)