


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

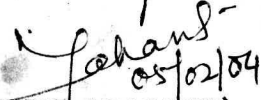
ORIGINAL APPLICATION NO. 54 OF 1996
Cuttack, this the 5th day of February, 2004.

Prakash Chandra Sahoo. Applicant.
-Versus-
Union of India & 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? Yes


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 54 OF 1996.
Cuttack, this the 5th day of February, 2004.

BORAM:

THE HONOURABLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDL.).

....

Prakash Chandra Sahoo,
Aged about 36 years,
Son of Radhanath Sahoo,
at present working as Telecom Operating Assistant
(Telegraphy) Gr. I, Telegraph Office, At/Po/Ps/
Dist. Dhenkanal.

.... Applicant.

By legal practitioner: M/s. A.K. Mohapatra,
D.N. Mohapatra,
Advocates.

-Versus-

1. Chief General Manager, Telecom, Orissa,
Orissa Telecom Circle, Bhubaneswar,
At/Po: Bhubaneswar, Dist. Khurda.
2. The Telecom District Manager, Dhenkanal,
At/Po/Ps/Dist. Dhenkanal.
3. Telecom District Engineer, Dhenkanal,
At/Po/Ps/Dist. Dhenkanal.

... Respondents.

By legal practitioner: Mr. A.K. Bose, SSC.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

In this Original Application, filed under section 19 of the Administrative Tribunals Act, 1985, the Applicant prays for a direction to the Respondents to select him for undergoing the basic training in the cadre of Senior Telecom Operating Assistant (Telegraphic); which was scheduled to start from 22.1.1996 and not to select his junior employees for training; for being promoted to the post of Senior Telecom Operating Assistant (Telegraphic).

2. The admitted facts are that the Applicant was appointed as a Telegraphist with effect from 30.1.1982. The said post is now designated as Telecom Operating Assistant (Telegraphic). He is the senior most in this cadre in Dhenkanal Division. He has qualified in the aptitude test for being recruited as Senior Telecom Operating Assistant Gr. I. The telegraph unit in question merged in the telecommunication engineering unit with effect from 1.10.1995. The Applicant was previously working in Sambalpur Telegraph Traffic Division in the post of Telegraphist in a divisional cadre. He applied for inter-divisional transfer in terms of Rule-38. On transfer, he joined, on 22.1.1987, at Dhenkanal as his request was allowed. The Dhenkanal Telegraph office was at the relevant time, under the administrative control

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of erstwhile Telegraph Traffic Division having headquarters at Bhubaneswar. In accordance with Rule-38, he had to be placed at the bottom of seniority-list (in the new Division) in his cadre. His seniority had been fixed below the persons selected for training who have been working prior to the Applicant's joining in the said Dhenkanal Division.

3. According to the panel prepared, the name of the Applicant found place at Sl. No. 4. It is, therefore, submitted (in the counter) that as the junior-most official in the Division, Applicant's request for officiating promotion in the cadre of Sr. T.O.A(T) could not be considered before others; as the Applicant is the junior-most in the Division. It is also submitted that by passing the aptitude test, the Applicant only became entitled to go for training; for which the panel has to be prepared among the persons, who are qualified in the aptitude test on the basis of their seniority.

4. The learned counsel for the Applicant contended that the direction of the Respondents (allowing the juniors ~~of~~ the Applicant, to undergo basic training in the cadre of Sr. Telecom Operating Assistant (Telegraphic)) was in violation of the circulars and instructions issued by the competent authority.

5. It is true that the Applicant was transferred in 1987 from Sambalpur Traffic Division to Bhubaneswar Traffic Division under Rule-38. With effect from 1.10.1994, the Traffic Division had been abolished and merged with the Engineering Division, which is a wider wing. As some of the posts of STOA were vacant steps were taken to fill up those posts on officiating basis. Except Dhenkanal Division, other Divisions complied with this direction. Further contention of the Applicant is that under Rule-38 sub rule (3) he has retained back his original seniority for the purpose of promotion to the higher cadre following to amalgamation and widening of the organisation.
6. The instructions are very clear on the subject of preparation of selection list/panel for training for the restructured cadres. In each Telegraph Traffic Division, a select panel was to be prepared by two stage process i.e. firstly an eligibility list and then therefrom a select panel. This eligibility list was to consist of two streams. A walk in stream of group of officials with requisite qualifications prescribed for training and list of officials who qualify for entry into the restructured cadres after a screening test. Both the lists, viz. walk-in-list and screening test select list were to be merged and a common eligibility list on the basis of inter-se-seniority in their respective existing cadres (after calling for

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options from willing employees to move over to the restructured cadres) was to be finalised. From out of the eligibility list, a select panel was to be drawn. Empanelled officials, as per this scheme were to be sent for training and absorbed in the new cadres, after successful completion of the prescribed training. It shows that Sl. Nos. 151, 169, 172 and 144 were placed in the panel.

The precise grievance of the Applicant is that by bye-passing the provisions of recruitment rules, and circulars, Respondent No. 3 prepared a list for granting basic training in the cadre of Sr. Telecom Operating Assistant at Bhubaneswar (with effect from 22-1-1996) for a period of four weeks. The Respondents contend that nomination for training was made out of the divisional gradation list from among the eligible officials who have qualified in the prescribed test and the Applicant is the junior most.

7. Before proceeding to take a final view over the matter, needless it is for us to keep note the relief as sought by the Applicant in this O.A. which runs as under:-

".... to direct the Respondents to select the Applicant for undergoing the basic training in the cadre of senior Telecom Operating Assistant (Telegraphy) which is scheduled to start from 22-1-1996 (Annexure-6) and not to select the employees for training who are juniors to the Applicant for being promoted to the post of Senior Telecom Operating Assistant (Telegraphy)".

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8. Apparently, the Applicant's grievance gives rise to a cause of action of the year 1996 with regard to sending him for the basic training in the cadre of Sr. Telecom Operating Assistant (Telegraphy). During hearing, counsel for neither of the parties could apprise as to the position where the matter now stands. We are also uncertain as to whether by efflux of time, the prayer of the Applicant has come infructuous.

9. We have heard learned counsel for both the sides and given our anxious consideration to the arguments advanced at the Bar.

10. In AIR 1996 SC 764 in the case of UNION OF INDIA AND OTHERS v. C.N. PANNAPPAN, the question before the Supreme Court was the eligibility for promotion of a transferred employee from one unit to another unit on compassionate grounds. Because of this transfer from one unit to another unit, the employee was placed at bottom of seniority list. The Supreme Court held that the services done at the place from where he has been transferred, being regular service, it has to be counted as experience for the purpose of eligibility for promotion at the transferred place. Such service cannot be ignored only on the ground that it was not rendered at the place to where he has been transferred.

11. The matter with regard to denial of promotion on the ground of transfer under Rule-38 was the subject matter of challenge before the Hon'ble Supreme Court in the case of Scientific Advisor to Rakshya Ministry and others v. B.M. Joseph (reported in (1998)SC(L&S)1362). This was a case where the Respondent's basic seniority was lowered down because of transfer under Rule-38. The Hon'ble Supreme Court keeping in view the Pannappan's case(supra) held that eligibility for promotion cannot be confused with seniority as they are two different and distinct factors. It is in this backdrop, what the Hon'ble Supreme Court held in C.M. Pannappan case (the relevant portion) is quoted below:

"Where an employee is transferred from one unit to another on compassionate grounds and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where he has been transferred, being regular service, has to be counted towards experience and eligibility for promotion".


12. In view of the settled position of law as enunciated by the Hon'ble Supreme Court in the aforementioned two cases, we are of the view that the ends of justice would be met if the following directions are issued to the Respondent Department:-

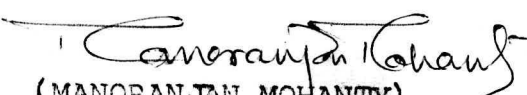
- i) If in the time between the applicant has been sent on training and has been appointed to the post of Senior Telecom Operating Assistant (Telegraphy) on promotion, at a later date, his date of promotion should be ante-dated with effect from the date his juniors (who are at Annexure-6) so promoted and/or appointed;

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- ii) If the Applicant is yet to undergo the basic training because of pendency of this O.A., then he should be sent on training alongwith others (if such a training is proposed to be conducted sooner or later) and subject to his securing the marks in the training, he should be promoted to the post of Senior Telecom Operating Assistant (Telegraphy) and in that event he should be given ante-dated seniority at par with his juniors under Annexure-6.

We make it clear that no financial benefits shall be granted to the Applicant (in exception to seniority only) while complying with either of the directions and that should be done within a period of 120 days from the date of receipt of copies of this order. With these observations and directions, this Original Application is disposed of. No costs.


(B. N. SOM)
VICE-CHAIRMAN.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 05/02/04