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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A. NO. 126 OF 1998

Cuttack, this the 12th day of February, 2004

Haripada Das

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Applicant

Vrs.

Union of India and others

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Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 7-5
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 7-5.


(D.N. SOM)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
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O.A NO. 126 OF 1998
Cuttack, this the 12th day of February, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

Sri Haripada Das, aged about 38 years, son of late Rama Chandra Das, at present working as Phone Mechanic, in the office of the Senior Divisional Engineer, Co-axial (M), Balasore

Applicant.

Versus

1. Chief General Manager, Telecommunication, Orissa, Bhubaneswar 751 001.
2. Telecom Divisional Manager, Balasore 756001.
3. Director (Maintenance), Telecom, Old Microwave Compound, Unit III, Bhubaneswar.
4. District Engineer, Telecom, Co-axial (Maintenance), Cuttack Telephone Bhawan, Cuttack.
5. Sub-Divisional Engineer, Co-axial Telephone Bhawan, Balasore 756 001

Respondents

Advocate for the applicant - Mr.T.Rath.

Advocate for the Respondents - Mr.A.K.Bose, Sr.CGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Haripada Das, presently Phone Mechanic in the office of Senior S.D.E., Co-axial (M), Telephone Bhawan, Balasore, has filed this Original Application challenging the arbitrary fixation of his seniority in the cadre of Phone Mechanic and non-payment of increments to his pay consequent upon his promotion as Phone Mechanic on 4.4.1995. He has also prayed for

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quashing the orders under Annexures 7,9 and 10 to the O.A. and Annexure R/1 to the counter.

2. The case of the applicant is that while working as regular Mazdoor in the Respondent-organisation, he was sent on training for promotion to the cadre of Phone Mechanic for which post he was selected in January 1994. After successfully completing his training at the Circle Telephone Training Centre, Bhubaneswar, he was posted as Phone Mechanic in the scale of Rs.975-1540/- with effect from 4.4.1995. After completion of one year of service as Phone Mechanic, he submitted a representation to the Accounts Officer in the office of Director, MTCE, Bhubaneswar, Bhubaneswar, on 23.8.1996 complaining that increment due to him has not been drawn so far and prayed for redressal of grievance. However, instead of redressing his grievance, Respondent No.2 vide his letter dated 31.3.1997 issued a memo that the applicant was appointed to the restructured cadre of Phone Mechanic in the scale of pay of Rs.975-1540/- with effect from the date he assumed charge of the new post or with effect from 5.7.1996 whichever is earlier. The applicant immediately submitted representation dated 30.5.1997 (Annexure 8) drawing notice of Respondent No.2 to the fact that he had already joined the post of Phone Mechanic in April 1995 and therefore, his salary should be fixed accordingly. However, this representation was also not considered favourably. On the other hand, Respondent No.3 by issuing a letter at Annexure 9 reiterated that the applicant was promoted as Phone Mechanic with effect from 5.7.1996 in pursuance of the letter issued by Respondent

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No.2 dated 31.3.1997. Thereafter also the applicant had represented several times to correct the date of his assumption of appointment on promotion as Phone Mechanic as 4.4.1995, but without success.

3. The Respondents have opposed the Original Application by submitting a detailed counter. The main thrust in the counter is that the order of promotion dated 4.4.1995 passed by Respondent No.2 was issued erroneously. This error could be noticed by the said Respondent only during December 1996 whereupon by the letter of Respondent No.4, dated 12.12.1996 (Annexure R/1), the earlier order was cancelled and the applicant's date of regular promotion to the grade of Phone Mechanic was ordered to take effect from 5.7.1996 and allowed drawal of annual increment in the cadre of Phone Mechanic only with effect from 5.7.1997 regularly. They have further submitted that the order of posting of the applicant dated 4.4.1995 had to be cancelled to rectify a mistake as no vacancy was available for promotion to the grade of Phone Mechanic at that point of time. They have further argued that the question of increment in the pay scale of Phone Mechanic with effect from 4.4.1995 does not arise since the applicant could not have been posted as Phone Mechanic during April 1995 due to lack of vacancies.

4. I have heard the learned counsel for both the parties and have perused the records placed before us.

5. The short point to be considered in this case is whether the Respondent-Department have legal right to rectify an error without affording

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pre-decisional opportunity to the affected official. The answer to this issue is in the affirmative because law is well settled by virtue of judicial pronouncements in this regard. Although the right of the administration to correct any error committed inadvertently is permissible under law, the instant case stands in a different footing. The averment made by the Respondents at paragraph 4 of their counter is that "the applicant was not posted as Phone Mechanic during April'96 and has been posted as Phone Mechanic w.e.f. 5.7.1996" is unacceptable as it contains factual error. It is strange that the Respondents have made the statement that "the applicant was not posted as Phone Mechanic during April 1996" in the face of the order issued by Respondent No.2 dated 4.4.1995 (Annexure 4) which reads as follows:

"The Telecom District Engineer, Balasore is pleased to post the following Phone mechanics as detailed below after successful completion of prescribed course of training at CTTC Bhubaneswar in the scale of pay Rs.975-25-1150-FB-30-35-1540/-

Sl.No.	Name of the official	Station of Posting
1.	Prafulla Kumar Behera L.M. (T.) Baliapal.	(1) S.D.O. T/Balasore
2.	Suresh Chandra Behera L.M. Joshipur.	(2) S.D.O. T.RRP (Joshipur)
3.	Radha Krushna Rout L.M.Soro	(3) S.D.O. T/Balasore.
4.	Haripada Das, R.M. Coaxial Balasore	(4) A.E.Coaxial, Balasore"

The authenticity of Annexure 4 has not been disputed by the Respondents. Therefore, their averment as quoted above is factually wrong and tht the said statement also carries a wrong date "April'96" which should have been stated as "April 1995". Their letter dated 12.12.1996 (Annexure R/1) by virtue of

which they have cancelled the appointment order issued earlier, in fact refers to this office order dated 4.4.1995. The question, therefore, arises here as to whether the Respondents after issuing a formal order of promotion in respect of the applicant vide order dated 4.4.1995, could have annulled the same by their order dated 12.12.1996 (Annexure R/1). Mr. T. Rath, the learned counsel for the applicant has drawn my notice to the judgment of the Apex Court in Civil Appeal No. 6229 of 1983, decided on 18.8.1983 in the case between Smt. P. Grover v. State of Haryana, to say that the applicant having been promoted by order dated 4.4.1995 could not have been denied of the benefit of promotion subsequently. In the case of Smt. P. Grover the case of the Respondent-State Government was that there was no Class I post available and therefore, the appellant was not entitled to be paid the salary of District Education Officer (the pay of higher post). In that case, the Apex Court held that it was unable to understand the reason given in the counter affidavit. Their Lordships observed that there was no denying of the fact that he was promoted to the post of District Education Officer and that the Respondent-State Government had not invited their notice to any rule which provides that promotion on an acting basis would not entitle the officer promoted to the pay of the post. Their Lordships, therefore, ruled that in the absence of any rule justifying such refusal to pay an officer promoted to a higher post the salary of such higher post and directed that the officer so posted/promoted is entitled to be paid the salary of District Education Officer from the date she was promoted to the post. Having regard to the facts and circumstances of the

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instant case, I agree with the learned counsel for the applicant that the ratio of the judgment in the case of Smt.P.Grover squarely applies in this case also. Here also the Respondents have not brought any material before me showing reasons for revising the date of promotion of the applicant and 23 other regular Mazdoors who were promoted to the restructured cadre of Phone Mechanic. The reason for revising their memo dated 4.4.1995 has not been given either in the memo dated 12.12.1996 or in the counter filed by them. In the circumstances, I see no reason why the applicant having been promoted as Phone Mechanic and having worked in that capacity from 4.4.1995 should not get the remuneration for the post. In the circumstances, this O.A. succeeds and the memo dated 12.12.1996 at Annexure R/1 is quashed. With the cancellation of the order of the Respondents at Annexure R/1, the applicant is entitled to to all benefits from the date of his promotion, i.e., from 4.4.1995.

6. In the result, the Original Application is allowed. No costs.


(B.N. Som)
Vice-Chairman

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