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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.26 OF 1998
Cuttack, this the 12th day of November, 2003

Rabindranath Parida Applicant

Vrs.

Union of India & Others Respondent

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

Mohanty
12/11/2003
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Som
(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

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

HON'BLE SHRI M.R. MOHANTY, MEMBER(J)

Rabindranath Parida, aged 46 years, S/o late Chandramani Parida, At. Sahapur, Po. Kumuda Jeypore, P.o. Mahanga, Dist. Cuttack, Now working as Junior Telecom Officer, Central Telegraph Office, Cuttack.

.....**Applicant(s)**
By the Advocate(s)M/s B.K. Sarangi,
P.K. Rout

-Vrs-

1. Union of India, represented through its Secretary, Ministry of Telecommunication, Department of Telecommunication, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief general Manager, Orissa Circle, At/Po: Bhubaneswar, Dist: Khurda.
3. Director, Telecommunication Headquarters, Office of the Chief General Manager, Telecommunication, Bhubaneswar.
4. Assistant General Manager (S&A), Office of the Chief Gneral Manager, Telecommunication, Orissa. Bhubaneswar.

.....**Respondent(s)**
By the Advocate(s)-Mr. S. Behera.

O R D E R

SHRI B.N. SOM, VICE-CHAIRMAN:

This O.A. has been filed by Shri Rabindranath Parida under Section 19 of the Central Administrative Tribunal Act 1984 challenging the officiating promotion given by the Respondents to his juniors in various posts of the Department ignoring his claim. He has prayed for issuing direction to the Respondents to show cause as to why the applicant shall not

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be promoted on officiating basis to the post of Assistant Engineer Telecom Engineering Service (in short TES) Group- B from JTO or to direct the authority to dispose of the representations pending with them at Annexure- 4,5,6,810 & 11.

2. The facts of the case in short are that the applicant was initially appointed as Assistant Superintendent of Telegraph Traffic (in short ASTT) on 28.05.1984. Thereafter, the cadre of ASTT was merged with the cadre of Junior Telecom Officer (in short JTO) with effect from 01.04.1994. Then a combined seniority list of JTO & ASTT officers were made on the basis of year wise recruitment placing the applicants name at Sl. No. 2(A) of the Recruitment year 1983. At the same time the Respondents by issuing a circular dt.26.09.1996 laid down the conditions for local officiating arrangement to the cadre of TES Group -B for the JTO's. In the said guideline it was inter-alia mentioned that if no qualified JTO's were available the officiating arrangement should be made strictly in accordance with the circle gradation list, taking officers who have put in three years of service. The applicant submits that he having completed 14 years of service he should have been considered for officiating promotion by the Respondents. By granting promotion to the persons who were placed below

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him in the gradation list the Respondents had ignored his claim in an arbitrary manner against which he represented first on 12.09.1996 and thereafter on several other occasions, every time officiating promotion was made to TES Group B ignoring his claim.

3. The Respondents have contested the application. They have submitted that the merger of ASTT cadre with that of the JTO took place only with effect from 09.02.1996 and not from 01.04.1994 as alleged by the applicant. They have submitted that the representation made by the applicant on 05.12.1997 (Annexure-R/II) was duly considered by the Respondents but was rejected on the ground that the applicant was undergoing punishment awarded to him under Rule 16 of the CCS (CCA) Rules. The reply to his representation was communicated to him on 23.03.1998.

4. We have heard Counsels for both the parties and have perused the records placed before us.

5. The sole grievance of the petitioner is that in spite of his seniority according to the combined seniority list of ASTT's and JTOs he was not given officiating promotion to TES Group -B by the Respondents although

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he was qualified in all respects in terms of departmental order dated 26.10.1996. It has been disclosed by the Respondents that he was denied officiating promotion on the ground that a minor penalty punishment was imposed on him by the order of the disciplinary authority dt. 31.03.1984 for recovery of Rs.8,000/- from his pay towards adjustment of loss caused to the department by him at the rate of Rs.400/- per month, commencing from his pay from September, 1994. The Respondents have also admitted that he was not considered for local officiating promotion to TES Group 'B' along with the juniors on 12th June, 1996, 11th September, 1997, 25th October, 1997 and 21st October, 1997 because of the currency of punishment imposed on him. From the above facts it is clear that the applicant was charge sheeted on 10.09.1992 and the punishment order was issued on 31st August, 1994. The recovery of Rs.8,000/- was to be completed within 20 months from September, 1994. It is however, found from the counter submitted by the Respondents that the punishment order dt. 31st August, 1994 was communicated only on 23.03.1998 and it is on account of this delay about four years on the part of the Respondents in communicating/ implementing punishment order that the petitioner suffered loss of

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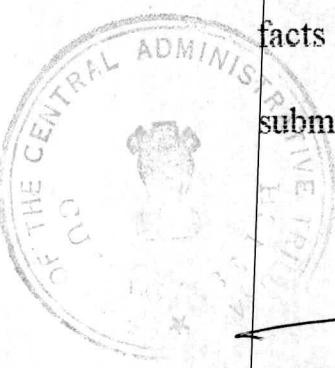
promotion for about four years. The applicant by filing a rejoinder has also submitted that withholding his promotion by the Respondents was done in an arbitrary and illegal manner. Further that by withholding implementation of the punishment order by about four years, the Respondents have caused great prejudice to the applicant.

6. The matter of denial of ad-hoc promotion to the applicant was brought to the notice of the Tribunal in O.A. No.559/94 which was heard by the Single Bench. He by his order dt. 21.09.1994 disposed of it by directing the Respondents that pending disposal of the representation made by the applicant at Annexure-6, the Respondent No.4 "shall not recover any cost on account of the alleged loss of programation from the official". It appears that the Respondents not only did not implement the order dt.21.09.1994 in all respects, but they also did not dispose of the representation dt.14.09.1994 within 60 days. In this present O.A. they have simply submitted that the applicant could not be promoted due to currency of a punishment. Such a submission is misleading and worthy of reproach. They have hidden more than they have disclosed. They did not explain as to why the punishment order was not sent on time, why he was not granted adhoc promotion if punishment order was not given affect to. Whatever

they have done not only constituted denial of justice and fair play but also smacks of malafide. As there was a stay on the recovery from his pay the Respondents could not have effected recovery from the pay of the applicant and because of that there could have been any hindrance to his ad-hoc promotion. We find that the Respondents were so prejudiced against the applicant that they did not deal with this case fairly. In the circumstances, we have no hesitation to hold that the applicant is entitled to the relief that has asked for in this O.A. that he should have been promoted on officiating basis to TES Group -B with effect from 12th June, 1996 i.e when his juniors were promoted with full financial benefits. As the Respondents have violated the order of the Tribunal dt.21.09.1994 also we direct the Respondent No.1,2 to fix responsibility on the officers for their failure to comply with the orders of this Tribunal. He should also enquire into the circumstances which led to about four years delay in communicating the punishment order dt. 31.08.1994 to the applicant, resulting in denial of officiating promotion to TES Group -B for those years. The Respondent No.2 should submit his report as per our direction above within 90 days of receipt of this order to receive further order from this Tribunal. We also

direct that the Respondent should take extreme care in future to ensure that facts are brought out clearly and truly in the counter affidavit that they submit to the Courts/Tribunal to further the cause of justice and fair play.

Accordingly, this O.A. succeeds. No costs.


Y. Mohanty
12/11/2003
(M.R. MOHANTY)
MEMBER (J)


(B.N. SOM)
VICE - CHAIRMAN

CAT/CTC
Kalpeswar