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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.274 OF 1998

Cuttack, this the 28<sup>th</sup> day of October, 2003

Akshaya Kumar Mishra..... 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*

*checked*  
28/10/03  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*checked*  
(B.N. SORI)  
VICE-CHAIRMAN



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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.274 OF 1998

Cuttack, this the 28th day of October, 2003

**CORAM:**

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

&

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

Akshaya Kumar Mishra, aged about 48 years, Son of Late Durbadla Mishra, presently working as Section Supervisor (Officiating) in the Office of the General Manager, Telecom District, Cuttack, At/PO: Dist: Cuttack.

.....**Applicant(s)**

By the Advocate(s)

.....**M/s H.P. Rath,**  
**S.C. Rath**

**-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 General, Department of Telecommunication, Sanchar Bhawan, New Delhi.

.....**Respondent(s)**

By the Advocate(s)-

.....**Mr. A.K. Bose, Sr. SC**

**O R D E R**

**SHRI B.N. SOM, VICE-CHAIRMAN:**

This O.A. has been filed by Sri Akshaya Kumar Mishra, challenging the inaction of the Respondents for not considering his case for promotion to the cadre of junior Telecom Officer (in short JTO) in spite

of a direction given by this Tribunal to this effect on 19.01.1993 in O.A. No.444/91 and non consideration of his representations, last one being submitted on 07.10.1997.

2. The case of the applicant is that while working in the grade of time scale clerk he appeared in a departmental competitive examination during February/June 1990 for promotion to the cadre of JTO against 15% quota of vacancies. Although, he had done very well in all the papers his score of marks in Paper III was low and therefore he had applied to the authorities for re-examination of his paper. His grievance was also heard by the Tribunal in O.A.444/91 and disposed of by giving a direction that if the applicant was found eligible for appointment according to the existing rules then such promotion order should be issued in favour of the applicant. Department held examination under 15 % vacancies for the years 1993-94 on 10<sup>th</sup> and 11<sup>th</sup> February 1996 in which he did not appear. The Respondents thereafter in 1997 lowered the qualifying standard in the examination from 40% minimum aggregate marks in all 4 subjects to 30% for all the "O.C." candidates. But even then the applicant was not considered for promotion although he had scored more than 70% marks in the 1990 examination. His representation to various authorities including

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the Hon'ble Minister of State for Telecommunications did not yield any result.

3. The Respondents have refuted the allegations by filing a counter. The Respondents have submitted that the applicant has suppressed some of the material facts to mislead the Court. They have stated that the applicant suppressed the order No.34 dt.23.6.1994 passed in M.A. No.228/94 by the Tribunal arising out of O.A. No.444/1991 wherein the later had dismissed the application with the observation that the applicant might file a representation to the appropriate authority and the same be disposed of by the said authority according to law. They have further stated that the Tribunal had earlier passed another order No.14 dt.20.08.1993 to the effect that the case of the applicant be considered in respect of the vacancies subsequent to the judgement according to the existing rule. Thereafter, the Standing Counsel for the Respondents by filing a letter No.ST/64/224/91 dt.14.08.1993 had submitted that the case of the applicant could not be considered for promotion to the cadre of JTO on the basis of the examination held in 1990 as per the existing rules.

4. They have further submitted that the Tribunal had directed them to consider the case of the applicant if eligible as per the existing rule for promotion against future vacancies. The applicant had also filed M.A.

228/94 for implementation of the said order, but the Tribunal had dismissed the said M.A. being devoid of merit after hearing both the parties. They have further averred that the representation received from the applicant was disposed of by the T.D.M. Cuttack under intimation to him. They also submitted that the applicant has no locus stand for consideration against subsequent vacancies as he did not appear in the subsequent competitive examinations.

5. We have heard the counsel for both the parties and have perused the records placed before us.

6. From the facts of the case it appears that the issue raised in this O.A. was also the subject matter for consideration in O.A. No.444/91 and in M.A. 228/94 arising out of that O.A. As he has repeated the old story in the present O.A. we have no hesitation in agreeing with the Respondents that this O.A. is effectively bared by the principle of constructive res-judicata.

7. In disposing of the O.A. No.444/91 we have already held that the apprehension expressed by the applicant about the conduct of the examination in 1990 was not at all reasonable, that no presumption could arise in favour of the applicant that the examiner had not correctly and properly valued the papers in the absence of any allegation of malafide or bias. In view of the aforesaid, we would make it clear that there is no scope for going into the matter again. Further, as disclosed by the Respondents,

as the applicant did not appear at any of the subsequent examinations, his claim for consideration for promotion under 15% examination quota against vacancies of those years is devoid of merit and we dismiss this O.A. accordingly. However, there shall be no order as to cost.

*lch*  
28/10/03

(M.R. MOHANTY)  
MEMBER (JUDICIAL.)

*R. Som*

( B.N. SOM)  
VICE-CHAIRMAN

CAT/CTC  
Kalpeswar