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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 375 OF 1998.

Cuttack, this the 19<sup>th</sup> day of July, 2000.

SHRI BUDHU JAL.

...

APPLICANT.

VRS.

UNION OF INDIA & ORS.

...

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? 22-
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 2000

*G. Narasimham*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL) 19-7-2000

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 375 OF 1998.

Cuttack, this the 19<sup>th</sup> day of July, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

..

SHRI BUDHU JAL,  
Aged about 30 years,  
S/o. Sri Karan Jal,  
At: Santipada,  
PO/Dist: Bolangir,  
PIN-1.

...

... APPLICANT.

By legal practitioner; M/s. P. V. Ramdas,  
P. V. B. Rao,  
Advocates.

- VRS. -

1. Union of India represented through its  
Chief General Manager, Telecom, Orissa Circle,  
Bhubaneswar-1.
2. Director (Telecom.),  
At/Po/Dist: Sambalpur,  
Pin:-1.
3. Telecom District Engineer,  
At/Po/Dist: Bolangir.
4. Sri S. P. Panda,
5. Sri Sanatan Bariha,
6. Sri Upendra Bhoi,
7. Sri R. K. Naik,
8. Sri A. C. Jena,
9. Sri S. K. Badi,
10. Sri M. V. Mishra,
11. Sri J. N. Mishra, (Nos. 4 to 11 are Telecom Office  
Assistants, Office of the Telecom  
District Engineer, At/Po/Dist:  
Bolangir, Pin-1.

..... Respondents.

By legal practitioner: Mr.S.B.Jena, Additional  
Standing Counsel

Mr. Ashok Mohanty  
Mr. T. Rath-R-5.

....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant Budhu Jal, who joined as Telecom Office Assistant in the year 1991 at Bolangir under Telecom District Engineer, Res.No. 3 has been transferred to Bhawanipatna by order dated 15.5.1998 under Annexure-6. He challenges this order of transfer on the ground that as per the policy decision and in view of his seniority over Respondents 4 to 11, he should not have been transferred to Bhawanipatna, Telecom District which was bifurcated from Bolangir Telecom District in CMT Orissa letter dated 4.2.1998 when the Respondents have not been transferred to Bhawanipatna Telecom District.

2. The case of the applicant is that Telecom District Engineer prepared a gradation list on 17.1.1997 showing the seniority of personnels in the post of Telecom Office Assistants and in that gradation list at Annexure-3, applicant appears above Respondents 4 to 11. This seniority list under Annexure-3 is the same as gradation list dated 26.8.1993 and 25.5.1995. In all these three gradation lists, name of the applicant has been shown above Respondents 4 to 11. However, the Telecom District Engineer in order dated 19.3.98 had altered the earlier gradation list and prepared a new one under Annexure-4 showing the applicant below Respondents 4 to 11. This alteration of the gradation list has brought

substantial prejudice to the Applicant inasmuch as on the basis of this gradation list the applicant has been transferred to Bhawanipatna, because persons from the bottom were picked up as per the policy decision for transfer to Bhawanipatna and while the seniors in the gradation list have been retained at Bolangir. Representation of the applicant under Annexure-5 in this connection did not yield any result. Hence this application praying for restoration of the earlier gradation list under Annexure-3 after quashing of the gradation list under Annexure-4; for declaration that the applicant is senior to Respondents 4 to 11 and for further direction to Respondent No. 3 to work out the transfer after correction of the gradation list and alternatively to quash his order of transfer to Bhawanipatna.

3. Departmental Respondents in their counter denied that the applicant was shown as senior in the earlier gradation list. According to them the gradation list dated 17.1.1997, under annexure-3 was a provision gradation list inviting objections from the concerned employees. In the OM dated 4.11.92 (Annexure-R/2) of the Govt. of India, in the Department of Personnel and Training it has been provided that gradation list has to be prepared taking seniority in the position of the candidates in order of merit indicated at the time of initial appointment. Respondents 5 to 8 were appointed against 1989 and 1990 reserved vacancies consequent upon their selection <sup>on</sup> ~~for~~ promotion to the cadre of Telecom Office Assistant, <sup>on</sup> review of the Departmental examination held on 6/7-10-1990 and as such they have been ranked senior to applicant in the corrected gradation list

under Annexure-4. Respondents, 4, 9, 10 and 11 secured higher marks in the direct recruitment of the year 1991 than the applicant and as such, they are shown senior to the applicant in order of merit. Applicant was promoted to the Grade of Sr. Telecom Office Assistant and his position in the gradation list of Senior T.O.A. was fixed at Sl.No.19. Consequent upon bifurcation of the Bolangir Telecom District, Bhawanipatna Telecom District was created and the junior most officials from the Sr. TOA grade has been transferred to Bhawanipatna Telecom District, as per letter dated 24.3.1998 under Annexure-R/4 .

4. Respondents 5, 6, and 7 filed separate counter supporting the stand of the Department and claiming their seniority over the applicant. Other Respondents though duly noticed, they neither entered appearance nor filed counter.

No rejoinder filed.

5. We have heard Mr. P. V. Ramdas learned counsel for the applicant, Mr. S. B. Jena, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents and Mr. T. Rath, learned counsel appearing for private Respondents entering appearance and also perused the records.

6. After conclusion of the argument, with the permission of the Tribunal, the Department filed letter dated 7.3.2000 addressed to Shri Jena, learned Additional Standing Counsel containing the marks obtained by applicant vis-a-vis the private Respondents in the Recruitment.

7. It is not in dispute that Bhawanipatna and Bolangir were <sup>under</sup> ~~not~~ one telecom district, upto the year 1993 when

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a separate Bhawanipatna Telecom District was created and bifurcated from Bolangir Telecom District. It is also not in dispute that as per the policy decision, the juniormost of the seniority list are picked up and transferred to Bhawanipatna Telecom District. It is also not in dispute that while the private Respondents were retained in Bolangir Telecom District, the applicant was transferred to Bhawanipatna Telecom District.

8. If the applicant is senior to Private Respondents 4 to 11, then his transfer to Bhawanipatna Telecom District being not according to policy decision of the Govt. may need interference. Hence the main point for consideration is whether the applicant is senior to the private Respondents 4 to 11.

9. Annexure-3 dated 17.1.1997 i.e. the Gradation list of TDA and Stenographers as on 1.7.1996 as the language therein indicates is a provisional seniority list because it has been published for wide circulation among the staff concerned with instruction that complaints if any, from the officials regarding their position, community, date of birth, date of entry and so on should be received by 13.2.1997, positively. Thereafter under Annexure-4, dated 19.3.1998 corrigendum gradation list was circulated for correction if any, and in that list the applicant is shown below the Private Respondents 4 to 11. It is true that in para-4(5) of the O.A. the applicant pleaded that the seniority as mentioned in the gradation list dated 17.1.1997 is the same as the gradation list dated 26.8.1993 and 25.5.1995 but the Department in their

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counter denied the same. Applicant had not filed copies of such gradation list dated 26.3.1993 or gradation list dated 25.5.95. Hence, in the absence of such gradation lists, we are not inclined to accept the version of the applicant. Even assuming the applicant was shown as senior to the Respondents 4 to 11 in such gradation list it would not mean that the Department are estopped from altering the seniority of applicant on the basis of guidelines in Annexure-R/2. As earlier stated the gradation list dated 17.1.1997 is a provisional gradation list and not final one.

10. Annexure 2 the OM dated 4.11.1992 of the Ministry of Personnel, Public Grievance, Pensions is clear that seniority of a person regularly appointed to a post according to Rules would be determined by the order of merit indicated at the time of initial appointment and not according to the date of his confirmation. As the pleadings reveal that the applicant alongwith Respondents 4, 9, 10 and 11 appeared in the Recruitment held in the year 1990 as outside candidates. The pleadings in the counter reveal that these Respondents secured higher marks than the applicant in that recruitment had not been denied through any rejoinder. Even Department letter dated 7.3.2000 addressed to the Ld. Addl. Standing Counsel and filed after conclusion of the argument reveals that while the applicant's position in the order of merit was 24, the Private Respondents are above him in the merit list with higher percentage of marks. In view of this guidelines issued by the Ministry, Respondents 4, 9, 10 and 11 being above in the merit list than the applicant are senior to the applicant. It further reveals that the Respondents 5 to 8 were promoted and appointed as against 1989 and 1990 resultant vacancies on review of the Departmental Examination held in October, 1990. Thus averment in the counter has not been denied through any rejoinder. Hence Respondents 5 to 8

can not be junior to the applicant.

11. In view of our discussions made above, we are of the considered view that the private Respondents 4 to 11 are senior to the applicant and as such the applicant is not entitled to any of the reliefs claimed in this Original Application.

12. In the result, the Original Application is dismissed but in the circumstances without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*17.7.2000*

*19.7.2000*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

KNM/CM.