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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 393, 396 AND 397 OF 1998
Cuttack, this the 28th day of October, 1999

Raj Kishore Panda and others Applicants

Vrs.

Union of India and 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? No

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICECHAIRMAN

2.10.99

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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In OA 393/98

Raj Kishore Panda, aged about 31 years, son of late Prahallad Panda, resident of village/PO-Kakarudrapur, P.S-Balianta, District-Khurda

...Applicant

Vrs.

1. Director General, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Orissa Circle, Bhubaneswar.
3. Chief General Manager, T & D Circle, Sanchar Vikash Bhawan, Residency Road, Jabalpur-482 001.
4. General Manager, Telecom District, Door Sanchar Bhawan, Bhubaneswar.
5. Divisional Engineer, Telecom (A/T) T & D Circle, Bhubaneswar-7, District-Khurda.

...Respondents

In OA 396/98

Sibaprasad Samantasinghar, aged about 32 years, son of Sridhar Jena, resident of Village/PO-Naharkanta, P.S.-Mancheswar, District-Khurda.

.....Applicant

Vrs.

1. Director General, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Orissa Circle, Bhubaneswar.
3. Chief General Manager, Eastern Telecom Project, Raja Subudhi Mallik Road, Calcutta.
4. Director, Microwave Project, Plot No. 83, Sahidnagar, Bhubaneswar-7, District-Khurda.
5. General Manager, Telecom District, Door Sanchar Bhawan, Bhubaneswar, District-Khurda.

....Respondents.

In OA 397/98

Arun Kumar Pandey, aged about 31 years, son of Ramachandra Pandey, P.K.Jena Colony, At/PO-Badagarh, Bhubaneswar-18, Dist. Khurda.... Applicant

Vrs.

1. Director General, Department of Telecom, Sanchar Bhawan, New Delhi.

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2. Chief General Manager, Telecom, Orissa Circle, Bhubaneswar.
3. General Manager, Telecom District, Door Sanchar Bhawan, Bhubaneswar Respondents

Advocates for applicant - M/s KC Kanungo
S. Behera

Advocate for respondents - Mr.S.B.Jena
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These three matters have been heard separately. But as the three applicants in these cases are almost similarly situated and the reliefs asked for are also the same and the averments of both sides are also on same lines, one order will govern these three cases. For the purpose of considering these applications, facts of OA No. 393 of 1998 are being referred to.

2. Applicant in OA No. 393 of 1998 was engaged as Motor Driver on casual basis under the respondents against a leave vacancy from 10.12.1991 to 23.2.1991 and he continues to be engaged as such on casual basis till date in the office of Divisional Engineer, Telecom(A/T), T & D Circle, Bhubaneswar. The applicant also possesses licence for driving heavy vehicles and has eligibility to be considered for appointment to the post of Motor Driver. While he was working as Motor Driver on casual basis, respondent no.4 notified the Employment Exchange for recruitment of Motor Drivers and the applicant's name was sponsored by the Employment Exchange. He was accordingly called to an interview and test after which a select list was drawn up along with a waiting list. This letter dated 10.3.1998 is at Annexure-1 in which the applicant's name is at serial no.1 of the list of persons came in the waiting list in

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1991 Motor Driver Recruitment. It has to be noted at this stage that the person whose name appears against serial no.3 in the waiting list is the applicant in OA No. 396/98 and the person against serial no.2 is the applicant in OA No.397/98. After this, a decision was taken to engage Motor Drivers on casual basis from the approved select list and accordingly the applicant got engaged as Motor Driver on casual basis from 4.3.1991 and continued for one month and 12 days after which he was disengaged. It is further stated that Deputy General Manager, Telecom Circle, in his letter dated 9.5.1991 at Annexure-3 intimated that the waiting list will be current only till announcement ^{of the} / next recruitment. The applicant has stated that Recruitment Rules for Motor Drivers provide for two streams of recruitment; 50% from departmental candidates who are in Class IV posts working in the Department or in Class III posts with pay scale less than that of the Motor Drivers. The other 50% is for outside candidates, i.e., candidates from open market along with whom the Casual Motor Drivers having eligibility should be considered and given preference. The applicant has stated that respondent no.4 made requisition to Employment Exchange for conducting interview for selection of Motor Drivers on 15.1.1992 and as the applicant was the Employment Exchange sponsored candidate, he was issued with call letter at Annexure-4 to appear at the interview and test. But this was later on cancelled without any reason. The postponement letter is at Annexure-5. Again a notification was made on 15.2.1993 (Annexure-6) for recruitment of Drivers. The applicant was again called in letter dated 20.4.1993 at

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Annexure-7. But again the interview was cancelled in the letter at Annexure-8. The applicant has further stated that in the DPC meeting held on 3.5.1993 two persons Laxmi Narayan Barad and Udayanath Mishra who had joined the Department as Casual Drivers on 10.5.1993 much after the applicant was selected. It is stated that according to Annexure-1, these two persons were selected as outsiders because of the judgment of Central Administrative Tribunal. The applicant has stated that he had approached the Tribunal earlier in OA No.232 of 1993 which was disposed of along with several other OAs in order dated 23.6.1994. It is necessary to note at this stage that the applicant in OA No. 396 of 1998 had approached the Tribunal in OA No.230 of 1993 and the applicant in OA No. 397 of 1998 had approached the Tribunal in OA No.236 of 1993. These three O.As. along with three other O.As. were disposed of in order dated 23.6.1994 in which the Tribunal directed that as the applicants have rendered service to the Department, their cases should be considered sympathetically along with others in respect of existing vacancies and in respect of vacancies which would arise in future. It was also indicated that weightage should be given to the experience gained by the applicant. Thereafter the petitioner had submitted representations but without any result. The applicant has also enclosed the orders of the Tribunals in OA Nos. 312 of 1990 and 311 of 1992 filed by Laxmi Narayan Barad and Udayanath Mishra. It is stated that on the basis of judgments of the Tribunal in these two cases, these two persons were considered and given

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appointment. The applicant has further stated that there are existing vacancies and therefore he has prayed for a direction to the respondents to allow the applicant to appear in the ensuing interview/test for selection for the post of Driver along with others in view of his experience and eligibility and he has also prayed for a direction to the respondents to condone the overage of the applicant in view of the facts and circumstances of the case and not to insist on the applicant to get his name sponsored through the Employment Exchange.

3. The applicants in OA Nos. 396 and 397 of 1998 have made similar averments and asked for same reliefs. The only difference is that the applicant in OA No. 396 of 1998, one S.P.Samanta Singhar has stated that he is still continuing as a Casual Motor Driver.

4. The respondents in these three cases have filed identical counters. In their counter in OA No.393 of 1998 the respondents have stated that the applicant was picked up from open market without any test prescribed in Recruitment Rules. They have also referred to the order of the Tribunal in OA No.232 of 1993 for considering the candidature of the applicant along with others for existing vacancies giving due weightage to his experience. The respondents have stated that as no recruitment of outsiders has been conducted due to ban order, the applicant's case could not be considered. The respondents have further stated that the applicant was inadvertently called to the interview earlier because those recruitments were meant exclusively for departmental candidates and the applicant was an

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outsider. They have also stated that the case of the applicant has already been settled by the Tribunal in the earlier OA and on the same grounds the applicant cannot agitate the same matter once again.

5. The applicant in OA No. 393 of 1998 has filed rejoinder in which he has reiterated his earlier prayer.

6. The counters filed by the respondents and the rejoinders filed by the applicants in OA Nos. 396 and 397 of 1998 are also on the similar lines.

7. We have heard Shri K.C.Kanungo, the learned counsel for the petitioners and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused the records.

8. The first prayer of the applicants is for a direction to the respondents to consider their candidature along with fresh outsiders by giving weightage to their experience as also by condoning their overage, if any. For the purpose of considering this prayer it is not necessary to go into too many facts of the cases. It is only necessary to note that the respondents in all these three cases have enclosed along with their counter at Annexure-R/4 a letter from Assistant General Manager S&A), office of Chief General Manater, Telecom, Orissa Circle, Bhubaneswar, to the Department of Telecom regarding recruitment of Motor Driver. The relevant portion of this letter is quoted below:

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"As per recruitment rules for Motor Drivers, 50% of vacancies are required to be filled up from amongst the departmental officials and rest 50% by RM/TSM i.e., no post is to be filled up from open market. In order to

maintain the prescribed ceiling limit, all out efforts have been made to recruit motor drivers from departmental eligible groups. But no eligible officials are available in the circle as on date.

There has been a complete ban for the engagement of casual labourers after 31.3.85. Engagement of casual motor drivers on contract basis is not also becoming feasible in most of the cases.

In view of the above exigent circumstances, it is therefore requested to kindly permit for recruitment of some motor drivers from open market who have got Hon'ble CAT's direction that "sympathetic view should be taken over the applicants as they have rendered service to the department for a good bit of time. All these cases be considered sympathetically along with others in respect of vacancies (if any) or in respect of vacancies which would arise in future."

From the above it appears that the office of Chief General Manater, Telecom, Orissa Circle, Bhubaneswar, has moved the Department of Telecom to permit them to recruit some Motor Drivers from the open market who have got the direction of Central Administrative Tribunal for consideration of their cases. It is submitted by the learned counsel for the petitioners that in pursuance of this proposal, the respondents are going to conduct selection/recruitment for the post of Motor Driver from open market and direction should be issued to consider the candidature of these three applicants in such selection along with other candidates. From the extract of the above letter at Annexure-R/4 it is clear that the respondents themselves are going to consider the candidature of those casual Drivers in respect of whom direction from the Tribunal is already there. Such a direction exists in respect of these three applicants in the earlier decisions of the Tribunal, referred to above. In view of the above, this prayer of the applicants is disposed of with a direction to the respondents that

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while recruiting Drivers against outsider quota, they should consider the candidature of these three applicants in terms of the direction of the Tribunal in their order dated 23.6.1994 referred to earlier.

9. The second prayer of the applicants is that while considering the candidature, overage of the applicants, if any, should be condoned. Normally in such cases directions are issued to condone overage to the extent of service rendered by the candidate as casual worker. It has been strongly submitted by the learned counsel for the petitioners that these three applicants were kept in the waiting list in the recruitment taken up in 1991 and even though it was indicated at Annexure-3 of the O.A. that the waiting list shall remain valid till fresh recruitment is made and as no fresh recruitment has been made by the respondents against outsider quota as per their averments in the counter due to ban order, the entire period from 1991 till fresh selection should be computed for the purpose of giving age relaxation. In these cases from Annexure-1 it appears that these three applicants were put in the waiting list in 1991 Motor Drivers Recruitment Examination. The respondents have also averred that after the direction of the Central Administrative Tribunal to consider their candidature along with others at the time of fresh recruitment against outsider quota, no such recruitment against outsider quota has taken place. It also appears from Annexure-3 that Deputy General Manager (General), Orissa Telecom Circle, has informed All India Telecom Employees' Union (Class III), Orissa Circle, in his letter dated

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9.5.1991 that the waiting list will be current only till announcement of the next recruitment. As according to the respondents themselves no recruitment against outsider quota has taken place thereafter, it is only fair that these three applicants are allowed age relaxation to the extent necessary subject to the maximum limit of the date of putting their names in the waiting list in 1991 till the date of next selection. This prayer of the applicants is disposed of accordingly.

10. The last prayer of the applicants is for a direction to the respondents that they should not be asked to get their names sponsored through Employment Exchange once again. As the applicants had once been put in the waiting list and they have been engaged for sometime under the respondents and one of them is still continuing, according to him, as Casual Motor Driver, they would have lost their position in the Employment Exchange queue. In view of this, this prayer of the applicants appears to be eminently reasonable. In view of this, it is also directed that for considering the candidature of the applicants along with fresh candidates at the next recruitment of Drivers under outsider quota, the respondents should not insist on these three applicants to get their names sponsored from the Employment Exchange.

11. In the result, therefore, these Original Applications are allowed in terms of the observation and direction given above, but without any order as to costs.

Sd/-G. Narasimham
Member (Jud)

Sd/-Somnath Som,
Vice-Chairman