

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BANCH: CUTTACK

ORIGINAL APPLICATION NO. 459 OF 1998
Cuttack this the 5th day of January/2004

Bhikar Kumbh

...

Applicant(s)

VERSUS

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *No*
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not ? *No*

See
05/07/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Nh
✓ B.N. SOR
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 459 OF 1998
Cuttack this the 5th day of January/2004

CORAM:

THE HON'BLE SHRI B.N. SON, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

• • •

Bhika Kumbhar, aged about 30 years,
Son of Late Rabi Kumbhar, Telecom Office Assistant
Office of Telecom District Engineer,
Bhawani patna - 766 001

... **Applicant**

By the Advocates

M/s. Basudeb Pujari
T. Parida
A. K. Jena

—VERSUS—

1. Union of India represented by the Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar-751001
2. Telecom District Engineer, Bolangir-767001
3. Telecom District Engineer, Bhawanipatna-766001
4. S.P. Panda
5. Sanatan Bariha
6. Upendra Bhei
7. R.K. Naik
8. A.C. Jena
9. S.K. Badi
10. M.V. Mishra
11. J.M. Mishra

Nos. 4 to 11 are working as Telecom Office Assistants, Office of Telecom District Engineer, Bolangir-767001

1

Respondents

By the Advocates

Mr. B. Dash, A.S.C.

O R D E R

MR. B. N. SOM, VICE CHAIRMAN: In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant (Bhika Kumbhar) while assailing the decision of Respondent No. 2 in showing him junior to Respondent Nos. 4 to 11 in the gradation list of Telecom Office Assistants(G) (in short T.O.A) circulated under Annexure-3 dated 19.3.1998 and as a consequence thereof his transfer from Belangir Telecom District to Bhawanipatna under Annexure-5 dated 15.5.1998, has prayed for quashing orders under these two impugned Annexures-3 and 5 with direction to Respondents-Department to post him at Belangir.

2. The case of the applicant is that in 1990 having been successful in the selection along with 14 others, as per instructions of the Department he reported to the Telecom Training Centre, Bhubaneswar and on successful completion of the training he was posted in the cadre of T.O.A. in the Office of Telecom District Engineer(Bolangir) (Respondent No.2). It has been submitted that the Res. No.2 on 26.8.1993, 25.5.1995 and 17.1.1997 circulated gradation lists of the T.O.As in his office wherein Respondent Nos.4 to 11 were shown junior to him. However, on 19.3.1998, Respondent No.2 issued a corrigendum to the gradation list of T.O.As putting the applicant below Respondent Nos. 4 to 11 (Annexure-3). The applicant represented against this gradation list (corregendum) because he was arbitrarily transferred to the Office of the District Telecom Engineer, Bhawanipatna on bifurcation of Belangir Telecom District, on the basis of this gradation list.

The plea of the applicant is that seniority of an employee regularly appointed to a post should be determined in order of merit indicated at the time of initial appointment. In support of this, he relied on an order issued by the Chief General Manager, Telecommunications, Orissa vide Annexure-6 dated 26.5.1998. He has, therefore, approached the Tribunal to direct the Respondents-Department to draw up the gradation list in terms of the seniority principles as contained in letter of C.G.M.T. referred to above.

2. The Respondents-Department have filed a detailed counter opposing the prayer of the applicant. Private Respondent Nos. 4 to 11 have neither appeared nor filed any counter.

3. In their counter filed the Respondents-Department have submitted that gradation list/under Annexure-2 dated 17/28.01.1997 was provisional and therefore the same was subject to correction. After receiving representations from the affected employees to the published provisional gradation list and after carefully considering each and every representation, the Respondents-Department recast the gradation list in order of merit indicated at the time of initial appointments, as per the Govt. of India instructions dated 4.11.1992. They have further clarified that Respondent Nos. 5 to 8 had been appointed against reserved vacancies of 1989-90 (Annexure-R/1). The C.G.M.T., Orissa vide its letter dated 1.8.1991(Annexure-R/1) instructed that the candidates who have been declared qualified and selected for promotion to the cadre of TDA on review of their results in the examination held on

6/7.10.1990 against the unfilled SC/ST vacancies of departmental quota of the respective units, their inter se seniority with respect to other departmental candidates selected for promotion to the cadre of T0A vide letter dated 6.3.1991 would be fixed according to the relevant rules on the subject. It is the case of the Respondents-Department that consequent upon the selection of these private respondents under reserved quota vacancies, as referred to above, their seniority position was put as due to them on their basis of their merit. They have reiterated that the seniority list was recast on the basis of merit indicated at the time of initial appointment and according to the year of vacancies as well as quota principle. However, in fixing inter se seniority of the T0As, the principle of quota between the promotees and direct recruits had also been kept in view. They have finally submitted that the Respondent Nos. 5 to 8 were shown senior to the applicant as they were promoted against the reserved quota of the year 1989-90 and Respondent Nos. 4, 9, 10 and 11 were shown senior to the applicant as they were found more meritorious than the applicant on the basis of marks secured in the examination at the time of their initial appointments.

4. We have heard Shri B.Pujari, the learned counsel for the applicant and Shri S.Bhhera, learned Addl. Standing Counsel appearing on behalf of the Respondent Nos. 1 to 3) and also perused the materials available on record. Having regard to the submissions made by the Respondents-Department in the counter as

well as the submissions made during oral hearing, we are satisfied that the gradation list of TOAs that has been recast under Annexure-3 dated 19.3.1998 was prepared to the principles of reservation as well as quota for determining inter se seniority between the promotees and direct recruits. Respondent Nos. 5 to 8, who passed the departmental competitive examination in the year 1991 along with the applicant were placed higher because of "quota" principle in promotion, and the Respondent Nos. 4 and 9 to 11, because they obtained higher merit than the applicant. As we are of the view that the seniority/gradation list of erstwhile Bolangir Telecom District is found to have been determined properly in terms of the Govt. of India instruction in this regard, we see no justifiable reason to interfere in the matter.

5. In view of foregoing discussions, we hold that this application deserves no consideration and therefore, we reject the same, leaving the parties to bear their own costs.

*Yadav
05/07/04*
(M.R. MOHANTY)
MEMBER (JUDICIAL)

BJY

N.S.
(B.N. SORI)
VICE-CHAIRMAN