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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.538 OF 1998
Cuttack this the 19th day of July/2000

Jayapal Singh Dharua ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2000

19.7.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Cuttack this the 19thday of July/2000

CORAM:

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

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Sri Jayapal Singh Dharua,
aged about 33 years,
S/o. Debadhi Singh Dharua
Senior Telecom Office Assistant (G)
Office of the Telecom District Engineer
At/PO: Bhawanipatna
Dist : Kalahandi

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Applicant

By the Advocates

M/s.P.V.Ramdas
P.V.Balakrishna

-VERSUS-

1. Union of India represented by the Chief General Manager, Telecom, Orissa Circle, Bhubaneswar-751001
2. Director, Telecom., At/PO/Dist: Sambalpur PIN 768001
3. Telecom District Engineer, At/PO/Dist: Bolangir PIN - 767001
4. Telecom District Engineer, At/PO: Bhawanipatna Dist : Kalahandi PIN - 766001
5. Sri R.K.Naik
6. Sri A.C.Jena
7. Sri S.K.Badi
8. Sri M.V.Misra
9. Sri J.N.Misra
10. Sri C.Kumbhar
11. Sri B.Suna

Nos. 5 to 11 are Telecom Office Assistants, Office of Telecom District Engineer, At/PO/Dist: Bolangir

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Respondents

By the Advocates

Mr .A.K.Bose
Sr .Standing Counsel
(Res. 1 to4)

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O R D E R

MR .G .NARASIMHAM, MEMBER (JUDICIAL): Applicant, Jayapal Singh Dharua, a Senior Telecom Office Assistant(G) prays for quashing of the order of transfer dated 15.5.1998 from Bolangir Telecom District to Bhawanipatna Telecom District by declaring that he is senior to Private Res. 5 to 11 by quashing the Gradation List dated 9.3.1998 (Annexure-5).

2. Earlier Bolangir Telecom District used to cover the areas at present ~~now~~ under Bhawanipatna Telecom District. In the year 1998 there was bifurcation and an independent Telecom District having headquarters at Bhawanipatna was formed. As per the policy decision, juniors from the bottom of the seniority list will be transferred to newly created Telecom District. In this process on the basis of Gradation List (Annexure-5) dated 19.3.1998, the applicant has been transferred to Bhawanipatna Telecom District.

3. The case of the applicant is that he joined in the post of Telecom Office Assistant under T.D.E.,^{Res.3} Bolangir on 29.10.1991. In the Gradation List dated 17.1.1997 (Annexure-4) he was shown Sr. to Res. 5 to 11. This Gradation list dated 17.1.97 is the same as the Gradation List dated 26.8.1993 and 25.5.1995. In all these lists the applicant is shown above Res. 5 to 11. However, in the gradation list dated 19.3.1998 (Annexure-5) he has been shown below to Res. 5 to 11. As required in order of gradation list under Annexure-5 inviting complaints regarding seniority etc., the applicant represented on 25.3.1998 under Annexure-6 seeking correction, but this was turned down. The seniority of Telecom Office Assistant is based upon the length of service and basing on this criterion gradation lists of the years 1993, 1995 and 1997 have been prepared. Hence alteration of his seniority in the gradation list in 1998 is not according

to law and basing on this incorrect gradation list his transfer from Bolangir to Bhawanipatna was ordered. Further in circular dated 26.5.1998 (Annexure-8) of the Chief General Manager, Telecom., Orissa, seniority of persons regularly appointed to a post would be determined by the order on merit indicated at the time of ^{and} initial appointment/in order of merit in such initial appointment the applicant stands above to Res. 5 to 11.

4. In the counter the stand of the Department is that gradation list (Annexure-4) was provisional in nature and after publication of this provisional gradation list many representations were received seeking correction of the gradation list and all these representations were sent to Respondent No.1 vide letter dated 26.3.1998 and the C.G.M.T. in his order dated 26.5.1998 directed to recast the gradation list in order of merit indicated at the time of initial appointment as per the Govt. of India, Department of Personnel & Training O.M. dated 4.11.1992 (Annexure-R/2). Accordingly in the recruitment concerning the initial appointments while the applicant secured only 51.4% of marks, Res. 7 to 11 secured 77.6%, 77.1%, 76.7%, 63% and 61.7% respectively. Respondents 5 and 6 being promotees for the quota vacancies of the year 1989-90 were shown senior to the applicant and Res. 7 to 11. In fact the applicant has been promoted to Senior Telecom Office Assistant(G) w.e.f. 22.12.1997 on completion of training and in that capacity he has been transferred to Bhawanipatna Telecom District. On these averments the Department pray for dismissal of this Original Application.

5. No rejoinder filed.

6. We have heard Shri P.V.Ramdas, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel

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appearing for the Departmental respondents. Also perused the records.

7. It is not in dispute that the applicant and Res. 7 to 11 faced the same recruitment in the year 1990 and joined as Telecom Office Assistants in the year 1991. It is the common case of both sides that the seniority at the time of initial appointment is guided by the position of a candidate in the merit list in the concerned ^{recruitment} Department. The specific averment in the counter ~~is~~ that in that recruitment applicant secured lesser percentage of marks than Res. 7 to 11, have not been refuted by the applicant through any rejoinder. Hence it is presumed that the applicant's position in the merit list of that recruitment is below Res. 7 to 11. Hence even assuming that his position was shown above these respondents in the gradation lists dated 26.8.1993 and 25.3.1995, it cannot be said that there is no legal difficulty to alter the same. The seniority list dated 17.1.1997 at Annexure-4 is a provisional seniority list inasmuch as it has been published for wide circulations amongst the staff concerned so that complaints, if any, could be received from the officials regarding their positions, community, date of entry into service and so on by 13.2.1997. Hence it cannot be said that Annexure-4 is a final gradation list. In fact on the basis of the representations received pursuant to Annexures-4 and 5, the gradation list has been published as a Corrigendum, still inviting complaints regarding seniority and so on for further action.

Since the applicant was below Res. 7 to 11 in the recruitment for the initial appointment, he cannot claim seniority over them. Res. 5 and 6 are promotees. Annexure-R/1

dated 15.8.1991 is the list of candidates qualified in the Departmental Competitive Examination for promotion from departmental lower grade officials to the cadre of Telecom Office Assistants. In this list the candidates qualified and selected for promotion, Res.5(Rajkishore Naik) belonging to Scheduled Caste has been shown to have been promoted against the vacancy of the year 1989 and Res.6, Abhaya Ch.Jena belonging to Scheduled Caste as against the vacancy of the year 1990. These promotions have been made much prior to joining of the applicant as Telecom Office Assistant w.e.f. 29.10.1991. Hence it is meaningless for the applicant to claim seniority over these two private respondents.

5 For the reasons discussed above we have no hesitation to say that the applicant cannot be declared senior to private respondents 5 to 11 in the cadre of Telecom Office Assistant. Hence his prayer to quash the gradation list cannot be acceded to. He being in the bottom of seniority list, as per the policy decision, his transfer from Bolangir to Bhawanipatna Telecom District does not suffer from any legal infirmity needing interference. In the result, we do not see any merit in this Original Application which is accordingly dismissed leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

14.7.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//