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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 561 OF 1998
Cuttack, this the 30th day of June, 2000

Bhruguram Mohapatra Applicant

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
(SOMNATH SOM)
VICE-CHAIRMAN
30.6.2000

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 561 OF 1998
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CORAM:

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

.....
Bhruguram Mohapatra, aged about 42 years, son of Sri Alekh Charan Mohapatra, at present working as Telecom Office Assistant in the office of the Telecom District Manager, Dhenkanal Applicant

Advocates for applicant - M/s G.Rath,
S.N.Misra
A.K.Panda
S.R.Mohanty
T.K.Prahraj

Vrs.

1. Union of India, represented by the Secretary, Department of Telecom, Sanchar Bhawan, New Delhi-110 001.
2. The Chief GeneralManager, Telecommunication, Orissa Circle, Bhubaneswar-751 001.
3. The Telecom District Manager, Dhenkanal.
4. Adikanda Nayak, Sr.Telcom Office Assistant, Office of the Telecom District Manager, Dhenkanal

..... Respondents

Advocates for respondents -Mr.B.K.Nayak
ACGSC
&
M/s S.K.Patnaik
U.C.Mohanty
for R-4.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quashing the order dated 13.7.1998 at Annexure-2 in which Adikanda Nayak (respondent no.4) has been placed above the applicant in the seniority list revised in the above order.

2. The applicant's case is that while working as Group-D in Sambalpur Telecom District he cleared the departmental examination for promotion to the cadre of Telecom Office Assistant on 11.12.1988. The applicant was transferred to Bolangir Telecom District which was formed by bifurcation of Sambalpur Telecom District. As there was no vacancy in the cadre of Telecom Office Assistant (TOA, for short) in Bolangir Telecom District he was transferred and posted with effect from 24.7.1989 as TOA in Dhenkanal Telecom District. The applicant has stated that he was promoted against the vacancies of departmental quota for the year 1988. According to him, respondent no.4 was initially selected as Telegraphist under Reserved Trained Pool (RTP) in Bhubaneswar Telegraph Division. He joined as RTP Telegraphist in Central Telegraph Office, Cuttack, in June 1984. Due to non-availability of vacancy in the cadre of Telegraphist he was offered a post of Telecom Office Assistant and after completion of training he was appointed as TOA against direct recruitment quota in Rourkela Telecom District with effect from 18.3.1989. In the same year two other persons Duryodhan Nayak and Binay Kumar Nayak who were also appointed as RTP Telegraphists were offered appointment as TOA in Dhenkanal Telecom District and both of them joined on 20.3.1989. The applicant has stated that under Rule 32-E of P&T Manual where recruitment is made partly for departmental candidates and partly for outsiders, the departmental candidates should always rank senior to the latter. The applicant being a departmental promotee and Duryodhan Nayak

and Binay Kumar Nayak being appointed against

direct recruitment quota, the applicant is senior to both of them and in the gradation list for the year 1991 and for 1997 the applicant was senior to both Duryodhan Nayak and Binay Kumar Nayak. The applicant has stated that respondent no.4 was transferred from Rourkela Telecom District to Dhenkanal Telecom District on mutual transfer basis with one Mrutyunjay Nayak, a departmental promotee who joined in Dhenkanal Telecom District with effect from 4.10.1989, under Rule 38 of P&T Manual. According to the provisions laid down in Rule 38 an official on mutual transfer would occupy either the place vacated by the official with whom he has made the mutual transfer or the place which he would have occupied had he been originally recruited in the unit whichever is lower in order to safeguard the interests of the officials of the unit where he joins on mutual transfer. According to the applicant, Adhikanda Nayak (respondent no.4) having been appointed against direct recruitment ^{quota} of 1989 is junior to the applicant and accordingly he was shown as junior to him in the gradation list for 1991. He made a representation to declare him senior to the applicant, but such representation was rejected on 29.1.1996. Respondent no.4 filed OA No.63 of 1997 before the Tribunal and while the matter was pending, respondent no.3 illegally and irregularly revised the gradation list for the year 1991 declaring respondent no.4 as senior to the applicant in the impugned order dated 13.7.1998 at Annexure-2. In the context of the above facts the applicant has come up in this petition with the prayer referred to earlier.

3. Respondent no.4 in his counter has mentioned about his selection as RTP Telegraphist of Bhubaneswar Division in 1983, joining at Central Telegraph Office, Cuttack in June 1984 after training and his appointment and joining as Telecom Office Assistant in Rourkela Telecom District with effect from 18.3.1989. He has also stated that by way of mutual transfer with one Mrutyunjaya Nayak, who is senior to the applicant, he joined as TOA in Dhenkanal Telecom District on 4.10.1989. In the gradation list of TOA prepared in 1991 respondent no.4's seniority was shown erroneously. The seniority list was not communicated to him. After it came to his notice he represented, but his representation was overlooked on the plea of limitation forcing him to file OA No.63 of 1997. The applicant has stated that in this OA the present applicant was respondent no.5. While OA No.63 of 1997 was pending, Telecom District Manager, Dhenkanal revised the gradation list in the impugned order at Annexure-2. Accordingly, the Tribunal accepted the refixation of seniority and disposed of OA No. 63 of 1997 in order dated 10.11.1998 granting all consequential service benefits to applicant no.4, the applicant in that OA. Respondent no.4 has further contested the averment of the applicant and has stated that Dhenkanal Telecom District was not a newly created Division. According to him it is the oldest Telegraph Engineering organisation in Orissa Telecom Circle. Respondent no.4 has made averments with regard to applicant's work as Group-D official, his clearance of departmental examination on 11.12.1988, bifurcation of Sambalpur Division into two Divisions, and transfer of applicant to Bolangir Division

as Group-D official in 1989. He has also stated that while the applicant was working at Bolangir Division, he qualified in the examination held on 11.12.1988, but he could not be promoted in Bolangir Division or Sambalpur Division because of lack of vacancy. Accordingly, he was asked to give his willingness to be promoted against unfilled vacancy in Dhenkanal Telecom District. After successful completion of training the applicant was given appointment as TOA in the office of Dhenkanal. Telecom District Engineer, / Respondent no.4 has stated that he was selected as RTP candidate for 1983 recruitment year for appointment as Telegraph Assistant/Telegraphist in Bhubaneswar Division. In view of this, respondent no.4 has stated that he did not come against the direct recruitment quota for the year 1989. Respondent no.4 has made further averments with regard to the rules regarding fixation of seniority. These will be referred to at the time of considering the submissions of the learned counsel for both sides. Respondent no.4 has stated that by the impugned order at Annexure-2 his seniority has been rightly fixed above the applicant and therefore he has opposed the prayer of the applicant.

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4. The departmental respondents have admitted that the applicant cleared the departmental examination for TOA held on 11.12.1988 against the vacancies of departmental quota for the year 1988. They have, however, stated that seniority of direct recruits and promotees are not based on the rule that the promotees will always and enblock rank above the direct recruits. They have stated that seniority of the direct

recruits is based on merit list of selected candidates at the time of their initial selection and seniority of departmental promotees is based on merit list in the departmental examination. Interse seniority is based on the principe of P1, D1, P2, D2, P3,D3 and so on where "P" stands for promotee through departmental examination against departmental quota and "D" stands for direct recruit against direct recruitment quota. They have referred to the relevant circular dated 7.2.1986 at Annexure-R/1. The departmental respondents have indicated the details of vacancy position in both direct recruitment quota and departmental quota for the year 1988 and the candidates selected in that recruitment year according to merit. They have also enclosed the merit list of RTP candidates in the year 1983 who were selected for appointment as Telegraphist/Telegraph Assistant at Annexure-R/5. Departmental respondents have stated that RTP candidates recruited in the years 1983 and 1984 as Telegraphists/Telegraph Assistants could not be appointed as such due to non-availability of vacancies in the respective cadres. Accordingly, in Department of Telecommunications' letter dated 27.3.1987 at Annexure-R/4 they have been offered appointment as Telecom Office Assistant against the direct recruitment quota. The departmental respondents have stated that during the pendency of OA No. 63 of 1997 filed by respondent no.4, they have reviewed the matter and correctly refixed the seniority between the applicant and respondent no.4 in the order at Annexure-2. They have stated that the revised seniority at Annexure-2 has been

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fixed correctly and strictly in accordance with rules and therefore they have opposed the prayer of the applicant.

5. We have heard Shri S.Misra, the learned counsel for the petitioner, Shri B.K.Nayak, learned Additional Standing Counsel for the departmental respondents, and Shri U.C.Mohanty, the learned counsel for private respondent no.4, and have also perused the records. We have also perused the record of OA No.63 of 1997.

6. From the above pleadings of the parties it is clear that the basic facts of this case with regard to joining of the applicant and respondent no.4 in different posts are not in dispute. The applicant has claimed his seniority over respondent no.4 on several grounds and these are discussed below.

7. Firstly it has been urged by the learned counsel for the petitioner that the applicant is a promotee for the year 1988 and respondent no.4 is a direct recruit for the year 1989 and therefore respondent no.4 cannot be senior to the applicant. Departmental respondents have admitted that the applicant qualified in the departmental examination for appointment as TOA against 1988 vacancies. But so far as respondent no.4 is concerned, the departmental respondents have pointed out that he had qualified for the post of RTP Telegraphist/Telegraph Assistant in 1983-84 and could not be appointed because of absence of vacancies in the respective cadre. In Department of Telecommunication's order dated 27.3.1987 (Annexure-R/4) to the counter of departmental respondents, it has been

clearly laid down under paragraph (ii) that after filling up the vacancies with the available RTP staff of respective cadres, vacancies in which there are no RTP candidates, may be filled up by the RTP candidates from other cadres on divisional basis on combined seniority for all eligible staff. Accordingly, respondent no.4, who had cleared the examination for RTP Staff in 1983-84, was taken in against 1988 vacancies originally in Rourkela Telecom District from where he came on mutual transfer to Dhenkanal Telecom District and therefore he cannot be taken as a direct recruit appointed in 1989. This contention of the learned counsel for the petitioner is accordingly rejected.

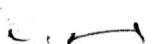
8. The second contention of the learned counsel for the petitioner is that under Rule 32-E of P&T Manual Vol.IV, copy of which is at Annexure-A/3, where recruitment is made through a competitive examination partly from departmental candidates and partly from outsiders, the departmental candidates should always rank senior to the latter. On that basis it has been stated by the applicant that even granting that recruitment of respondent no.4 was in respect of 1988 vacancy, then as a direct recruit he must rank below the applicant who is a promotee. This contention is without any merit because Rule 32-E clearly lays down that when the date of appointment of two persons in the cadre is the same, while fixing seniority between the two persons, the promotee will rank above the direct recruit. In other words, this principle would apply when promotee and direct recruit are appointed on the same day and there are no other rules to govern seniority between them. The

✓ *VS* departmental respondents have on the other hand pointed out that in accordance with the Department of Personnel & Training's circular dated 7.2.1986 at Annexure-R/2 the interse seniority amongst the promotees will be determined on the basis of their position in the merit list while clearing the departmental examination. Similarly the interse seniority of direct recruits is to be determined on the basis of their position in the recruitment test, i.e., in the merit list. As regards seniority between promotees and direct recruits, on the basis of this circular, it is to be determined on the principle of P1,D1, P2,D2,P3,D3 and so on. In view of this, the contention that as a promotee the applicant must rank above respondent no.4 who is a direct recruit is held to be without any merit and is rejected.

S. Jom. 9. The third contention of the learned counsel for the petitioner is that as respondent no.4 has come on mutual transfer with one Mrutyunjay Nayak, from Rourkela Telecom Division to Dhenkanal Division, according to rules, respondent no.4 would occupy the same position as occupied by Mrutyunjay Nayak or the position to which he would have been entitled had he been originally recruited in Dhenkanal Telecom District and not come on mutual transfer from Rourkela Telecom District. It is admitted that respondent no.4 came on mutual transfer with one Mrutyunjay Nayak who is a promotee. In the merit list of promotees Mrutyunjay Nayak is above the applicant. Therefore, if respondent no.4 has to occupy the position of Mrutyunjay Nayak, then naturally he will rank above the applicant. The next aspect is whether respondent no.4 would have occupied a

lower position than what has been given to him at Annexure-A/2 if he had been originally recruited in Dhenkanal Telecom District and not come on mutual transfer from Rourkela Telecom District. From the merit list of RTP candidates which has been enclosed by the departmental candidates at Annexure-R/5 it is seen that as an RTP candidate, respondent no.4's position is above Binay Kumar Nayak and therefore had respondent no.4 joined Dhenkanal Telecom District originally, then he would have got still higher position because on the principle of P1,D1,P2,D2, Mrutyunjay Nayak comes after Binay Kumar Nayak and respondent no.4 had occupied higher merit position than Binay Kumar Nayak. In view of this, it is clear that assigning respondent no.4 the position which has been occupied by Mrutyunjay Nayak who has admittedly occupied a higher position than the applicant in the departmental examination for the promotees, has been correctly done.

10. In the light of our above discussions, we hold that the Original Application is without any merit and the same is rejected. No costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
30.6.2000
VICE-CHAIRMAN