

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 625 OF 1998  
Cuttack, this the 8th day of August, 2001

Sri Dillip Kumar Mohanty ... Applicant

Vrs.

Union of India and another ... 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.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
18/8/2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 625 OF 1998  
Cuttack, this the 8th day of August, 2001

**CORAM:**

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

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Sri Dillip Kumar Mohanty, son of late Surendra Nath Mohanty, aged 46 years, residing at Qr.No.PTN-8, New P&T Colony, Sector-6, Rourkela-2, now working as Senior Telecom Office Assistant, Office of Telecom District Manager, Rourkela, District-Sundargarh

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Applicant

Advocate for applicant - Mr.S.K.Patnaik

Vrs.

1. Union of India, represented through Director General, Department of Telecommunications, Sanchar Bhawan, New Delhi-110 001.
2. Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar-1.

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Respondents

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

O R D E R  
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a declaration that his break in service from 28.5.1980 to 6.6.1980 is deemed to be condoned. The second prayer is for a direction to the respondents to promote the applicant to the rank of Telecom Office Assistant against the vacancy of 1981 or at least of 1982 above the direct recruits of that year and to grant all consequential service benefits and seniority.

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2. The case of the applicant is that while working as Cleaner in Telephone Exchange, Rourkela, from 28.7.1973 he participated in the pendown/tool down

strike from 28.5.1980 to 6.6.1980. This period was declared as dies non with break in service without entailing loss of past service towards pension and gratuity only. He submitted a representation to Chairman, Posts & Telegraph Board on 22.9.1980 (Annexure-2) regretting his participation in the strike causing inconvenience to general public and the Department and prayed for condonation of the above period which has been treated as dies non. Departmental Examination for promotion of lower grade officials to the cadre of Clerks in Subordinate Offices was scheduled to be held in February 1981. In letter dated 7.1.1981 (Annexure-3) General Manager, Telecom (respondent no.2) intimated DET, Rourkela that the applicant and four others of the office of D.E.T., Rourkela, have been provisionally permitted to sit for the examination provided they have expressed, in writing their apology and regret for participating in the strike. The applicant took the examination. In order dated 8.5.1981 (Annexure-4) results of other Divisions were notified along with the vacancies available. For Rourkela Engineering Division two vacancies were mentioned, one for General Category and the other for SC, and it was indicated that the results would be declared later. Ultimately, in memo dated 27.8.1981 at Annexure-5 three persons including the applicant were declared to have qualified. Of these, one belongs to ST category and of the other two, the applicant occupied second position. At that time, the departmental authorities held that there were no vacancies in Rourkela Engineering Division and option of the applicant was asked for getting absorbed in other Division. The applicant in his letter at Annexure-6 gave

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his option for working in Cuttack or Bhubaneswar Division. The first grievance of the applicant is that even though respondent no.2 wrote to DET, Rourkela, to intimate the names of the approved departmental candidates for training, it was wrongly reported in letter at Annexure-9 that there is no approved candidate in his office who is awaiting for training. The grievance of the applicant is that in order dated 3.11.1981 the representation of the officials for condoning the break in service was rejected. But the applicant came to know that after the power for condoning the break in service was delegated to the Head of Department in DG, P&T's circular dated 23.4.1983, the General Manager, ETR, Calcutta, condoned the break in service of six persons in the letter dated 25.4.1984 (Annexure-10). The applicant has stated that by refusing to condone the break in service in his case, he has been discriminated against. He filed a further representation on 12.5.1984 praying for condonation of break in service which was forwarded by DET, Rourkela, in his letter at Annexure-12. Ultimately, in letter dated 31.8.1984 the applicant and two others were sent for training and after completion of training he joined in the office of DET, Rourkela, as Telecom Office Assistant on 28.6.1985. The applicant's further grievance is that in exercise of the delegated power, Chief General Manager, Telecommunication, Orissa Circle, considering the cases of three employees whose names have been mentioned and who participated in the strike for the above days, condoned their break in service and it was ordered that they are deemed to have been promoted from the date their juniors

were promoted. They were also given interse seniority. On coming to know of this, the applicant filed representation for getting promotion in 1981 or 1982. The applicant has stated that large number of vacancies were available in Rourkela Division which were also reproted by DET, Rourkela, in his letter at Annexure-24. He filed further representations to Chief General Manager, Telecommunication, Orissa Circle, and Director General, P&T. Ultimately in order dated 27.2.1998 at Annexure-36, the Director General, Telecommunication, rejected the representation. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. It is not necessary to refer to the averments made bythe respondents in their counter as these will be taken note of while considering the prayers of the applicant.

4. The first prayer of the applicant is for a direction to the respondents to condone the break in service for the period from 28.5.1980 to 6.6.1980. In the order dated 3.11.1981 of DG, P&T, representations received from a number of officials for condoning the break ins ervice for the above period were rejected. The applicant's grievance is that after the power to condone the break in service was delegated to Heads of Departments, General Manager, ETR, Calcutta, had condoned break in service of six officials in the order at Annexure-10. Chief General "anayer, Telecommunication, Orissa, in his order dated 4.10.1989 (Annexure-15) has effectively condoned the break in service of three other

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persons mentioned in this Annexure for the period of their participation in the illegal strike. The respondents in their counter have stated that the case for condonation of break in service is considered on merit of the case on individual representation taking the facts and circumstances as well as the service record of the person into account. It is stated that the case of the applicant has been rejected on due consideration taking into account his relevant service record. We are unable to accept the above contention because if the case of the applicant is different from the case of three other persons mentioned at Annexure-15, it was incumbent on the part of the respondents to indicate how the case of the applicant is different from the case of the three other persons mentioned at Annexure-15. The three persons mentioned at Annexure-15 also participated in the pen down/tool down strike during the period aforementioned. In the order at Annexure-15 it has not been specifically mentioned that the break in service of these persons has been condoned. But even then they have been allowed promotion, seniority and notional fixation of pay. On the basis of a bland assertion of the respondents that each case is decided on merits, it is not possible to reject the contention of the applicant that he has been discriminated against. In view of this, we dispose of this prayer of the applicant with a direction to respondent no.2 to consider if the case of the applicant is exactly similar to the cases of three persons, namely, S/Shri Laxmidhar Sahoo, Kunja Bihari Purty and Sudhir Kumar Basu, mentioned at Annexure-15 with regard to their participation in the strike and their expression of regret and consider the prayer for condonation of break in service of the applicant. This exercise should

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be completed within a period of 90 days from the date of receipt of copy of this order.

5. The second prayer of the applicant is for a direction to the respondents to promote him against the vacancies of 1981 or 1982 above the direct recruits of that year. We find that the applicant is not entitled to this relief for the following reasons. The applicant along with four others took the departmental examination in February 1981. In the order at Annexure-4 in which results were published, the result of Rourkela Engineering Division, where the applicant was working, was not published. But like all other Divisions, vacancies available were mentioned and according to this there were two vacancies in Rourkela Engineering Division, one for GC and the other for SC. The respondents have stated that this notification of two vacancies for Rourkela Division is erroneous. The applicant, on the other hand, has stated that there were more vacancies. In support of his contention that there were more vacancies, the applicant has relied on the letter dated 10.3.1992 at Annexure-24. Even granting for the sake of argument that two vacancies were available in Rourkela Engineering Division, as mentioned at Annexure-4, as per the results published at Annexure-5, one ST candidate and amongst the other two candidates, the applicant occupied the second position. Thus, even if it is taken for the sake of argument that there were two vacancies, the applicant could not have been given promotion against the single General Category vacancy because there was another person Tribeni Kr. Sahu above

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him. The stand of the respondents that there was no vacancy in Rourkela Division is borne out by the fact that option was called for from the applicant seeking his willingness to serve in other Division and he gave the willingness in his letter at Annexure-6. In his letter he has not mentioned that vacancies are available in Rourkela Division. As regards the letter at Annexure-24 this merely says that in 1981, 1982 and 1983, one, nine and five posts were filled up by direct recruitment. The applicant has not stated that direct recruitment posts could also be filled up by giving promotion to departmental candidates. In view of this, it is not possible to hold that there were vacancies of 1,9 and 5 in promotional quota. There is also one more ground why this prayer of the applicant cannot be accepted. In the order dated 4.10.1989 at Annexure-15 the three persons named therein have been given promotion from the date their juniors were promoted and given benefit of interse seniority according to the merit as declared in the results of the examination. Thus, the three persons mentioned at Annexure-15 have been given promotion and seniority over certain other promoted candidates who have been placed below these three persons in the merit list. The prayer of the applicant in the instant case is to declare him senior to the direct recruits of the relevant year. The applicant has also not impleaded those direct recruits as parties in this case and no order can be passed to their detriment without hearing them.

6. The last point is that at the time of promotion of the applicant in the order dated 31.8.1984 at Annexure-13 it has been mentioned that the applicant

along with two others, was declared as surplus qualified candidate for absorption in the cadre of Telecom Office Assistant on the results of the examination held on 1.2.1981. They were sent for training and subsequent absorption in the cadre against future vacancies. It was indicated in this order that their seniority will, however, be fixed from the date of sending them for training and from the date of their subsequent absorption. The applicant is effectively challenging this order dated 31.8.1984 stating that his seniority will count from the date of his being sent for training and subsequent absorption. He cannot be permitted to challenge this order of 1984 after a passage of fourteen years. In view of all the above, we hold that the applicant is not entitled to the second relief claimed by him.

7. In the result, therefore, the Original Application is disposed of in terms of the observation and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
8.8.2001  
VICE-CHAIRMAN