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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application NO. 95 of 1998
Cuttack, this the 26th day of February, 2004

Kailash Chandra Moharana & Ors. Applicants.

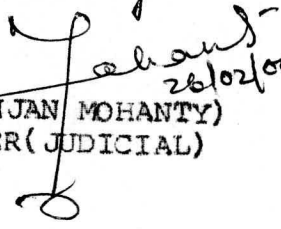
- Versus -

Union of India & 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? *yes*


(A.B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
26/02/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
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C O R A M :

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

....

1. Kailash Chandra Moharana,
Aged about 32 years,
S/o. Narayana Ch. Moharana,
J.T.O (Out door) Office of the
S.D.O (Phones-11),
OMP Square, Dist. Cuttack.
2. Rajendra Kumar Behera,
S/o. Late Giridhari Behera,
J.T.O. Regional Telecom,
Training Centre, Vanivihar, BBSR,
Dist. Khurda.
3. Ranjan Kumar Prustyy,
S/o. Krishna Ch. Prustyy,
J.T.O (A/T),
O/O the G.M.T.D., Bhubaneswar,
Dist. Khurda.
4. Narasingh Chinara,
S/o. Mohan Chinara, JTO (MARR),
O/O the GMTD, BBSR, Dist. Khurda.
5. Sachidananda Pati,
S/o. Narasingh Narayan Pati,
J.T.O, Computer Section, Office
of the GMTD, BBSR, Dist. Khurda.
6. Brahmananda Pati,
S/o. Dhanunjaya Pati, JTO,
Circle Instalation, Office of the
GMTD, BBSR, Dist. Khurda.
7. Ekamra Kabi,
S/o. Late Durga Ch. Kabi,
JTO Circle Instalation Office of
GMTD, BBSR, Dist. Khurda.

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8. Mrs. Mamata Mishra, W/o. Sachindananda Mishra, J.T.O. repairing Centre, Office of the GMTD/ BBSR, Khurda.
9. Pravakar Giri, S/o. Late Ratnakar Giri, JTO Circle, Telecom Training Centre, Vanivihar, Bhubaneswar, Dist. Khurda.
10. Manasendu Das, S/o. Prafulla Kumar Das, JTO Circle Telecom Training Centre, Vanivihar, BBSR, Dist. Khurda.
11. Mrs. Kalyani Behera, W/o. Netrananda Mohanty, JTO (Phones) Udala Exchange, At/Po: Udala, Dist. Mayurbhanj.
12. Mrs. Jayani Panda, W/o. A. K. Panda, J.T.O., Salipur Exchange, At/PO: Salipur, Dist. Cuttack.
13. Amulya Kumar Panda, S/o. B. Panda, J.T.O. Traffic Trail, Old Micro Building, B. K. Road, Telephone Bhawan, Dist. Cuttack.
14. Mrs. Mamata Satapathy, W/o. Sachidananda Kar, JTO (R. L. U) Chandrasekharpur, Exchange, Chandrasekharpur, BBSR, Dist. Khurda.
15. Kedarnath Mishra, S/o. Kulamani Mishra, JTO (Out Door) Office of the S.D.O (Phones-11), Kalpana Square, BBSR, Dist. Khurda.

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APPLICANTS.

By legal practitioner: M/s. G. A. R. Dora, V. Narasingh,
J. K. Lenka, B. Mishra,
Advocates

:Versus:

1. Union of India, represented through its Chairman Cum Secretary, Department of Telecommunication, Government of India, New Delhi.
 2. Chief General Manager, Telecommunications, Orissa Circle, PMG Square, Bhubaneswar, Dist. Khurda.
 3. A. C. Bhuyan, SDO, Telegraph, At/Po: Dist: Khurda.
 4. Mrs. Meena Mallick, SDE (Estimate) Office of the GMTD, Cantonment Road, Dist. Cuttack.
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5. S. K. Sahoo, SDO (Telegraph), At/Po/Dist. Nuapara.
6. Sailesh Mohapatra, SDE, RTTC, Vanivihar, BBSR, Dist. Khurda.
7. Sanjaya Kumar Mohapatra, SDE (RTTC) Vanivihar, BBSR, Dist. Khurda.
8. Bhagabat Sahoo, SDE, RTTC, Vani Vihar, BBSR, Dist. Khurda.
9. K. K. Patra, SDE, NEC, Exchange Telephone Bhawan, BBSR, Dist. Khurda.

.... RESPONDENTS.

By legal practitioners: Mr. A. K. Bose, Senior Standing Counsel
For Respondent Nos. 1 & 2.

M/s. B. S. Mishra-2, M. R. Mishra,
Miss. N. Chakraborty, Advocates
for Respondent No. 4.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicants 15 in number are the direct recruit Junior Telecom Officers, in this Original Application u/s. 19 of the Administrative Tribunals Act, 1985 claim that although (in the recruitment examination for 'JTOs'), they secured higher marks than the Respondents 3 to 9, they have not been shown Senior to the said Respondents. It is the further case of the Applicants that, after the selection, the JTOs were deputed for inservice training (in order of their position in the merit list drawn in the recruitment examination) and the periods they spent in the training were counted towards grant of their annual increment. It is the case of the Applicants that as the Applicants secured

higher percentage of marks (than Respondents 3 to 9) in the recruitment examination and, accordingly, sent for training at an earlier point of time than the Respondents 3 to 9, they are senior to Respondents 3 to 9 and notwithstanding this, in the seniority list at Annexure-7, the Applicants were shown junior to Res. No. 3 to 9; and as a consequence, those Respondent Nos. 3 to 9 were promoted to the post of T.E.S. Gr. B while the Applicants have been left out. Therefore, in this Original Application, the Applicants have prayed for setting aside the promotions of the Respondents 3 to 9 to TES Gr. B cadre with a further prayer to direct the Respondents to promote the Applicants (w.e.f. date the said Respondents were promoted) with all consequential service benefits. They have also prayed to set-aside the seniority list in which the Respondents 3 to 9 have been shown senior; by declaring that the Applicants are senior to the Respondents 3 to 9 and Applicant Nos. 3, 14 and 15 are junior to the JTOs of the same batch.

2. Respondents/Department, by filing counter, have submitted that seniority list of JTOs is prepared as per the direction of the Director of Telecommunication (communicated in letter dated 10.07.1980; copy of which has not been enclosed); that the inter-se-seniority has been fixed in accordance with the marks obtained in the training; that Respondent Nos. 3 to 9 have been treated as senior to the Applicants as they have secured higher marks in the training period; that as the Applicant Nos. 3, 14 and 15 have

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passed the training examination in second attempt, they have been rightly shown junior to the Applicants; because performance in the training is taken into consideration for promotion. It is the case of the Respondents that though the Applicants were selected in 1989, they have challenged the seniority list in the year 1998 and, therefore, this Original Application is barred by limitation, and that the candidates are being sent for training according to the availability of vacancies in the training centre and seniority has nothing to do with regard to sending one for training. It has further been submitted by them that seniority list is prepared as per the Recruitment Rules and since the Applicants 3, 14 and 15 have passed the examination in second attempt, they have rightly been shown at Sl. Nos. 156, 162 and 159 respectively and Respondent Nos. 3 to 9 have been shown at Sl. Nos. 5, 6, 8, 17, 33, 42 and 43 and as such, there is no illegality or irregularity neither in the seniority list; nor giving promotion to Respondent Nos. 3 to 9 to the next rank, taking into consideration the seniority position in the said list. Respondents, however, have not placed on record the Rules; which requires that the result of the training to be the criteria to determine the inter-se-seniority.

3. Though notices were made sufficient on all the Respondents, only Respondent No. 4 filed his counter stating therein that since the Respondent No. 4 has secured more marks in the examination conducted during training, in absence of any common test or interview at the initial

recruitment, the Respondent No. 4 has rightly been shown senior to the Applicants and, accordingly, was given promotion and success in the test conducted during the training is the basis for continuance in the post of JTO and, therefore, the marks secured in the test during the training is the vital consideration for one's placement in the seniority list.

4. We have heard learned counsel for both sides and perused the materials placed on record. During the hearing, learned Counsel for the Respondents, on being asked, produced the procedure for recruitment of Junior Engineers circulated by the Directorate and letter dt. 28th February, 1963 issued by the DGP&T.

5. The crux of the issues to be determined and decided by this Tribunal is as to whether seniority will be fixed on the basis of the marks/position secured by a candidate at the initial recruitment test or the marks position secured in the examination conducted during the training period. Law on the subject is well settled that marks obtained in the initial recruitment test is the criteria for determination of seniority; which means a candidate, who secures higher marks in the recruitment examination, will be placed above the candidates who secures less marks. This point is no more dispute in any

of the Department. It is a settled position that after being recruited, JTOs are required to undergo departmental training and only after passing the examination to be held during the training, he will be retained/confirmed. However, the dispute in this case is that as to whether on the basis of the Rules/Procedures/Letters issued on the subject the Respondent Department have correctly implemented the same or not and if it is correct, whether the same is sustainable or not, is to be examined. For determining this question, first of all we are required to look into the source of recruitment as provided in the procedure which provides as under:-

"SOURCE OF RECRUITMENT-Recruitment to the cadre of junior engineers shall be made as per the statutory recruitment rules. The main provisions are as follows:-

- (1) 65% by direct recruitments;
- (2) 35% by departmental examinations as follows:
 - (i) 15% by promotion of departmental candidates through a competitive examination;
 - (ii) 10% by promotion of RSAs, TIs, AEAs and WOs through a competitive examination; and
 - (iii) 10% by promotion of RSAs, TIs, AEAs and WOs on seniority cum fitness basis through a separate qualifying test".

As regards seniority, it has been provided as under:

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- "(1) Inter-se-seniority of each category of recruits (departmental and outsiders) shall be fixed in order of marks obtained in examination held during or at the end of the theoretical training. Those who appear in the first attempt in one or all the papers and fail and pass in subsequent attempts will rank en-block junior to all those in their respective category who pass in first attempt. The combined seniority of departmental candidates and outsiders shall be determined by rotation of vacancies in accordance with the percentage of reserved for them in the recruitment rules i.e. 65% for outsiders and 35% for departmental candidates".

Relevant portion of the letter dated 28th February, 1963 issued by the DGP&T to all the Heads of the Circles, framing the principles for determination of seniority of non-gazetted staff in the Telegraph Engineering and Traffic Branches reads as under:-

"xx xx xx. The matter has been considered in consultation with the Ministry of Home Affairs and it has been decided that the Home Ministry's general principles should be made applicable to the various non-gazetted cadres excluding Clerks and Telephone Operators in the Telegraph Engineering and Traffic Branches with the modification that in cadres appointments to which are to be made only after successful completion of a prescribed course of training, the inter-se-seniority of each category of recruits viz. departmental candidates and outsiders should be determined in the order of the marks obtained by them in the examination or examinations held during or at the end of their training. In each category candidates, who are given extended training or who pass the training centre examination in the second or subject attempt should rank en-block junior to those who pass in the first attempt without extended training".

It is an admitted fact that the Applicant had secured higher position than the Respondents 3 to 9 at the initial recruitment. It is also an admitted fact that the Applicants (except Applicant Nos. 3, 14 and 15) have passed the examination (conducted at the end of the training) earlier, at first instance, than the Respondents 3 to 9. As such, if there would have been any comparison of marks of the training examination, the same would have been made among those persons and, accordingly, position should have been assigned to them, and that the persons who are given extended training or who passed in the training examination in the second attempt, should have been made junior to those who passed in the first attempt in the same batch. There cannot be two stages of examination for determining the seniority. The letter, basing on which the seniority has been fixed, also does not say specifically about the manner in which the Respondents have fixed the seniority. It merely says about the fixation of seniority between departmental and direct recruits of the same batch. In this view of the matter, we do not see any good reason to uphold the action of the Respondents. However, on perusal of records, it is seen that the Applicants have made no efforts to redress their grievances before their Authorities; though they have declared in para-6 of the Original Application that they have exhausted all the remedies. Even after the promotion of the Respondents, the Applicants have not filed any representation to their Authorities. Law is well settled that mere existence of right is not enough to

rush to the Court, without trying to redress the same before their Authorities. Law is also well settled that hyper technicality should not stand on the way for dispensing justice; where glaring omissions and commissions are noticed.

6. In the aforesaid premises, the Respondents are hereby directed to examine the matter in the light of the discussions made above and redress the grievances of the Applicants with a reasoned order within a period of 60 days from the date of receipt of a copy of this order.

7. In the result, this Original Application is disposed of. No costs.


(B. N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
26/02/04