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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 10 OF 1999
Cuttack, this the 25th day of January, 2002

Sri Panchanan Nayak

....Applicant

Vrs.

Union of India and others....

Respondents

FOR INSTRUCTIONS

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,

Sonamati Sin,
SONNATH SONI,
VICE-CHAIRMAN
25.1.2002

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 10 OF 1999
Cuttack, this the 25th day of January, 2002

COURT:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....

Sri Panchanan Nayak, aged about 37 years, son of Rameswar Naik of village Debakani, P.O-Kurul, P.S/Dist.Bolangir

..... Applicant

Advocates for applicant - M/s K.C.Kanungo
S.Beherea

Vrs.

1. Union of India, represented by the Chief General Manager, Telecommunication, Orissa Circle, Jawaharlal Nehru Mary, Bhubaneswar, Dist.Khurda
2. Telecom District Engineer, Bolangir, At/PO/Dist.Bolangir, Orissa Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the Chief General Manager, Telecommunication (respondent no.1) to pay all the service and financial benefits such as pay, allowances, increments, etc., with effect from 4.5.1995 till the date of joining of the applicant in duty.

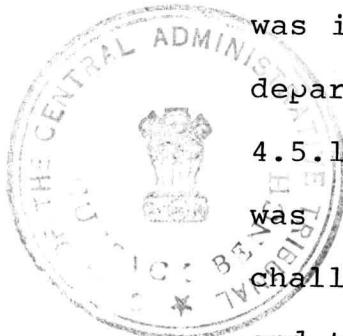
2. The applicant had earlier approached the Tribunal in OA No. 429 of 1997 which was allowed. Against the order of the Tribunal, OJC No. 2845 of 1999 was filed by

the departmental authorities, which was rejected with certain observations in order dated 20.6.2001. The admitted position is that the applicant is a Science Graduate of the year 1985 from Sambalpur University and he was selected as Junior Telecom Officer in 1989 on the basis of marksheet obtained by the applicant from Rajendra College, Bolangir, in which it was shown that he had secured 544 marks in Honours subject out of total 600 marks. Subsequently, Vigilance Wing of the ~~Vigilance~~ Department caused enquiries and came to know that these marks were not valid marks and he had only secured 369 marks in Honours papers out of 600. A departmental proceeding was initiated in which the applicant denied the charge. The departmental proceedings ultimately resulted in order dated 4.5.1995 dismissing the applicant from service. His appeal was rejected in order dated 8.5.1997. The petitioner challenged his dismissal from service in O.A.No.429 of 1997 and the Tribunal in their order dated 13.10.1998 allowed the petition with the following words:

11. For the reasons discussed above, we hold the enquiry right from the stage of appointment of enquiry officer, dated 15.5.1992 is vitiated. In the result, we quash the order of dismissal dated 4.5.1995 imposed by the Disciplinary Authority in Annexure-4 and the order dated 6/8th May, 1997 of the Appellate Authority (Annexure-5) confirming the order in Annexure-4 and hold that the applicant is deemed to be in service.

12. If indeed the applicant secured less marks than "544" in the Hons. subject out of the total "600" marks in the B.Sc. Examination of the year 1985 conducted by the Sambalpur University and if through those less and correct marks, he could not have been selected in normal course on merit as J.T.O. by the Respondents in the year 1989, the Respondents may take appropriate action in the matter."

J. Jom.



From the above, it is seen that the Tribunal quashed the order of dismissal and the order of the appellate authority and held that the applicant is deemed to be in service. The Tribunal further held that if indeed the applicant secured less than 544 marks in the Honours subject in B.Sc.Examination and if through those less and correct marks he could not have been selected in normal course on merit as J.T.O., the respondents may take appropriate action in the matter. This order dated 13.10.1998 was challenged by the Department as also by the applicant. The applicant challenged the second portion of the order as mentioned in paragraph 12 by filing OJC No. 4221 of 1999. The Hon'ble High Court disposed of OJC No.4221 of 1999 in their order dated 20.6.2000 (Annexure-R/12 of the counter in the present O.A.) noting that after some arguments when their Lordships were going to dismiss the writ application, the counsel for the petitioner sought permission to withdraw the same and such permission having been accorded, the writ application was disposed of. As regards OJC No. 2845 of 1999 filed by the respondents against the order dated 13.10.1998, it appears from copy of the order dated 16.3.1999 (Annexure-R/1) that the writ application was admitted with the following words:

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"After having heard learned Senior Stasnding Counsel for the Union of India and the lea\$rned counsel for the respondents, we found a prima facie case to admit this petition. We passed an interim order to the extent that opp.party no.1 should not insist to join the post pursuant to the order of the Tribunal. Considering further, we are of the view that there should be stay of operation of the judgment challenged before this Court. There is no scope for pursuing any contempt matter on the basis of the judgment, which has been challenged before this Court, since the matter has been admitted and operation of the said judgment has been stayed."

From the above it appears that prior to passing of the above order on 16.3.1999 the Hon'ble High Court passed an earlier interim order to the extent that the present applicant should not insist on joining the post pursuant to the order of the Tribunal, but copy of the earlier interim order has not been enclosed by either side. The above O.J.C. was disposed of in judgment dated 20.6.2001 enclosed by the applicant along with his memo filed on 27.8.2001. As the learned counsel of both sides have relied heavily on this order and have sought to import a plethora of meaning of the order of their Lordships of the Hon'ble High Court, it is necessary that the relevant portion of the judgment of the Hon'ble High Court is extracted below:



.....To establish the allegation of forgery, fraud or misrepresentation, active participation and/or connivance of the beneficiary and knowledge thereof are essential. If the opp.party no.1 received those marksheets from the College and the University and utilised those in good faith, he cannot be held guilty of the charge as framed against him. The appellate authority also entered into surmise and conjecture. He has failed to appreciate that the Department is required to substantiate the charge on objective basis. If there was really any mistake on the part of the University the delinquent cannot be held to be guilty of committing forgery. On the basis of the materials on record we agree with the finding of the Tribunal that the allegation of forgery or fraud has not been established in the disciplinary enquiry. Thus, we do not find any illegality or infirmity in the judgment of the Tribunal in setting aside the orders of dismissal.

8. The Tribunal has given liberty to the present petitioners to take appropriate action if it is found that on the basis of the marks as obtained by opp.party no.1 as contained in the records of the University he was ineligible to apply and yet selected. When the disciplinary proceeding was quashed and the order of dismissal was set aside, opp.party no.1 was restored to the position of an employee and is entitled to

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discharge his duties until an action in pursuance of the liberty given by the Tribunal is taken. Opp.party no.1 rightly claimed that he should have been allowed to join the post till a final decision is taken in pursuance of the liberty given by the Tribunal. There was no real reason for the petitioners to feel aggrieved by the insistence of opp.party no.1 to join his post.

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10. Thus, we do not find any merit in this writ petition. However, if the petitioners proceed in accordance with the liberty given by the Tribunal, they should keep the observations made by us in this judgment in mind before taking any such final decision. The opp.party no.1 is entitled to join and work in his post till a final decision is taken.

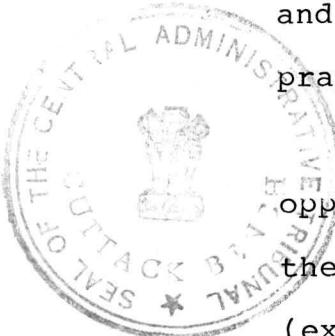
The writ petition is accordingly dismissed."

The case of the applicant and that of the respondents have to be noted in the context of the above undisputed facts. The applicant has averred that even though the Tribunal in their order dated 13.10.1998 held that the applicant is deemed to be in service, he was not allowed to join. On 23.10.1998 the applicant through a representation, enclosing a copy of the order of the Tribunal, requested respondent no.1 to allow him to join and to extend consequential service benefits to him. This representation is at Annexure-2. He also submitted joining report in the office of District Telecom Engineer, Bolangir (respondent no.2) in whose office he was working when he was dismissed from service from 4.5.1995. But as no orders were passed he filed further representation on 27.11.1998(Annexure-3). The applicant has stated that he has received letter dated 20.11.1998 (Annexure-4) from respondent no.2 stating that he cannot be allowed to join as he had been already dismissed from service. A further letter was sent to him on 4.12.1998 (Annexure-5) stating that as he had been dismissed from service, his superfluous joining report cannot



be entertained. The applicant was advised to make correspondence with the legitimate authority. Thereafter on 5.1.1999 (Annexure-6) the applicant was addressed by Director, Telecom, to produce fresh marksheet in respect of his B.Sc.(Hons.) Examination held in 1985 from the Sambalpur University as well as from Principal, Rajendra College. The applicant's grievance is that even though the Tribunal in their order dated 13.10.1998 had held that he is deemed to be in service and the writ application filed by the respondents has been dismissed, he has till now not been allowed to join and in the context of the above, he has come up with the prayers referred to earlier.

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3. The respondents in their counter have opposed the prayers of the applicant. They have stated that the Hon'ble High Court in their order dated 16.3.1999 (extracted above) directed that the applicant should not insist on joining the post in pursuance of the order of the Tribunal. The respondents have stated that after receipt of the order dated 13.10.1998 they took up the question of aggregate marks of the applicant both with the Registrar, Sambalpur University and the Principal, Rajendra College. The Sambalpur University supplied the marks in their letter dated 9.12.1998 (Annexure-R/2) which showed that the applicant has got 369 marks in Honours paper. As the Tribunal had authorised the Department to proceed further in the matter if the marks actually secured by the applicant were less than the marks shown in the marksheet produced by the applicant at the time of his appointment, the respondents directed the applicant on 5.1.1999 to produce fresh marksheet within 15 days. In reply the applicant submitted a letter dated 27.2.1999 stating that he would send a reply only after

he was allowed to join duty. The marksheet submitted by the applicant showing that he has got 544 marks in Honours paper was also sent to the Sambalpur University who replied that the aggregate marks have already been intimated in letter dated 8.12.1998 (Annexure-R/2) and any other marks shown to have been awarded may be treated as fictitious. The respondents have stated that the applicant filed Contempt Petition No. 61 of 1998 on 8.12.1998 and also filed the present O.A. on 4.1.1999. It is stated that the O.A. is not maintainable. As earlier noted, on receipt of the letter dated 5.1.1999, the applicant in his letter dated 27.2.1999 (Annexure-R/4) had stated that he would reply to the letter only after he joined his duty. Prior to this on 21.1.1999 the applicant had issued another letter (Annexure-R/10) asking for one month's time to reply to the letter. The respondents have stated that on the basis of marks actually obtained by the applicant, he could not have been appointed as Junior Telecom Officer. They have also stated that against the order of the Tribunal in OA No.429 of 1997 the departmental respondents have filed writ application and the judgment of the Tribunal has been stayed, and as such the applicant is not entitled to any arrear service benefits.

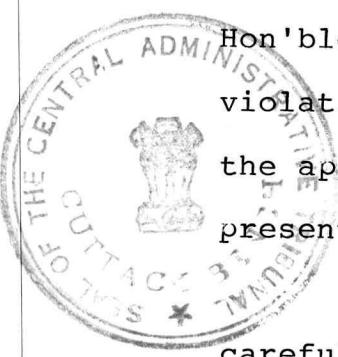
4. No rejoinder has been filed.

5. I have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the pleadings. The learned Senior Standing Counsel has stated that as against the order of the Tribunal writ application was filed and stay was granted on some date prior to 16.3.1999 and the order of stay was continued in order dated 16.3.1999 and the Hon'le High Court in their order dated 16.3.1999, extracted above, indicated that the

applicant should not insist to join the post pursuant to the order of the Tribunal, the respondents have rightly not allowed the applicant to join. Subsequently, even though in order dated 20.6.2001 the Hon'ble High Court dismissed the writ application, in that order their Lordships have observed that the applicant was entitled to join and work in the post till a final decision is taken. It is stated that because of the stay of the order of the Tribunal, the applicant was not entitled to join till the writ application was disposed of and therefore, he is not entitled to any arrear service benefits, as claimed by him in this O.A. Secondly, it is submitted by the learned Senior Standing Counsel that with the passing of the order by the Hon'ble High Court the order of the Tribunal has merged in the order of the superior court and the respondents are to be guided by the order of the Hon'ble High Court. Thirdly, it is stated that for alleged violation of the order of the Tribunal in OA No. 429 of 1997, the applicant has filed CP No. 61 of 1998 and therefore, the present application is not maintainable.

6. I have considered these submissions carefully. Law is well settled that in a contempt proceeding the petitioner, who files the contempt petition, is not a necessary party. The contempt is a matter between the court and the alleged contemnor, and simply because the petitioner has filed C.P.No. 61 of 1998, his rights, if any, under the order of the Tribunal in OA No. 429 of 1997 would not become inoperative. This contention of the learned Senior Standing Counsel is, therefore, held to be without any merit and is rejected.

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7. As regards the interim order of stay and the final judgment of the Hon'ble High Court, I have extracted the relevant portions. The Hon'ble High Court have categorically stated in their final judgment that there is no reason for the respondents to feel aggrieved by the insistence of the petitioner to join the post. This point has been further clarified by the Hon'ble High Court by stating that the petitioner is entitled to join and work in his post till a final decision is taken. The question of joining or not joining of the petitioner in the post from which he was dismissed is not an issue in this O.A. The petitioner has not sought for a direction to the respondents to allow him to join. In the order dated 13.10.1998 the Tribunal also did not give any direction to the departmental authorities to allow the petitioner to join. The Tribunal had held that the petitioner is deemed to be in service. Their Lordships of the Hon'ble High Court in judgment dated 20.6.2001 have specifically held that they do not find any merit in the writ application filed by the Department which was accordingly dismissed. By this judgment the order of the Tribunal has become final. By this judgment of the Hon'ble High Court the direction of the Tribunal that the petitioner is deemed to be in service has become final.

8. The next question which arises for consideration is whether, because of the fact that the Tribunal had held, after quashing the order of dismissal and the order of the appellate authority, that the applicant is deemed to be in service, the applicant will be entitled to salary and all the service benefits. The learned counsel for the petitioner has submitted that the applicant is deemed to be in service and the respondents deliberately did not allow

him to join and work, the applicant will be entitled to salary and all other service benefits. The learned Senior Standing Counsel has stated that principle of "no work no pay" will be involved. It is not necessary to consider these two rival submissions because FR 54-A deals with such specific situation. It is necessary to extract the concerned rule:

FR 54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government



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servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."



From the above extract, it is seen that in sub-rule (2)(i) of FR 54-A and sub-rule (2)(ii) reference has been made to sub-rule(7) and sub-rule (5) of FR 54 which are quoted below:

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"(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that, if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

NOTE.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -



- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

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(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

A plain reading of the above Rules will make it clear that where dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further enquiry, the period of absence will be regularised and he will be paid all pay and allowances in accordance with sub-rules (2) and (3) of FR 54-A subject to the directions, if any, of the Court. It is further necessary to note that in OA No. 429 of 1997 the applicant did not ask for all consequential service benefits after quashing of the order of dismissal and consequent reinstatement. The Tribunal in their order dated 13.10.1998 did not specifically direct payment of consequential service benefits presumably in view of the provisions of FR 54-A and held that the applicant is deemed to be in service. The second point to be noted is that sub-rule (2)(i) of FR 54-A specifically provides that when dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and where he is not exonerated on merits, the Government servant shall be paid such pay and allowances which would be less than the pay and

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allowances which he would have received had he been in service. What that amount will be is a matter to be decided by the competent authority after giving notice to the Government servant about the quantum he proposes to determine and after considering the representation for which also the rule provides a maximum period of sixty days. On a perusal of the order dated 13.10.1998 it is clear that the Tribunal did not exonerate the applicant. The order of dismissal from service was set aside on the ground of violation of procedural rules and the principles of natural justice and also on the grounds that the respondents had failed to establish the charge during the enquiry. In paragraph 6 of the judgment dated 20.6.2001 in OJC No. 2845/99 their Lordships of the Hon'ble High Court have observed that the essence of the judgment of the Tribunal is that the departmental authorities have failed to establish the charge. The Tribunal did not exonerate the applicant because in paragraph 12 of their order it was mentioned that if indeed the applicant secured less marks and he could not have been selected on the basis of those marks, the respondents may take appropriate action in the matter. From this it is clear that the applicant was not completely exonerated and his case is not covered under FR 54-A(1). As the applicant's case thus falls within the four corners of sub-rule (2)(i) of FR 54-A, it is incumbent on the part of the departmental authorities to take action in terms of the above clause of sub-rule (2). But apparently no action has been taken in this regard. In view of the above specific provision in the rule it will not be proper for the Tribunal to issue any direction at this stage with regard to pay and allowances which are due to him from the date of dismissal, i.e., 4.5.1995. At the first instance the competent authority has to take a view and under

sub-rule (7) of FR 54 this amount cannot be less than the subsistence allowance and other allowances admissible under FR 53 and thereafter the competent authority has to put the applicant on notice, yet and consider his representation, if any and pass final orders subject again to verification envisaged under sub-rule (5) of FR 54-A and also subject to the conditions in sub-rule (4). In this case the order of dismissal, dated 4.5.1995, which is at Annexure-4 of OA No. 429 of 1997 has been passed by the Director, Telecom, Sambalpur, who was respondent no.3 in OA No.429 of 1997. In the present O.A. the petitioner, for reasons which are not clear from the pleadings, has not made Director, Telecom, Sambalpur, a party. As Director, Telecom, Sambalpur, is not a party, no direction can be given to him. But as after order of the Tribunal and moreso after dismissal of the writ application filed by the respondents, no steps have been taken by the departmental authorities to take action as per FR 54-A, I direct respondent no.1 to get action initiated in accordance with FR 54-A by the competent authority within a period of 45 (forty-five) days from the date of receipt of copy of this order.

9. In the result, therefore, the Original Application is disposed of with observation and direction above. No costs.

Somnath Som.
(SOMNATH SOM)
25.1.2002
VICE-CHAIRMAN

AN/PS