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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 121 OF 1999.
Cuttack, this the 17th day of May, 2000.

SHRI SURESH CHANDRA PRADHAN.

APPLICANT.

VRS.

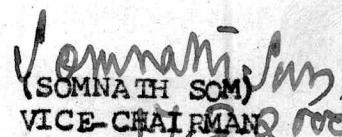
UNION OF INDIA & OTHERS.

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? No


(J.S. DHALIWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN NO

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 121 OF 1999.
Cuttack, this the 17th day of May, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. E. S. DHALIWAL, MEMBER (JUDL.)

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SHRI SURESH CHANDRA PRADHAN
Aged about 43 years,
S/o. Late Satyabadi Pradhan,
At present working as Junior Engineer
(Electrical) Telecom Electrical Sub-division
Berhampur-I, Dist: Ganjam.

:Applicant.

By legal practitioner: M/s. Ashok Kumar Mohapatra, Ashok Ku. Das,
Advocates.

-VERSUS-

1. Union of India represented through the Secretary, Ministry of Communication, Government of India, Sanchar Bhawan, New Delhi.
2. Chief Engineer, Electrical Eastern Zone, Department of Telecommunication, 195, Rash Bihari Avenue, Calcutta-19.
3. Superintending Engineer, Telecom Electrical Circle, Plot No. 21, Saheednagar, Bhubaneswar, Dist: Khurda.

:Respondents.

By legal practitioner : Mr. A. K. Bose, Senior Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents to give him the scale of pay of Rs. 1640-2900/- from 1.1.1986 and Rs. 2000-3500/- from 23.5.1993 in terms of the order at Annexures 1 and 2.

2. Respondents have filed counter opposing the prayer of applicant.

3. For the purpose of considering this Original Application a few facts will have to be stated. Applicant joined as Jr. Engineer in erstwhile Dandakaranya Project (in short DNK Project) in the scale of Rs.1400-2300/- on 23.5.1978. With the gradual closure of the DNK Project and consequent declaration of surplus staff, he came as a surplus from DNK Project and joined under the Superintending Engineer, Telecom Electrical Circle, Bhubaneswar on 28.8.1985. Department of Telecommunications, in their order dated 9.5.1991 directed that Junior Engineers shall be initially appointed in the scale of Rs.1400-2300/- and on completion of five years, they shall be placed in the scale of Rs.1640-2900/- on the basis of seniority cum fitness.

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It was also provided that the higher grade shall not be treated as a promotional grade. It was further directed that Jr. engineers who could not be promoted to the post of Assistant Engineer in the scale of Rs.2000-3500/- due to nonavailability of vacancies shall be allowed the scale of Asst. Engineer Rs.2000-3500/- on a personal basis after completion of 15 years of service in the grade computed from the date of entry in the basic grade of Rs.1400-2300/-. Applicant's grievance is that while allowing him the scale of Rs.1640-2900/- his entire previous service under

DNK Project has been ignored and his service from 28.8.1985 under the Respondents has been taken into account and with effect from five years from that date he has been allowed the above higher scale from 28.8.1990. According to him he is entitled to the above higher scale according to the circular w.e.f. 1.1.1986, as by that date he had completed five years of service, if the previous service under D NK Project is taken into account. He has also stated that he is also entitled to get the scale of Rs. 2000-3500/- w.e.f. 23.5.1993 i.e. counting 15 years from the date of his initial appointment under the D NK Project on 23.5.78.

3. Respondents, in their counter have stated that as the applicant has joined as Jr. Engineer under the Respondents only on 28.8.1985 and his previous service can not be counted for the purpose of seniority and promotion, he is entitled to compute the five years of service necessary for getting the higher scale of Rs. 1640-2900/- only w.e.f. 28.8.1985. It is also stated that the Circular is applicable only to those who are appointed as Jr. Engineers under the Respondents in the lower scale of Rs. 1400-2300/-. Thirdly it is stated that the applicant has approached the Tribunal after avoidable delay and his claim is barred by limitation.

4. We have heard Mr. A. K. Mohapatra, learned counsel for the applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

5. Instructions are very clear that a surplus staff on redeployment can not count his previous service for the purpose of seniority and promotion. This is conceded by the learned counsel for the applicant. The point for consideration is

whether that period of service under the DNK Project will count for the purpose of the benefit in Annexure-2. A similar matter came up before the Nagpur Bench of the Central Administrative Tribunal in Original Application No.866 of 1993, decided on 19.7.1995. A copy of this order is at Annexure-4. There, the Tribunal have taken note of the relevant instructions governing the Surplus employees and have found that according to the instructions even though the previous service can not be counted for the purpose of seniority and promotion for all other purposes, on such redeployment, such redeployed person must be taken to have come on transfer to the new Department and on that basis prayer of the applicant before them for getting higher scale was allowed. We have looked into the concerned instructions and we find that the instructions provide that past service rendered prior to redeployment should not count towards seniority in the new organisation/new post in which service the employee joins after he is redeployed. The instructions also provide that such employees will be treated to have joined by transfer in public interest for the purpose of admissibility of joining time, Joining time Pay and TTA. It is further provided and we quote that 'In other service matters, they should be treated as appointed by transfer'. These instructions have been printed at page 576 of Swamy's Compilation of establishment and administration, (5th Edn.). From this it is clear that the applicant's deployment under the Respondents have to be taken as if he has come by way of transfer. In that event, he should be entitled to count the previous service for the purpose of getting the higher scale as prescribed in order at Annexure-2. In view of this, it is clear that the applicant having completed

five years of service prior to 1.1.1986 is eligible to be given that scale from 1.1.1986 but that does not mean that the applicant would be allowed the scale automatically. The circular at Annexure-2 provides that he will be placed in the scale of Rs.1640-2900/- on the basis of seniority cum fitness. The fitness is an aspect which has to be considered with reference to the service records of the applicant by the Departmental Authorities. The second aspect is that he will be given the higher scale on seniority cumfitness. This presupposes that all persons Senior to the applicant in his new establishment would have got the higher scale by 1.1.1986. In consideration of the above, this prayer of the applicant is disposed of with a direction to the Departmental Authorities that the case of the applicant should be considered for giving him the higher scale of pay of Rs. 1640-2900/- from 1.1.1986 or from a later date on which date his immediate senior in the new establishment has got the scale. Giving of the higher scale to the applicant would also subject to the Departmental Authorities finding him suitable for the higher scale. It is necessary to note in this case that the circular at Annexure-2 specifically provides that giving of the higher scale will not be treated as a promotion and therefore, the applicant would be normally entitled to the higher scale from the date his immediate senior has got it, in case his records are not positively bad. This prayer of the applicant is accordingly disposed of.

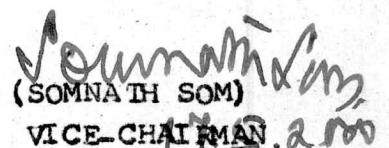
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6. The second prayer is for getting the next higher scale of Rs.2000-3500/- w.e.f. 23.5.1993 when he has completed 15 years of service with effect from his date of initial joining

under the DNK Project. This higher scale has also been allowed on the condition of seniority cum fitness with an additional condition that only such of the Jr. engineers who have not been promoted to the post of Asst. Engineer because of non-availability of vacancies in the grade of Asst. Engineers would be allowed this scale. There are no materials before us in the pleadings of the parties as regards promotion of the seniors of the applicant to the rank of Asst. Engineer or they are having been given the higher scale because of the fact that they have not been promoted to the post of Asst. Engineer after a period of 15 years. In Consideration of the above, we dispose of this prayer with a direction to the Respondents to consider the case of the applicant for higher scale of Rs. 2000-3500/- within a period of 120 days from the date of receipt of a copy of this order. We make it clear that in case the applicant has any grievance with regard to the Departmental Authorities regarding giving of this scale, he is free to approach this Tribunal.

7. In the result, the Original Application is allowed in terms of the observations and directions made above. No costs.


(J.S. DHALIWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 2.000

KNM/CM.