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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.219 OF 1999
Cuttack this the 1st day of August/2000

Smt.G.S.Vijaya Lakshmi ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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
1.8 & VCO

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ORIGINAL APPLICATION NO. 219 OF 1999
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CORAM:

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

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Smt.G.S.Vijaya Lakshmi
aged about 33 years,
W/o. G.Mathi Vathanan, I.A.S.,
working as Telecom Officer Assistant(G)
In the Office of S.D.O. Phones
Baragarh
At/PO/Dist: Baragarh

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Applicant

By the Advocates

M/s.B.K.Sharma
Savitri Ratho

-VERSUS-

1. Union of India represented
by the Chief General Manager
Telecom, Orissa Circle
Bhubaneswar,
Dist : Khurda

2. Telecom District Manager
Sambalpur,
At/PO/Dist: Sambalpur

3. S.D.O. Phones
Bargarh
At/PO/Dist: Bargarh

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Respondents

By the Advocates

Mr.B. Dash
Addl. Standing Counsel
(Central)

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to Respondents to issue Admit Card to her and to allow her to appear at the Departmental Competitive Examination scheduled to be commenced from 15.5.1999. Respondents have filed their counter opposing the prayer of the applicant.

2. We have heard Shri B.K.Sharma, learned counsel for the petitioner and Shri B.Das, learned Addl. Standing Counsel appearing for the Respondents and also perused the records.

3. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that applicant initially joined as Telecom Office Assistant in Chennai Telecom Circle on 18.06.1986. On her request she was transferred to Bhubaneswar Telecom Circle and joined in Sambalpur Telecom District as Telecom Office Assistant (General) is now posted under S.D.O.(Phones), Bargarh. The applicant herself has stated that her seniority has been fixed as per terms and conditions of Rule-38 of P & T Manual, Vol-IV and she has been treated as new recruit in the Telecom Circle with effect from 1.6.1998. It is also the admitted position that for filling up of the post of Junior Telecom Officers under 15% quota, Chief General Manager, Telecom Circle, Orissa, Bhubaneswar (Res.1) invited applications and the petitioner, who according to her had the necessary eligibility applied for the said post. It is also the admitted position that initially Admit Card was ~~not~~ issued in her favour allowing her to sit for the examination, but before the admit card could be handed over to her, on instruction of Res.1, the admit card was not handed over to her.

S. J. M.

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 The applicant in this Original Application came up with a prayer for interim relief which was disposed of in order dated 14.5.1999 directing respondents to allow the applicant to sit for the examination which was scheduled to be held on 15th and 16th of May, 1999, but not to declare her result till the disposal of this Original Application.

4. Respondents in their counter have stated that the applicant was not eligible to sit for the examination and the admit card was prepared for her inadvertently, but before the admit card could be handed over to her the mistake was detected and that is why the applicant was not given the admit card. However, in compliance with the interim order of the Tribunal a provisional/duplicate Hall Permit was issued to her in order dated 14.5.1995 (Annexure-R/7) and accordingly the applicant has taken the examination. Respondents' stand in this case is that as the applicant has come on transfer on her request from Chennai Telecom Circle to Bhubaneswar Telecom Circle her seniority in Bhubaneswar Telecom Circle should be counted with effect from the date of joining at Bhubaneswar and as her service was counted from 1.6.1998. So by the referral date for the examination she had not completed the minimum eligible service of five years and that is why the applicant was rightly not allowed to appear at the examination. Respondents have stated that in accordance with the circular dated 8.4.1999 (Annexure-4) the length of service in case of transferees from other circle under Rule-38, for the purpose of appearing at the Departmental Examination for promotion against 15% competitive examination quota shall count from the date they join the new Circle. It is further stated that an earlier circular dated 30.1.1988 (Annexure-R/5) provides that for the purpose of

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eligibility to appear at the Departmental Examination for promotion a Rule-38 transferee can get the benefit of his/her service rendered in the previous Unit; provided it does not adversely affect his seniors in the new Unit. It is further stated in this circular that for instance, if all the officials senior to him/her in the new Unit, to which he/she has been transferred, are eligible to appear in the examination, then only the past service can be counted for the purpose of deciding eligibility to appear in the said examination. Respondents have stated that on this ground also the applicant is ineligible because many of her seniors are still ineligible to sit for the examination. Before considering the various decisions cited by the learned counsel for the petitioner it is necessary to note that circular dated 8.4.1999 does not rule out counting of previous service in respect of all the transferees under Rule-38. In the last line of this circular it is provided that length of service of transferees from one Division to another Division of the same Circle shall count from the date they joined the eligible feeder cadre in their old Division. We are not able to understand the logic of this special dispensation in respect of transferees under Rule-38 from one Division to another Division in the same Circle; or putting in away the logic of allowing this benefit in respect of Rule-38 transferees from one Division to another Division in the same Circle while withholding the same benefit in respect of Rule-38 transferees from one Circle to another Circle. From the counter of the respondents no satisfactory explanation about this is forthcoming.

It is submitted by Shri B.K.Sharma, learned counsel for the petitioner that eligibility to appear at 15% quota examination for promotion to the post of Junior Telecom Officer is laid down in

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the statutory rules, copy of which has been furnished by the Respondents at Annexure-R/1. He has stated that according to statutory rule eligibility to appear at 15% quota examination is five years of regular service. This does not provide for discounting of past service in respect of Rule-38 transferees and in the face of this statutory rule another executive instructions like those at Annexures-R/4 and R/5, which have the effect of taking away the eligibility for Rule-38 transferees, who are otherwise eligible to appear at the 15% quota examination must be held to be illegal as no executive instruction can be in contravention of the statutory rules. It is also submitted by Shri Sharma, the learned counsel for the petitioner that similar matters came up before the Hon'ble Supreme Court in a series of cases and the decision has been taken in all those cases to count the previous service. In support of his contention Shri Sharma relied on the following decisions :

1. Scientific Adviser to Raksha Mantri & Others v. V.M. Joseph AIR 1998 SC 2318
2. S.I. Roopal and another v. Lt. Governor through Chief Secy., Delhi and Others (AIR 2000 SC 594)
3. Union of India vs. C.N. Ponnappan reported in AIR 1996 SC 764

S. Jom

It is not necessary to refer to the facts of all these cases as reference to one decision would suffice. *On the case of Union of India v. C.N. Ponnappan.* Their Lordships of the Hon'ble Supreme Court considered this aspect in the context of difference of opinion between the Madras and Bangalore Bench of the Tribunal. In both those cases the transfers were on compassionate ground. After considering the differing view taken by the two Benches of the Tribunal, their Lordships of the Hon'ble Supreme Court laid down the law in the following terms :

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" The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred".

In the case of V.M. Joseph a similar view has been taken and reference has also been made to the case of C.N.Ponnappan. In view of the law as laid down by the Hon'ble Supreme Court in the words extracted by us above, it appears that the decision of the respondents in holding the petitioner ineligible to take the examination is not based on correct interpretation of law and therefore, cannot be sustained.

In this application the petitioner has prayed for giving her admit card and allowing her to sit for the examination. In our order dated 14.5.1999 we have already granted this prayer to her. In view of this in a way this Original Application has become infructuous. But in consideration of our above discussion we direct the departmental authorities to publish the result of the petitioner and take further action on such result strictly in accordance with laws.

The O.A. is disposed of as above, but without any order as to costs.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

Somnath Som
(SOMNATH SOM)
VICE-CHIEF JUSTICE