

14

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 150 OF 2001  
Cuttack this the 8th day of April '04

Niranjan Dalai ... 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 ? Yes

*M.R. Mohanty*  
(M.R. MOHANTY) 8/04/04  
MEMBER (JUDICIAL)

*B.N. Som*  
(B.N. SOM)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 150 OF 2001  
Cuttack this the 8th day of April /2004

CORAM:

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

Niranjan Dalai, aged about 57 years,  
S/o. Sri Gopal Dalai, At-Baulanga,  
Pakamikapada, Dist-Cuttack - at present  
working as Sr.TOA(P) in the office of  
the Asst.Engineer(Trunks), Rourkela  
Dist-Sundargarh

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Applicant

By the Advocates

M/s.B.B.Acharya  
C.Mohanty  
P.R.J.Dash

-VERSUS-

1. Union of India represented through its Secretary to Govt. of India, Ministry of Communication, Dept. of Telecommunications, Sanchar Bhawan, New Delhi
2. Chief General Manager, Bharat Sanchar Nigam, Orissa Circle, Bhubaneswar, Orissa, Dist-Khurda
3. General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Rourkela, Dist-Sundargarh
4. Telecom District Engineer, Rourkela, (Bharat Sanchar Nigam Ltd.), At/PO-Rourkela, Dist-Sundargarh

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Respondents

By the Advocates

Mr.S.B.Jena, A.S.C.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN : Niranjan Dalai (applicant)  
has filed this Original Application being aggrieved by  
the order dated 14.3.2001 (Annexure-6) passed by Res.No.3,  
terminating his officiating arrangement as Telephone  
Supervisor at Rourkela. He has, therefore, prayed for  
quashing the impugned order under Annexures-6 and 7

dated 14.3.2001 and 19.3.2001 respectively by virtue of which he has been reverted and posted as Sr.T.O.A.(P) in the Office of SDOP(II), City Area, Rourkela.

2. The case of the applicant is that soon after the introduction of one Time Bound Promotion Scheme (in short O.T.B.P.) he was appointed as Supervisor vide Respondents' letter dated 16.10.1994 (Annexure-1) and for discharging such duty he was being paid Rs.35/- as special allowance. It is his grievance that the grade of Sr.Telephone Operator having been restructured as Telephone Supervisors, in 1984, the Respondents had called for to volunteer for carrying out purely the supervisory duty and as he had volunteered for the same, he was transferred from his parent cadre at Balasore to take up the supervisory job at Rourkela. Therefore in October, 1990, on introduction of the Scheme, called, Biennial Cadre Review, the Telephone Supervisors (Operative) who had completed 26 years of service were to be given second financial upgradation in the pay scale of Higher Selection Grade-II; and that the persons given the benefit under the B.C.R. Scheme would be put on Supervisory duty in case sufficient number of officials were not available from the Lower Selection Grade. In accordance with the said scheme and directives, the Respondent No.5 took action for reversion of the applicant from the grade of Telephone Supervisor to that of Telephone Supervisor (Operative). The applicant brought this matter before this Tribunal in O.A.311/91 challenging the letter dated 21.8.1991 issued by the Respondents.

After hearing the matter, the Tribunal was pleased to

stay the operation of the purported reversion of the applicant from the post of Telephone Supervisor to the post of Telephone Supervisor(Operative) vide its order dated 12.9.1991, pending disposal of the said O.A. The O.A. was listed on 2.11.1994 for final disposal. However, as the applicant had already received the benefit of B.C.R.Scheme he did not press that O.A. which was accordingly disposed of by this Tribunal by its order dated 2.11.1994. After the disposal of that O.A. the petitioner was allowed to continue <sup>without any</sup> as Telephone Supervisor/disturbance. While the matter stood thus, Respondent No.2 all on a sudden by issuing order dated 14.3.2001 (Annexure-6) ordered that as the applicant was junior to one <sup>Shri</sup> Brundaban Jena, he was being reverted to the post of Telephone Supervisor (Operative) to make room to Shri Jena to act as Telephone Supervisor. Not only that, the applicant vide order dated 19.3.2001 (Annexure-7) was posted out to the Office of SDOP(II), City Area, Rourkela against a clerical post. The grievance of the applicant is that this order of reversion after a period of 16 years was illegal and arbitrary and therefore, he has approached this Tribunal in this O.A. under Section 19 of the A.T.Act, 1985, for the redressal of his grievance.

3. The Respondents have filed a detailed counter contesting the application and have submitted that the applicant is not entitled to any of the reliefs, giving out detailed reasons in support of their statement.

Without going into the details, it would suffice to say that the Respondents have submitted that there exists no separate supervisory cadre (Grade-III) in the Telecom Department since the time O.T.B.P. Scheme was introduced. The Department adopted a practice of putting the senior-most official of the basic cadre of Sr.T.O.A.(P), Gr.III with special allowance of Rs.35/- for supervisory duty. It is also the policy of the Respondents not to post officials as Supervisors strictly according to seniority of the supervisory post, but on the basis of willingness. <sup>that</sup> It is how the applicant, who belonged to Grade-II of the cadre at Balasore volunteered to work as Telephone Supervisor with special allowance and was posted to Rourkela. However, this system of appointment of supervisors with allowance had been dispensed from 1.12.1990 after introduction of the B.C.R. Scheme. It was at that time the Respondents decided that for the purpose of supervisory duty, the B.C.R. officials would only be preferred. In this connection the Respondents have referred to letter issued by Respondent No.1 at Annexure-R/5. In pursuance of this policy decision, the Respondents, on receipt of an application from one Shri Brundaban Jena who was senior to the applicant for supervisory duty considered the same and having found merit in the application issued the revised order of transfer and posting of the applicant vide Annexures-6 and 7. They further stated that by allowing the applicant to work against a supervisory post with supervisory allowance does not create any vested right on the

on the applicant. Further they have stated that the said allowance was abolished with effect from 1.12.1990 and it was decided that supervisory posts were only to be held by the B.C.R. promotees, who have completed 26 years of service in the basic grade of Telephone Operators as on 30.11.1990, subject to seniority in the circle gradation list. As the applicant had also been granted financial upgradation under the B.C.R. Scheme and payment of supervisory allowance was discontinued, by no stretch of imagination, the applicant could urge that taking him out of supervisory position had caused any injury to his interest. It is the case of the Respondents that Shri Brundabana Jena, Sr.TOA, Gr.III has been appointed as Supervisor only because he is senior to the applicant and that the supervisory duty is allotted to available senior most officials against the limited number of sanctioned supervisory posts as per the policy decision at Annexure-R/5. The applicant, it is stated, being junior has been asked to perform operative duty and that there is no financial loss to the applicant.

4. The applicant has submitted a detailed rejoinder to the counter wherein he has submitted that he has a right to continue in the said supervisory post, that he is eligible and entitled to hold the said post, that he was reverted due to bias and that he was denied the benefit of notice to show cause before issuing the impugned order at Annexure-6. The Respondents, by filing additional counter, have denied all these allegations.

5. We have heard the learned counsel for the parties and have perused the materials placed on record.

20

6. The questions to be answered in this O.A. is whether the applicant has any right to continue in the said supervisory post and whether the applicant was entitled to show cause before he was reverted from that post by virtue of order dated 14.3.2001(Annexure-6).

7. We would first answer the 2nd part of the issue, i.e., whether before issuing the order dated 14.3.2001, the applicant was entitled to show cause. The applicant has stated that he was performing the duties of Telephone Operator. It is, therefore, admitted that he was not holding any supervisory post. In the order dated 16.10.1984 (Annexure-1) it was stated that "the following officials on circle seniority basis, who opted to perform supervisory duties carrying a special allowance of Rs.35/- ...". In (emphasis supplied) other words, from October, 1984, while he was in the basic grade of Telephone Operator, the applicant was asked to perform supervisory duties, for which he was to be compensated by grant of a special allowance of Rs.35/-. In their order dated 14.3.2001, it is stated <sup>who</sup> that the applicant/was officiating as Telephone Supervisor was, by that order, being reverted to the operative post. The wordings of this order do not stand in conformity with the order issued by the Respondents on 16.10.1984 - rather they contradict each other. The order of October, 1984 clearly states and the applicant also has not disputed that position either in his O.A. or in his rejoinder that he had opted to perform the duties of Telephone Supervisor and that he had been doing that supervisory duty for all those years.

2

8/ That being the nature and character of arrangement, the order dated 14.3.2001 wrongly couched <sup>in</sup> the word 'reversion' and 'posting' from supervisory post to operative post. However, the order dated 19.3.2001 (Annexure-7) makes it amply clear the ratio of the order of October, 1984, when it states that the applicant, ~~who~~ was presently working as Sr.T.O.A.(P) under DEEP, 10-B, Rourkela. Our finding therefore, is that the applicant was called upon to discharge the duties of a Supervisor without holding the post of a Supervisor. And for doing some onerous duties he was being paid special allowance. As he was not holding any post, the question of reversion does not arise. More than observing this, we refrain ~~from~~ from going further into the matter, because, as submitted by the applicant that he had earlier approached this Tribunal in O.A.No.311/91 challenging his reversion/shifting from the position of Telephone Supervisor, which he, later on, did not press as he had received "promotion under the B.C.R. Scheme". The issue that he has raised herein having been ~~answered~~ earlier in O.A.311/91, the present application is hit by the principle of constructive res-judi-cata.

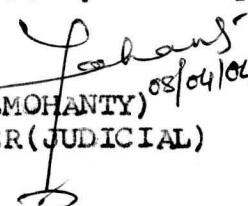
8. With regard to the first part of the issue, i.e., whether the applicant has any right to hold the supervisory post, our answer is in the negative, because, he was not given any promotion to that grade by the order of the Respondents issued on 16.10.1984. He was given a placement to perform the duties of a Supervisor for which he was given comeensation, called "special allowance" at the

9/



rate of Rs.35/- per month. Further, that the said allowance having been abolished with effect from December, 1990, and the entire earlier scheme of making supervisory arrangement having been nullified with the introduction of a new Scheme, called, B.C.R. Scheme, the question of continuance of the applicant in supervisory post did not arise. As the applicant was not holding any supervisory post, but was performing a supervisory job/duty given to him and the employer having inherent right to allot duties to its employees according to the need of his business, the applicant cannot claim any vested right to question the authority of the Respondents' action. The Apex Court in the case of State of Punjab vs. Joginder Singh reported in AIR 1993 SC 2486 have already held that it is entirely for the employer to decide as to when, where and at what point of time a public servant is to be transferred and posted and the instant case also involves posting of an official from one duty position to another. Thus, we are of the view that it is not a matter for the Tribunal to interfere with.

9. Having regard to what has been discussed above, we see no merit in this application, which is accordingly dismissed, leaving the parties to bear their own costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

BJY