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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 471 OF 2001
Cuttack this the 14th day of Sept. 2004

S.C. Bhattacharya ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 7/5
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 7/5

[Signature]
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO. 471 OF 2001
Cuttack this the 14th day of Sept. 2004

CORAM;

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

...

Subash Chandra Bhattacharya, aged about 42 years
S/o. Sri Santi Ranjan Bhattacharya, Resident of
388/A Bapuji Nagar, Jeypore, Koraput - at present
working as Telephone Operating Assistant(P), DTO
Koraput

... Applicant

By the Advocates

M/s. R.K. Bose
G. Ghel
J. Nayak

- VERSUS -

1. Union of India represented by the Secretary to Govt., Department of Telecommunication, New Delhi
2. Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi
3. Telecom District Engineer, Koraput, At/PO/Dist-Koraput

... Respondents

By the Advocates

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

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: This Original Application, under Section 19 of the A.T. Act, 1985 has been filed by the applicant (Shri S.C. Bhattacharya) assailing the inaction of the Respondents-Department in completing the departmental inquiry pending against him since long and inspite of the fact that the inquiring officer had submitted its report as early as in the year 1991. He has, therefore, approached this Tribunal with prayer for quashing the charge-sheet dated 1.12.1990 on the ground of excessive and inordinate delay in concluding the same; to give him service benefits, i.e., increments,

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Time Bound Career Progression and promotion as may be due to him from time to time.

2. The facts of the case in brief are that the applicant, who had entered service under the Respondents-Department as Telephone Operator with effect from 26.2.1983, had declared that he was born in 'Dacca' (now Bangladesh) in 1959. He had claimed himself to be Indian by domicile. It was several years after his appointment in the year 1990, Sub-divisional Officer, Telegraph, Jeypore (SDOT) under Respondent No.3 called upon him to submit his citizenship certificate in support of his declaration that he was a citizen of India. The applicant submitted rehabilitation certificate, but could not produce any other document as these were not available with him. Thereafter a charge memo dated 1.12.1990 was served on him vide Annexure-3 alleging that he had secured the job in the Department of Telecommunications by rendering a false declaration with regard to his citizenship that "he is the citizen of India by domicile". The disciplinary proceedings was initiated under Rule-14 of CCS(CCA) Rules, 1965. During inquiry, the applicant was denied several documents as per Annexure-7, which were essential for defending his case. He was also put under suspension, which was, however, revoked by order dated 14.10.1991. Even after six years of initiation of this proceeding, the applicant had to submit a representation to the Chief General Manager (C.G.M.) on 15.7.1996 for its early disposal. Soon thereafter the applicant came to know

that the Respondents were reviewing the charge-sheet and in the circumstances, he submitted a representation against such review. However, the inquiring officer submitted his report whereafter a copy of the inquiry report was supplied to the applicant on 25.11.1998, ^{by him} when it was found that the inquiry had been completed as early as 11.9.1991. In the letter dated 25.11.1998 it was disclosed that the inquiring officer had not found the charge proved against the applicant, but the disciplinary authority had disagreed with the inquiring officer and called upon the applicant to submit representation against such decision of the disciplinary authority. A copy of the inquiry report was also supplied to the applicant along with the tentative decision of the disciplinary authority. The applicant submitted his reply to this show cause. In his reply he had pointed out the prejudice against him, ~~the~~ delay in processing the report of the inquiring officer by ^{disciplinary authority} ~~the~~. As he did not receive any final order from the disciplinary authority and in the meantime his suspension period had not been regularised nor was he granted other service benefits, he has approached the Tribunal in this O.A. with the prayers referred to earlier.

3. The Respondents have opposed the O.A. by filing a detailed counter wherein they have stated that the applicant is not entitled to any of the reliefs prayed for by him. They have stated that the applicant, while entering the service had declared that he was a citizen of India by domicile although born on 10.10.1959 at Bikrampur,

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District - Dacca (Bangladesh) East Pakistan. He was, therefore, requested to produce the relevant document to prove his Indian citizenship vide SDOT, Jeypore (K) letter dated 19.10.1990. They had also taken up the matter with Collector, Koraput by their letter dated 20.10.1990, to which the latter replied that no citizenship certificate seem to have been issued in favour of the applicant (vide A.D.M., Koraput letter dated 15.11.1990). Accordingly, the disciplinary proceedings under CCS(CCA) Rules, 1965, was initiated against the applicant. They have stated that all prescribed procedures have been followed in concluding the inquiry. They have admitted that the disciplinary authority did not agree with the findings of the inquiring officer, who had found the charges not proved. They have, also admitted that his representation dated 10.12.1998 (Annexure-15) is pending with the disciplinary authority. It is in this background, the Respondents have opposed the prayer of the applicant.

4. We have heard the learned counsel appearing for the parties and perused the materials placed on record. The applicant has also filed a rejoinder to the counter, which we have taken note of.

5. The issue involved in the disciplinary proceeding which is pending finalization is whether the applicant has secured a job under the Respondents-Department by perpetrating fraud and/or giving a false declaration. Admittedly, the applicant in his application seeking an appointment had disclosed that he was born on 10.10.1959 at Dacca, the then East Pakistan (now Bangladesh) and

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that he was a citizen of India by domicile. During inquiry it was established that the applicant, along with his family migrated to India in 1964. There had been exodus of the people belonging to Hindu community from erstwhile East Pakistan and the Government of India had taken up special arrangement for receiving the migrants at the border and took them straightaway to Mana Camp in Dandakaranya for rehabilitation. The inquiring officer in his report has brought out the facts that the applicant's father was given migration certificate disclosing the names of his wife and children, which include the name of the applicant. The father of the applicant was also given a job under the Government and that is why no ^{dole} date was given to the applicant's ^{family}. The applicant had passed his School Examination from the Board of Secondary Education, Orissa, and prosecuted his college education ^{under} Berhampur University. His father was granted citizenship by Registration under the Citizenship Act of 1955 on 29.3.1971. On the date his father was registered as Indian citizen, the applicant was a minor of 13 years 5 months of age. After going through the provisions of Article 5 of the Constitution and the rules made under the Indian Citizenship Act of 1955, the inquiry officer came to the conclusion that "a minor child gets citizenship of his father and enjoys it till his father ceases to be a citizen of India", ^{and that} such a minor is required to make an application for registration within one year after attaining majority. While arriving at this conclusion the Inquiring Officer held as under :

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" In the present case the S.P.S. came to India at the age of about 5 with his father on 4.4.1964 and his father got citizenship on 29.3.1971 by registration, when the SPS was a boy aged about 14 years and as per Sec. 2(c) of citizenship act, 'minor' means a person who has not attained the age of eighteen years. The SPS did his school and college education in India, got registered himself in the local employment exchange indicates that he never showed any interest to go back to Bangladesh and did not hide any information regarding himself, and thus given a correct declaration in the application form under S.Est.2, which was authenticated by SW.1, Shri K.T. Rao, A.E. Vigilance.

And thus the charge against Shri S.C. Bhattacharya, the SPS stands disproved".

6. The report of the Inquiring Officer has brought out legal position regarding acquisition of citizenship of India. The report has been based on law and facts of the case and its objectivity is unassailable. In the circumstances, the reason that weighed with the disciplinary authority to disagree with the findings of the inquiring officer that the said inquiring officer had shown "misplaced sympathy" on the applicant is devoid of merit. Having regard to the facts of the case and the documents adduced before us, we are of the view that the problem which is faced by the applicant has been caused ^{due} to his ignorance to apply for his citizenship certificate under the Indian Citizenship Act, 1955. From the migration certificate issued in favour of his father by the Mana Camp authorities, it is clear that the Government had accepted the family for rehabilitation in India to merge them with the main stream. Not only that, applicant's father

was provided with a Govt. job in the District of
Koraput under the District Health Officer, Koraput,
as a Vaccinator. ^{pending grant of citizenship by registration.} The migration card issued to him
also included the names of his wife and children, including
that of the applicant and according to law, the migration
card is a certificate for them to obtain citizenship
by registration in due course. It has been disclosed by
the Respondents that the father of the applicant got
his citizenship certificate in the year 1971 when he
was a minor. It was the duty of the applicant's father
as well as ^{of} the applicant to apply for citizenship
certificate to the district authorities soon after he
(applicant) attained the age of 18 years, which was not
done. The applicant has now filed a copy of the
application that he had submitted to the Collector,
Koraput on 14.2.2004, followed by reminder on 17.7.2004,
sent by the learned counsel for the applicant for grant
of citizenship certificate.

6. The applicant has now completed the formalities
for obtaining citizenship by registration. There is no
doubt that it was his duty to have submitted his application
earlier. But the fact is that there is not ^{enough} unawareness
about the procedure for acquiring citizenship. However,
one point is clear that the applicant had not earlier
knowingly or intentionally secured appointment under the
Govt. of India by making a false declaration. Rehabilitation
of the displaced persons of Indian origin is the responsi-
bility of the State, which has not been repudiated by the
Government of India. But there has been lapse on both sides


in creating awareness about acquiring citizenship right which comes only through registration. In the circumstances, the Respondents also could have advised the applicant, as soon as it was found that a citizenship certificate was required for the purpose of law of the land, to obtain the requisite certificate from the district authority within a time-frame and if the applicant would have shown callousness or lack of interest in the matter, they could have thought of taking disciplinary action against him. Further, the report of the inquiring officer should not have been called in question by the disciplinary authority on the ground of subjectivity. The Inquiring Officer, in his report, truly found out the facts on the basis of which the applicant could have been asked to obtain citizenship certificate. It is also a fact that the disciplinary authority has not been able to take any final decision in the matter.

7. Having not been able to decide the issue so far, the disciplinary authority, at this stage, is precluded from deciding the matter. We would, therefore, direct the Respondents including the disciplinary authority to hold in abeyance the finalization of the disciplinary case awaiting receipt of the copy of citizenship certificate from the applicant. In order to expedite the matter, they should also, on their own, approach the district authority for disposal of the application of the applicant for registration of citizenship and set the matter at rest for all times to come. We hope and trust that once the applicant will be able to submit his citizenship certificate

before the Respondents, the disciplinary proceeding against him should be closed and in consequence thereof, the applicant should be given all the consequential service benefits without any delay.

8. With the observation and direction as made above, this Original Application is allowed. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)



(B.N. SGM)
VICE-CHAIRMAN

BJY

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O.A. 421/01

Order dated - 25/03/2011.

Cosam! -

Hon'ble Mr. C.R. Mohapatra, M(A)

Hon'ble Mr. ^BA.K. Patraik, M(J)

Heard Ld. Counsel for the parties.

For the reasons recorded separately, the M.A. 444/05 is disposed of.

Members (J)

Members (A)

Or. Dt. 25.03.11

Copies of order
issued to counsel
for both sides.

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20/03

20/03/11
Sd/- (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.471 of 2001

S.C.Bhattacharya Applicant
-Versus-
Union of India & Others Respondents

Order dated 25th March, 2011.

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....
By filing OA No. 471 of 2001, the Applicant has prayed to quash the charge sheet dated 01.12.1990 on the ground of excessive and inordinate delay in concluding the same, to give him service benefits i.e. increments Time Bound Career Progression and promotion as may be due to him from time to time. Respondents filed their counter opposing the prayer of the Applicant. After considering all aspects of the matter this Tribunal disposed of the matter on 14th September, 2004. Operative part of the order reads as under:

"7. Having not been able to decide the issue so far, the disciplinary authority, at this stage, is precluded from deciding the matter. We would, therefore, direct the Respondents including the disciplinary authority to hold in abeyance the finalization of the disciplinary case awaiting receipt of the copy of citizenship certificate from the applicant. In order to expedite the matter, they should also, on their own, approach the district authority for disposal of the application of the applicant for registration of citizenship and set the matter at rest for all times to come. We hope and trust that once the applicant will be able to submit his citizenship certificate before the Respondents, the disciplinary proceeding against him should be closed and in


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consequence thereof, the applicant should be given all the consequential service benefits without any delay."

2. By filing the present MA No. 444 of 2005, on 2nd August, 2005, the Respondents seek the following order:

"Under these circumstances, it is humbly prayed that this Hon'ble Tribunal may be graciously pleased to fix a time limit for submission of citizenship certificate for finalization of departmental proceeding and by which the order of the Hon'ble Tribunal can be fully implemented.

3. Heard Learned Counsel for both sides on the above MA and perused the materials placed on record. From the order dated 14th September, 2004 it is clear that the citizenship certificate would have to be produced by the Applicant. It is for the Respondents to pursue the matter with the Applicant. It is well settled law that in disposed of matter MA with the present prayer (which amounts to review of the earlier order in the OA) is not maintainable. In view of the above, we find no merit in this MA. Hence, MA No. 444 of 2005 is accordingly dismissed.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)