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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.369 OF 2011

Cuttack this the 26th day of April, 2012

Amiya Ranjan Lenka...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?ⁿ
2. Whether it be referred to CAT, PB, New Delhi or not ?ⁿ


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.369 OF 2011

Cuttack this the 26th day of April, 2012

CORAM;

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Amiya Ranjan Lenka, 41 years, S/o. Niranjana Lenka, At/PO/Sarichuan, PS-Sadar, Dist-Cuttack, presently working as Senior Accountant, O/O.The Controller of Communication Accounts, Department of Telecommunication, Orissa Telecom Circle, CPMG Building, Bhubaneswar, Khurda

...Applicant

By the Advocates: M/s.D.P.Dhalasamant & N.M.Rout

-VERSUS-

- 1. Union of India represented through its Secretary, Department of Telecommunication, Ministry of Communication & I.T., Sanchar Bhawan, 20-Ashoka Road, New Delhi-110 001**
- 2. Controller of Communication of Accounts, Orissa Telecom Circle, 4th Floor, CPMG Building, Bhubaneswar-751 001**
- 3. JS(Trg) and CAO, Ministry of Defence, E-Block (Near Sena Bhawan), New Delhi-110 011**

...Respondents

By the Advocates: Mr.S.Barik, ASC

ORDER

A.K.PATNAIK, MEMBER (J): In this Original Application under section 19 of the A.T.Act, 1985, the applicant has sought for the following relief.

- i) Order dated 01.06.2011(A/12) be quashed.**
- ii) Direction be issued to the Respondents, particularly respondent no.1 that the applicant be appointed on permanent absorption basis in the post of Junior Accountant in the office of the Respondent No.2 w.e.f. 03.09.2010; and**

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iii) **further be pleased to pass any other order/orders as deemed fit and proper.**

2. Brief facts leading to filing of this Original Application are that while working as U.D.C. under Respondent No.3, the Applicant came under deputation to the Office of Controller of Communication Accountant, Department of Telecommunication, Orissa Telecom Circle, Bhubaneswar and joined as Senior Accountant with effect from 30.6.2008. While he was continuing as such, the Respondent No.1 issued a notification dated 12.8.2009 for appointment on Permanent Absorption basis of LDC, Jr. Accountant and Sr. Accountant in the Department of Telecommunications as a One Time Measure. In response to this, the Applicant submitted his application for permanent absorption through proper channel, that was duly forwarded to Respondent No.1 by the Respondent No.3 vide letter dated 29.10.2009. In addition to this, the Respondent No.2 also intimated the Respondent No.1 vide letter dated 16.11.2009 inter alia mentioning therein that the applicant may be considered for appointment in DoT on permanent absorption basis as per his eligibility based on the application already forwarded by his parent office. While the matters stood thus, the Respondent No.1 vide Annexure-A/5 dated 15.1.2010 published a list of applications already received for permanent absorption for the convenience of the applicants to check the completeness of their applications. Since the name of the applicant did not appear amongst the candidates so listed, he immediately made a representation dated 11.2.2010 to Respondent No.1. But in the meantime the Respondent No.2 vide letter dated 15.2.2010 again forwarded the application of the applicant to the

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Respondent No.1. However a Memo was issued on 24.8.2010 issuing instructions to all the Principal CsCA / CsCA to ensure that offer of appointment is made to the short listed applicants uniformly on a single date i.e. 03.09.2010. In the same Memo it was further clarified that when an individual who was on deputation in CCA office as on 17.02.2008 and beyond upto 15.02.2010 should be considered in the first instance. The applicant submitted representations which have been annexed as Annexure A/10 and A/11 to this O.A for consideration of his absorption. In response to these representations, the applicant was informed that his absorption could not be considered as his application was not received in complete form vide letter dated 1.6.2011. Aggrieved with the above, the applicant has moved this Tribunal in the present O.A. seeking relief as referred to above.

3. Respondent Nos. 1 and 2 have filed their counter opposing the prayer of the applicant. They have stated that since the application of the applicant was not received in complete form there was no other option but not to consider the applicant's case for absorption. In the circumstances, they have stated that the O.A. being devoid of merit is liable to be dismissed.

4. Applicant has filed rejoinder refuting the stand taken by the Respondent Nos. 1 and 2. According to applicant, his application was forwarded by the Respondent No.3 to Respondent No.1 on 29.10.2009 after being verified from his service book. According to him, the plea of Respondent No.1 that the application had been received in an incomplete form is false and fabricated in view of the fact that the status regarding his application had not been revealed on the web

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site vide Annexure-5 and therefore, it is an admitted fact that the application had been received in complete form.

5. We have heard Sri D.P.Dhalasamant, learned counsel for the applicant and Sri S.Barik, learned Addl. Standing Counsel for the Respondents and perused the materials on record.

6. Sri Dhalasamant, learned counsel for the applicant contended that upon being verified by his parent office, the application of the applicant had been forwarded to Respondent No.1 in complete form. In this connection, Sri Dhalasamant drew our attention to the notice published in the website on 15.1.2010 under Annexure-A/5 containing a list of applications already received for permanent absorption for the convenience of the applicants to check the completeness of their applications. Sri Dhalasamant, in course of his submission emphasized on the point of application already received as on 15.1.2010 by Respondent No.1 in so far as applicant is concerned and contended that had the name of the applicant been reflected on Annexure-A/5 certainly he could have noticed the deficiency in his application and taken appropriate remedial measure. According to him, the Respondent No.1 except making a bald statement that the application of the applicant had not reached in complete form has not made any statement so as to the exact date on which his application was so received by the Under Secretary(SEA) in the office of Respondent No.1. In addition to this, Sri Dhalasamant submitted that in view of the Notification dated 02.02.2010 issued by Respondent No.1 to the effect that the candidates who had already

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applied for permanent absorption/appointment need not apply afresh, the applicant under the bona fide impression that his application had been received in complete form did not take any further steps re-apply.

7. In response to this, the learned ASC Sri S.Barik strenuously urged on the point that the applicant's application having not been received in complete form, his application has not been entertained by Respondent No.1 rightly, far less absorption. In the circumstances, Shri Barik prayed that the O.A. being devoid of merit is liable to be dismissed.

8. We have considered the submissions made by the learned counsel for the parties and perused the materials on record.

9. From the pleadings of the parties, short point emerges for our consideration is whether the application of the applicant had been received by Respondent No.1 in complete form or otherwise.

10. It reveals from the record that the Respondent No.3 had forwarded the application of the applicant along with the requisite documents to the Under Secretary (SEA), DoT Headquarters, New Delhi vide Annexure-A/3 dated 29.10.2009, albeit it was required to be so forwarded by name Smt. Irene Cherian, Under Secretary. So also it appears from Annexure-A/5, that was published on the web site on 15.1.2010, which is about two and half months from the date of forwarding of application of the applicant by his parent office.

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Admittedly, at no point of time any communication pointing out any deficiency in the application in respect of the applicant, as forwarded by his parent office, has ever been intimated to any one concerned. Annexure-A/5 in so far as present matter is concerned, more importantly discloses two information, viz. (i) List of **applications already received** for permanent absorption and (ii) the list is for the convenience of the applicants to **check the completeness** of their applications. It is an admitted fact that the name of the applicant had not appeared in the said list at Annexure-A/5. From the above, the only presumption that can be drawn is that either as on 15.1.2010, i.e., the date of publication of Annexure-A/5 on the web site the application of the applicant had not been received by the office of Respondent No.1 or even if received, there was no deficiency in the application for rectification/addition. In the above said circumstances, the statement made by the Respondent No.1 that the application of the applicant had been received in incomplete form cannot be believed.

11. Besides the above, the fact that the matter regarding forwarding of application by the parent office to the office of the Respondent No.1 is not within the reach of the applicant. This apart, the contents of the letter dated 29.10.2009 under Annexure-A/3 of Respondent No.3 having been accepted by the addressee in toto without any demur, whatever contentions and pleadings have been put up by Respondent Nos. 1 and 2 in their counter are unjustified.

12. Last but not the least, we have gone through the Memo dated 12.04.2012 submitted by Sri S.Barik, learned Addl.Standing Counsel disclosing certain

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information in response to the query made by us. Since the matter in controversy is directly and substantially involved with respect of the rights and interests of the applicant, in our considered view, the information as revealed vide Memo dated 12.04.2012 will be of no help to the Respondents.

13. For the reasons discussed above, we answer the point in issue that the application of the applicant as forwarded by Respondent No.3 had reached the office of Respondent No.1 in complete form thereby accruing a right on him for being considered for permanent absorption based on Annexure-A/1 dated 12.8.2009. In view of this, we quash the impugned letter dated 01.06.2011.

14. In the circumstances, we direct Respondent No.1 to consider absorption of the applicant in the post of Junior Accountant as per his eligibility and subject to other conditions of Rules, with effect from 03.09.2010 which is a unified date stipulated for absorption. This exercise shall be completed within a period of thirty days from the date of receipt of this order.

In the result, the O.A stands allowed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

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(A.K. PATNAIK)
JUDICIAL MEMBER