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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO. 824 OF 2013
Cuttack, this the 5th day of December, 2013

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

Biswanath Behera,
aged about 47 years,
Son of Late Purna Chandra Behera,
At -Managobindapur, P.O- Gudum, P.S/District-Khurda;
At present working as Regular Mazdoor under
Sub-Divisional Officer, Telecom Department,
Sundargarh, At/P.O./P.S./District-Sundargarh.

.....Applicant

Advocate(s). M/s. A. Swain, S.C. Mohanty, P.K. Misra, N.C. Moharana,
P.M. Paltasingh.

VERSUS

Union of India represented through

1. Secretary, Ministry of Telecommunication,
Sanchar Bhawan, New Delhi,
Now Bharat Sanchar Nigam Limited;
2. Bharat Sanchar Nigam Limited;
(Government of India Enterprises),
Represented through its Chief General Manager,
Telecom, Orissa. (CGMT), Bhubaneswar, Dist-Khurda;
3. General Manager, Telecom., Sundargarh;
At/P.O./P.S.-Rourkela, District-Sundargarh;
4. Sub-Divisional Officer, Telegraph., Sundargarh;
At/P.O./P.S.-Rourkela, District-Sundargarh;
5. Senior General Manager, Telecom. District,
Door Sanchar Bhawan, Rourkela,
At/P.O./P.S.-Rourkela, District-Sundargarh;
6. Deputy General Manager, Telegraph.,
Office of the GMTD, Rourkela,
At/P.O./P.S.-Rourkela, District-Sundargarh;

..... Respondents

Advocate(s)...Mr. S.B. Jena (R-1) & Mr. K.C. Kanungo (BSNL)

Alka

ORDER(Oral)

A.K. PATNAIK, MEMBER (JUDL.)

Applicant stating to have been working as a Regular Mazdoor under Sub Divisional Officer, Telecom Department Sundargarh has filed this Original Application under section 19 of the A.T. Act, 1985 praying for a direction to the Respondents to absorb him as a Regular Mazdoor as per his option submitted and his pay be revised from the date the Telecom Department was taken over by the BSNL with consequential service benefits.

2. The case of the Applicant, in nut shell is that he was appointed as a Regular Mazdoor (in short 'RM') in the year 1996 by the Sub Divisional Officer, Telecom, Sundargarh. He was inflicted in a criminal case along with the Junior Telecom Officer on the basis of an FIR lodged in the year 2000 and consequently he was placed under suspension w.e.f. 03.11.2000. He was paid subsistence allowance @ 50% with effect from November, 2000 to May, 2001 and @ 75% with effect from June, 2001. Meanwhile the Telecom Department was taken over by the Bharat Sachar Nigam Limited. Applicant submitted option to be absorbed in the BSNL but due to his involvement in the Criminal case his option could not be considered. Meanwhile on 20.5.2004 he was reinstated to service. Applicant sent pleader's notice on 22.4.2013 and having received no reply has approached this Tribunal in the instant OA with the aforesaid prayer.

3. Heard Mr. A.Swain, Learned Counsel for the Applicant, Mr.S.B.Jena, Learned Additional CGSC appearing for the Respondent No.1 and Mr.K.C.Kanungo, Learned Counsel appearing for the BSNL (Respondent Nos. 2 to 6) and perused the records.

Ally

4. Mr. Swain Learned Counsel for the Applicant submitted that after BSNL came into force, option was called for from the existing employees of the erstwhile Telecom Department and on the basis of this option, employees of the Telecom Department were absorbed in the BSNL. Though the Applicant submitted his option to be absorbed, his case could not be considered. Therefore, gross injustice by way of discrimination was caused to the applicant for which pleader's notice was given but the Respondents have shown callous in considering the legitimate grievance of the applicant. On the other hand by drawing our attention to the provisions of Section 20 and 21 of the A.T. Act, 1985, Mr. Jena and Mr. Kanungo vehemently opposed the maintainability of this OA. They have also opposed the prayer of the applicant on the ground that this OA has been filed by the Applicant without enclosing when such option was called and when the applicant submitted his option etc.

5. I have considered the rival submissions of the Parties and perused the records. Section 20 of the A.T. Act, 1985 reads as under:

"(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the

date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial. ”

Section 21 of the A.T.Act, 1985 reads as under:

“(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case maybe, Clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

6. On a bare reading of the provision made in Section 20 of the Act, 1985 I do not find any such provision has been provided that one can approach this Tribunal after making pleader's notice. This being a service grievance of the applicant he should have personally made representation ventilating his grievance to his immediate superior authority and had he not considered such grievance and/or had the decision gone against his interest he would have availed the opportunity by way of making representation to next higher authority. Except bald submission that he has earlier approached the authority, no material has been filed in support thereof. Further according to the applicant BSNL came into effect sometime in 2000-2001 and he was reinstated to service only on 20.5.2004 and thereafter when he has submitted his option, before whom and in pursuance of which order has not been stated/enclosed to the OA. Section 21 of the A.T. Act, 1985 clearly provides the period within which one has to file the OA. No separate application has been filed seeking condonation of delay. This Tribunal is a creature under a particular statute and therefore, cannot go beyond the provisions provided under the A.T. Act and Rules made thereunder.

7. In view of the specific provisions enumerated under Section 20 and 21 of the A.T. Act, 1985 this OA deserves to be dismissed and is accordingly dismissed by leaving the parties to bear their own costs.


(A.K. Patnaik)
Member (Judicial)