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M.A.523/94 in O.A.658/1989.

(AS PER HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN)

Date: ^{23rd} August, 1996.

Syed Bakshali. Applicant.

1. The Sub Divisional Officer,
Telecom, Nalgonda
2. The Telecom District Engineer,
Nalgonda.
3. The Director General, Telecom,
(representing Union of India,
New Delhi.

Respondents.

Counsel for the Applicant: Sri C.Suryanarayana.

Counsel for the Respondents: Sri N.R.Devraj, Senior Standing
counsel for the Respondents.

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN.
HON'BLE SHRI R.RANGARAJAN, MEMBER (A).

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O R D E R.

Heard Mr. C.Suryanarayana for the applicant and Sri N.R.Devraj, Senior Standing Counsel for the respondents. Perused the reply affidavit. The M.A., is filed in order to secure implementation of the Judgment passed in batch of cases by this Tribunal which is reported in 1991(2)SLJ(CAT)175. The first direction was to prepare a seniority list as per the various instructions issued by the D.G. Telecom letters. The second direction was to re-engage the applicants in those cases in accordance with their seniority subject to availability of work and to extend them such other benefits to which they may be entitled. The third direction was that the respondents shall pass orders in accordance with the instructions of the

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of DG(P&T) as regards breaks in service (in relation to the applicants in those cases).

2. The applicant does not aver that the respondents have not prepared the seniority list as directed. The grievance of the applicant is that the respondents published the seniority list on 9-1-1990 relating to serving casual labourers as on 31-12-1989/1-1-1990 in the Nalgonda Telecom District. But in that list the name of the present applicant has not been shown although some others who were junior to him have been included. Because of this grievance the applicant seeks by this M.A., appropriate orders and directions to the respondents to ensure faithful implementation of the original directions.

3. The reply filed by the respondents shows that the name of the applicant was not included in the seniority list owing to break in service which was on his own accord since January, 1982 and the condonation of break in service cannot be given and therefore he would not be senior to any of the Mazdoors as all of them were recruited before 31-3-1985 and rank senior to him. They also state that no senior to the applicant was engaged and work is not available to engage the Mazdoors. Controversy therefore becomes a factual controversy and has nothing to do with the implementation of the directions contained in the original Order. In that connection, it may be mentioned that Cl.(b) of the original order had left it open to the respondents to pass orders in accordance with the instructions of the D.G(P&T) issued from time to time in regard to the question of breaks in service. Since the respondents have taken a particular view in that respect in regard to the applicant and have stated that the breaks in service of the applicant were not condoned, there does not remain any question of non-implementation of the Order. A decision taken on

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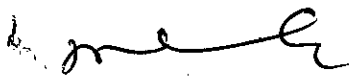
factual basis as above, cannot be dealt with on merits by purporting to do so in order to ensure a faithful implementation of the directions as prayed. In our view the proper course for the applicant was to make a representation to the concerned authorities on the point of breaks in service and to include his name in the seniority list dated 9--1--1991 and deal with his case accordingly since he seems to be aggrieved by his non-inclusion in the said seniority list. Mr. Suryanarayana stated that the applicant has not been informed about the ground^{now} stated in the reply. However, the ground is now known to the applicant from the reply of the respondents. It is therefore, a matter where the applicant may file a representation before the appropriate authority against the same and pursue his remedies by filing substantive proceedings in this Tribunal if he is so advised. Mr. Suryanarayana stated that the applicant had also filed O.A.No.1539/93. But by Order dated 8-3-94 as it was treated that the applicant was seeking implementation of the original orders, it was held that it was not maintainable and so dismissed the same with liberty to file a Miscellaneous application under Rule 24 of the Central Administrative Tribunal(Procedure)Rules,1987. We make it clear that the said Order does not ~~give~~ come in the way of the applicant in pursuing the ~~normal~~ course indicated above namely to file a representation and to approach this Tribunal by substantive proceeding i.e., by filing an independent O.A., inasmuch as the Order did not deal with on merits and cannot estop the applicant from raising those grounds again or claiming similar relief on merits. We are convinced that the grievance of the applicant as is made in the M.A., cannot form the subject matter of an application under Rule 24 of Central Administrative (Procedure)Rules and it can only be dealt with in a substantive proceeding.


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4. We therefore clarify that the Order dated 8-3-1994
not
in O.A.1539/93 would stand in the way of the applicant to pursue
his other remedies.

5. At the request of Mr. C.Suryanarayana, we give
liberty to the applicant to file a representation to the
concerned authorities within a period of two weeks from today
and direct the respondents to dispose of the same on merits
and convey the decision thereon to the applicant within a
period of four weeks from the date of filing of the representation
by the applicant. If aggrieved ^{by} of the decision, the applicant
will be at liberty to pursue his legal remedies.

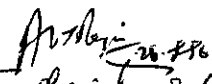
6. In the light of the above discussion, the
M.A., is disposed of.


R.RANGARAJAN,
Member (A)


M.G. CHAUDHARI, J
Vice-Chairman.

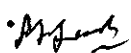
Date: August 23, 1996.

Pronounced in open Court.


Deputy Registrar (D) ce.

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NOTE

Expedite C.C. to the
parties. 
(B.O.)