

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 679/98

New Delhi, this the 16th day of April, 1999

(12)

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

L.K.Singh
S/o Shri G.P.Singh
66/11, Sector-1, Pushp Vihar,
New Delhi-110017.
(By Advocate: Sh. M.M.Sudan)

Vs.

Union of India through

1. Cabinet Secretary,
Cabinet Secretariat,
South Block,
New Delhi-110001.
2. Director General of Security,
East Block-V,
R.K.Puram, New Delhi-110066.
3. Deputy Director Administration
Aviation Research Centre,
Charbatia, Distt. Cuttack,
Orissa-754028.
(By Advocate: Sh. K.C.D.Gangwani)

JUDGMENT

delivered by Hon'ble Shri T.N.Bhat, Member (J)

The applicant, who initially joined as LDC in the Aviation Research Centre at Charbatia, Orissa (ARC, for short) on 14.9.1964 but was later asked to officiate as Storekeeper Gr. II w.e.f. 25.2.66 and was at the same time given the normal seniority in the cadre of Upper Division Clerk, assails in this OA the order dated 20.2.98 issued by the Deputy Director ARC by which the promotion granted to the applicant to the post of Assistant w.e.f. 26.12.1997 has been cancelled, purportedly, in perusal to the judgments/orders of the Cuttack Bench of this Tribunal in TA No. 87 of 1986 (B.Pradhan vs. Union of

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India and others) and OA No.146/87 (B.C.Bhol vs. Union of India and others) as upheld by the Apex Court in CA No. 866/88 and CA No. 3358/88.

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2. It appears that the cadre of Storekeepers in ARC was a separate cadre until the same was re-designated as Storekeeper (UDC) thus constituting a common cadre OF UDCs by the Memorandum dated 24.8.1976 (Annexure A-19 to the OA). A dispute regarding seniority arose between those who were working as UDCs prior to the issuance of the aforesaid Memorandum and those who came to re-designated as UDCs in pursuance thereto. The Cuttack Bench of the Tribunal held that the Storekeepers who came to be redesignated w.e.f. 24.8.76 (the date of issuance of the Memorandum) would rank junior to those who were already working as UDCs, as the Memorandum could not be given retrospective effect.

3. The applicant's contention is that since he was initially appointed as LDC and even after his appointment on officiating basis to the post of Storekeeper, against which he had protested, the respondents had given him the benefit of seniority on the basis of his initial appointment in the Ministerial cadre (LDC and UDC), it could not be said that he became a part of the combined cadre of UDC only from 24.8.76. His further contention is that the judgment of the Cuttack Bench (supra) would not be applicable in his case as he was for all intents and purposes a UDC even prior to the issuance of the Memorandum dated 24.8.76.

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4. In reply, the respondents have taken the plea that the judgments of Cuttack Bench squarely apply to the applicant. (A)

5. We have heard the learned counsel for the parties and have perused the material placed by them on the record of the case.

6. It is not disputed by the respondents that the applicant having been initially appointed as LDC belonged to the Ministerial cadre and as such he was entitled to get promotions in the normal line first to the post of UDC and thereafter to the post of Assistant. It is true, as submitted by the respondents' counsel that the applicant was later given appointment to the post of Storekeeper which was a higher post in terms of scale of pay. But it is equally true that the applicant on being asked to officiate as Storekeeper protested and made repeated requests for being reverted back to the General Ministerial cadre. His protests were more vehement when he was asked to furnish cash security. Copies of several such representations made by the applicant have been annexed to the OA. We may refer in particular to the representation dated 13.11.69 (A-6) in this regard wherein the applicant made a request that he may be transferred back to the General Ministerial cadre and his seniority be fixed among the other UDCs. In response to that representation the Deputy Director (Admn.) in the ARC issued the Memorandum dated 18.12.69 that the ARC Headquarters have been moved for fixing his seniority at the appropriate place among other UDCs. Thereafter the applicant continued to make representations. On 17.4.72

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an office order was issued, as at Annexure A-11, declaring the applicant to have been appointed in quasi-permanent capacity as LDC with effect from 14.9.67. (S)

7. On 4.11.75 the Administrative Officer issued a draft seniority list of LDCs in which the applicant's name figured at S.No.5. It is significant to note that in this seniority list the name of B.Pradhan, one of the petitioners before the Cuttack Bench, also figures and that too below the name of the applicant. Thus, even in the years 1972 and 1975 the applicant continued to be borne on the General Ministerial cadre even though he was officiating as Storekeeper which was an ex cadre post at that time.

8. The final decision on the representations of the applicant came on 5.3.1974 when the ARC Headquarters issued a Memorandum (A-13). With the approval of the Director ARC the ARC Headquarters decided by the aforesaid Memorandum as follows:-

".... that Sh. Singh (applicant herein) may be treated as having been promoted notionally as UDC from the date he would have been promoted as UDC had he not been appointed as Storekeeper. His name in the seniority list of UDC may, therefore, figure in the same order as it was in the list of LDCs."

Another Memorandum was issued by the Office of Director ARC in the Directorate General of Security on 27.7.74 (A-14) by which the applicant's name was included (inserted) in the draft seniority list of UDCs at S.I.

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No.28(a). In this draft seniority list, we may point out, the name of B.Pradhan figures at S.No.39 and the name of G.C.Bhol at SI. No.53, who were the applicants in TA No. 87/1986 and OA No. 146/1987, respectively, before the Cuttack Bench. All this had happened prior to 24.8.76.

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9. In the above facts and circumstances it can by no stretch of reasoning be held that the applicant became a part of the cadre of UDCs or, in other words, was born in that cadre, only on 24.8.76 when the post of storekeeper was redesignated at Storekeeper (UDC) so as to attract the application of the Cuttack Bench judgment in TA 87/86 and OA 146/87. On the other hand there is clinching evidence on the record to establish that the applicant continued to be borne on the General Ministerial cadre (LDCs and UDCs) even though he was officiating on the ex cadre post of Storekeeper. It is not the case of the respondents that the applicant herein was also one of the party-respondents in the aforesaid TA or OA. We are convinced that the case of the applicant herein stands on a different footing altogether from the cases of those who were the private respondents No.4 to 7 in TA 87/86 and Nos.5&6 in OA 146/87 before the Cuttack Bench.

10. For the aforementioned reasons this OA has to be allowed. We accordingly allow the OA and quash the impugned Order/Memorandum dated 2.2.98. We further declare that the applicant is entitled to continue on the post of Assistant and to get all the consequential benefits. It needs to be stated here that on 31.3.98 we had issued interim directions restraining the respondents from implementing the impugned order. The said directions

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have continued to remain in force. We however make it clear that if in the meantime the impugned order has been implemented the respondents shall forthwith restore the applicant to the position held by him prior to the issuance of the impugned order and shall give him all the consequential benefits.

11. There shall be no order as to costs.


(S.P. BISWAS)
Member (A)


(T.N. BHAT)
Member (J)
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