

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(6)

O.A. No. 2213/90
T.A. No.

199

DATE OF DECISION 24-7-1991

Shri M.Jaykutty

Petitioner Applicant

Shri E.X.Joseph,

Advocate for the Petitioner(s) Applicant

Versus

U.O.I & ors.

Respondents

Shri K.L.Bhandula ,

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N.DHUNDIYAL, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal? Y

JUDGEMENT(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. B.N.DHUNDIYAL, MEMBER)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by Shri M.Jaykutty working as Stenographer (Grade I) with the General Manager, Chukha Hydel Project, Bhutan challenging impugned order No. 49011/21/90-Estt.IV dated 11.6.90 issued by the Central Water Commission (Respondent No.2) rejecting his plea for absorption.

2. The applicant was appointed as L.D.C by the erstwhile Central Water and Power Commission (now Central Water Commission) in the Chukha Hydro-electric Project Construction Circle, Bhutan with effect from 13.12.74. Rising through the ranks of Steno-typist and Stenographer Grade II, he finally became Steno Grade I on 27.9.1989. After formation of the

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Chukha Project Authority, the project was transferred from the Central Water Commission to it on 1.12.75. The relevant order No.1(69)/75-Adm.I dated 27.11.75 inter alia laid down that the services of the officers and staff of the project would be placed at the disposal of Chukha Project Authority for a period of three months during which they would continue to be governed by the rules framed by Government of India. The Chukha Project Authority had to offer terms and conditions of service/them within this period and those who did not volunteer for absorption in Chukha Project Authority would revert to their parent cadre not later than 29.2.1976. However, no such offer was made to the applicant or other "locally recruited" employees. His representation elicited inquiries from the Commission as to whether he had exercised his option within the prescribed period of three months and whether there were other similarly placed members of staff in the project. Further correspondence on the subject shows that the issue of absorption remained under consideration in the Commission till January 1987, when the Commission expressed its inability to absorb any more surplus staff. By an order dated 29.5.1990, issued by the General Manager, Chukha Project informed the applicant that the assets and liabilities of Chukha Project would be handed over to the Government of Bhutan and the Chukha Project Authority would be wound up by 31.12.1990. The surplus employees were given option to offer themselves for absorption by the Government of Bhutan for their Inspection and Maintenance organisation. Faced with the prospect of loss of job, the applicant gave his option for such absorption without prejudice to his claim for absorption in the Central Water Commission. The applicant has prayed that the decision conveyed vide Commission's letter dated 11.6.90 not to absorb him may be set aside and he may continue to be an employee of the Central Water Commission.

3. The respondents have contended that the applicant was locally recruited in Bhutan and his order of appointment issued in December 1974 clearly stipulates that he will be governed by the provisions of Bhutan C.C.S Rules, hence his case does not fall within the jurisdiction of this Court. The option for absorption or reversion to parent cadre given in 1976 was meant only for the Central Water Commission employees sent on deputation to Bhutan and not for the employees recruited locally.

4. The applicant was informed as early as on 14.1.87 that his case has been considered, that his absorption was not possible and that no further correspondence would be entertained. The applicant is an employee of Government of Bhutan and the Central Water Commission cannot be made liable to absorb him.

5. We have gone through the records of the case and heard the rival contentions. The appointment letter issued to the Applicant on 2nd December 1974 is by the Superintending Engineer, Chukha Hydro Electric Project, Bhutan. The appointment letter clearly states that the rules framed by the Royal Government of Bhutan would apply in his case and he would have the liability to serve in any part of Bhutan. However, as is clear from the correspondence exchanged between the Project Authority and the Central Water Commission (Annexure A-10), Shri JoyKutty's case is unique as there was no other L.D.C who was recruited on the strength of the regular establishment. Even ^{his} ^{DN} recruitment was made against the instructions that only Bhutanese nationals should be appointed locally. It is clear that the staff employed before the formation of autonomous body with

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the Chukha Project Authority consisted of (a) locally recruited in the regular establishment and (b) locally recruited in the work charge establishment and India based staff on deputation basis. When the services were transferred to the authorities on 1.12.75, no option was given to the locally recruited staff whether work charged or appointed against regular vacancies. There is some force in the contention of the applicant that his local recruitment cannot deprive him of the rights which flow from the appointment by the Commission. Similarly placed locally recruited staff at Trisuli Hydel Project, Nepal as also employees of Central School at Tsimelakha(Bhutan) had earlier been absorbed after completion of the projects in different jobs in India. We, therefore, hold that even though the Central Water Commission may have been acting on behalf of the Government of Bhutan, they cannot totally absolve themselves from the responsibility of looking after the interests of the employees appointed against the regular establishment. We, therefore, partly allow the application and direct that the particulars of the applicant be circulated to all the establishments under the Central Water Commission and other Government establishments for possible absorption. The age relaxation to the extent of service rendered by the applicant with the Central Water Commission and the Chukha Project Authority will be allowed to him in terms of the Department of Personnel & Training O.M.No.15012/7/90-Estt(D) dated 7.11.90. The applicant will continue to work as Stenographer Grade I in the office of the respondents till final absorption, as indicated above. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.

B.N.DHOUNDIYAL
(B.N.DHOUNDIYAL)
MEMBER (A) 24/1/91

Parvati
24/1/91
(P.K.KARTHA)
VICE CHAIRMAN (J)