

9 ⑤

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A NO. 309 OF 1987

Date of decision : September, 23, 1988

Vishwanath Dwivedi,
aged about 54 years
S/o Late Kamala Kanta Dwivedi,
Deputy Director of Agriculture Zonal Office,
P.O Malkangiri Colony,
Dist. Koraput.

... Applicant

Versus

1. Union of India represented by its
Secretary to the Department
of Internal Security,
Ministry of Home Affairs,
Rehabilitation Division, Jaisalmer House,
Mansingh Road,
New Delhi-110001.

2. Secretary,
Union Public Service Commission,
New Delhi.

3. Chief Administrator,
Dandakaranya Development Authority,
Project Head Quarters,
Koraput.

... Respondents

M/s. I. Mohanty, L. Pradhan,
Advocates

... For Applicant

Mr A.B Misra,
Sr Standing Counsel (Central)

... For Respondents

C O R A M

THE HON'BLE MR B.R PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR K.P ACHARYA, MEMBER (JUDICIAL)

-
1. Whether reporters of local papers have been permitted to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? No
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

B. R PATEL, VICE-CHAIRMAN

The applicant who has an M.Sc degree in Agriculture joined the Dandakaranya Development Authority as a Senior Technical Assistant. He worked as Senior Technical Assistant and Farm Manager from 3.7.63 to 24.1.75 and as Assistant Executive Officer Sr.(Agril.) from 25.1.75 to 9.7.75. He worked as Soil Survey Officer/Agriculture Officer which was a Group B post carrying a pay scale of Rs.650-1200 from 10.7.75 to 20.2.1980. He was then appointed on promotion to the post of Zonal Agricultural Officer , General Central Service Group A in the scale of Rs.700-1300 on ad hoc basis with effect from 21.2.80 and continued as such upto 26.1.81. On the recommendation of the Departmental Promotion Committee and with the approval of the Union Public Service Commission he was promoted to officiate as Zonal Agricultural Officer on regular basis with effect from 29.11.1985 vide Annexure R-8. He was appointed on promotion to the post of Deputy Director(Agriculture), General Central Service Group A in the scale of Rs.1100-50-1600 on adhoc basis for a period of 6 months vide Annexure R-4 and Annexure 1. The ad hoc appointment of the applicant to the post of Deputy Director (Agriculture) was terminated with effect from 30.9.87 vide Project Headquarters Order No.59/33/84-A.II dated 9 September, 1987 as at Annexure R-7 and Annexure -3 and consequently he was reverted to his former post of Zonal Agricultural Officer with effect from the same date. The post of Zonal Agricultural Officer to which the applicant was reverted was found surplus to the requirement with effect from 16.10.87 and the applicant was declared surplus with effect from the same

R. Patel

date and his name and bio-data were reported to the Ministry of Personnel & Training, Administrative Reforms, Public Grievances & Pensions, Central (Surplus Staff) Cell for his redeployment vide DDA letter No.119/4/86-IWSU dated 5.10.1987 as at Annexure-4. The applicant has moved the Tribunal to quash, (i) the Order No.59/33/84-A II dated 9.9.87 vide Annexure 3 and (ii) No.119/4/86-IWSU dated 5.10.87 vide Annexure 4 declaring him surplus and to grant him seniority with effect from 21.2.80 in the grade of Zonal Agricultural Officer and to regularise his ad hoc promotion to the post of Deputy Director(Agriculture) with effect from 28.1.86 and to grant him all consequential benefits.

2. The respondents have maintained in their counter that the applicant did not have continuous service as Zonal Agricultural Officer with effect from 21.2.80 till he was regularised on 29.11.85 and as such he cannot be given the benefit of the service from 21.2.80 for the purpose of his seniority as Zonal Agricultural Officer. They have further maintained that the applicant does not satisfy the eligibility conditions laid down in the Recruitment Rules (Dandakaranya Project Agricultural Organisation Class I and Class II Posts Recruitment Rules, 1973) and as such he could not have been promoted on a regular basis to the post of Deputy Director(Agriculture) and as the Government directed the Dandakaranya Development Authority to reduce the staff as well as the vehicles to the barest minimum by 1.10.87 vide Annex. R-2, the post of Deputy Director(Agriculture)

R. S. S.

was abolished and the applicant reverted to his substantive post of Zonal Agricultural Officer before his placement in the Surplus Cell.

3. We have heard Mr I. Mohanty, learned counsel for the applicant and Mr. A. B. Misra, learned Senior Standing Counsel (Central). On hearing both the counsel, the reversion of the applicant from the post of Deputy Director (Agriculture) was stayed till 24.11.87 when on further hearing the stay order was modified to the extent that the petitioner would continue to remain in the post of Zonal Agricultural Officer to which he was reverted with effect from 30.9.87 and he would not be relieved from this post till the final disposal of this case even though he has been surrendered to the Surplus Cell.

4. Mr Mohanty has urged that since the applicant held the post of Zonal Agricultural Officer and/or equivalent post on and from 21.2.80 and since the vacancy of Zonal Agricultural Officer against which he has been adjusted occurred in 1982, for the purpose of eligibility for promotion to the next higher post, i.e., the post of Deputy Director (Agriculture), the period from the date of the vacancy in 1982 should count. In this connection he has cited the judgments of the Central Administrative Tribunal, Delhi Bench in S.C Jain vs. Union of India and others and in the case of S.S. Grover and another vs. Union of India and others both published in SLR June 87 Part 2 Vol. 46 p. 416 and p. 423 respectively. The first judgment is based on a judgment of Hon'ble High Court of Delhi in Kuldeep Chand Sharma and another v. Delhi Administration and

Handwritten signature

another , 1978(2) SLR p.379. The relevant portion of the High Court judgment reads as follows:-

" But it is equally true that once ad hoc appointee is eventually selected for the post in a regular selection, the regular appointment would relate back to the date of ad hoc appointment " (Emphasis supplied)

It also refers to the judgment of Hon'ble Supreme Court in the case of Narendra Chadha v. Union of India and others AIR 1986 SC 638 ATR 1986 Vol.I SC 49. Based on these findings the Delhi Bench has held that the entire period of service rendered by the petitioner as Technical Assistant should count for seniority in that grade. In the other judgment the Bench has referred to the observations of the Hon'ble Supreme Court in the case of A.Janardhana v. Union of India (AIR 1983 SC 769) and also the case of Narendra Chadha v. Union of India and others and have come to the conclusion " that it is now well established that continuous and uninterrupted officiation in a post for a long time confers a claim for seniority and confirmation even though the initial promotion might have been on ad hoc basis ". Therefore Mr Mohanty has urged that if there is a continuous period of ad hoc appointment prior to regularisation , that period should count towards seniority of the applicant in the grade of Zonal Agricultural Officer and consequentially also for eligibility for promotion to higher grade. The only point for determination is whether the applicant held the post of Zonal Agricultural Officer continuously from the date of vacancy that arose in the year 1982. Admittedly as per

Banerjee

Recruitment Rules "Zonal Agricultural Officer with 5 years service in the grade rendered after appointment thereto on a regular basis " is eligible for consideration for promotion to the post of Deputy Director(Agriculture) and this post is a selection post to be filled up by promotion, failing which by direct recruitment. To a representation made by the applicant regarding regularisation of his ad hoc appointment in the post of Deputy Director (Agriculture), the Zonal Administrator, Malkangiri informed the applicant that being a regular incumbent in the grade/post of Zonal Agricultural Officer with effect from 29.11.85 he is not coming within the purview of the Recruitment Rules for consideration for promotion as Deputy Director(Agriculture) vide Annexure 5. The decision of the Zonal Administrator is contrary to the views taken by the Delhi Bench of the Central Administrative Tribunal, the High Court of Delhi and the Supreme Court and as such is not acceptable to us. Mr Misra also did not controvert this legal position. There was also nothing in the counter filed by the respondents to suggest that they have controverted this legal position. Mr Misra has however contended that the applicant does not have 5 years continuous ad hoc service as Zonal Agricultural Officer to be eligible for consideration for promotion to the post of Deputy Director(Agriculture). He has in this connection drawn our attention to the service particulars given at page 3 of the counter. These particulars are as follows:-

[Signature]

15 XI

| <u>Post</u> | <u>Period worked by applicant</u> | <u>Gap in service</u> |
|--|-----------------------------------|-----------------------|
| 1. Zonal Agril. Officer (Rs.700-1300) | From 21.2.80 to 26.1.81 | |
| 2. Soil Scientist (Rs.700-1300) | From 27.1.81 to 31.12.83 | Another cadre |
| 3. Zonal Agril. Officer (Rs.700-1300) | From 2.1.84 to 2.6.85 | |
| 4. Agril. Officer (Rs.650-1200) | From 3.6.85 to 30.6.85 | Another cadre |
| 5. Zonal Agril. Officer(Ad hoc) (Rs.700-1300) | From 1.7.85 to 28.11.85 | |
| 6. Zonal Agril. Officer (Rs.700-1300) | From 29.11.85 | Regular appointment |

The applicant was thus appointed as Zonal Agricultural Officer for a period of about one year from 21.2.80 to 26.1.81 when he was appointed as a Soil Scientist. This fact finds corroboration from a letter dated 30 May 1983 written by the Dandakaranya Development Authority to the Under Secretary to the Union Public Service Commission making out a case in favour of the applicant for convening a review D.P.C for consideration of the case of the applicant for promotion to the rank of Zonal Agricultural Officer on regular basis as his junior O.P Verma had been already functioning as Zonal Agricultural Officer on regular basis vide Annexure R-16. Para 7 of this letter reads as follows:-

" Keeping the proposed amendment in view, Shri Dwivedi, Soil Survey Officer(re-designated as Agriculture Officer) while officiating as

Signature

16 XII

Zonal Agriculture Officer on adhoc basis, on termination of his ad-hoc appointment, was appointed to the post of Soil Scientist on adhoc basis with effect from 27.1.81. This appointment was made considering his experience in the line of Soil Survey/Conservation etc. and is still continuing in the post. His adhoc officiation as Soil Scientist has been approved by the Union Public Service Commission upto 30.6.83. In this connection Commission's letter No. 2/46(1)/82-A.U.6 dated 12.1.83 may please be referred to."

With the appointment of the applicant to the post of Soil Scientist his adhoc appointment as Zonal Agricultural Officer came to an end and there was break in the adhoc service of the applicant as Zonal Agricultural Officer. The applicant remained in the post of Soil Scientist atleast upto 30.6.83 as the Union Public Service Commission approved his adhoc officiation as Soil Scientist upto that date. Mr Mohanty has argued that the post of Soil Scientist and that of Zonal Agricultural Officer have identical scale of pay and should be treated as identical posts and further that the appointment of the applicant as Soil Scientist with effect from 27.1.81 was nothing but deputation of a Zonal Agricultural Officer to that post. and that the services of the applicant as Soil Scientist from 27.1.81 should be treated as part of the ad hoc service of the applicant as Zonal Agricultural Officer. We are unable to accept the contention of Mr Mohanty for the following reasons:-

(i) The post of Soil Scientist has not been included in the cadre of the Zonal Agricultural Officer. In fact, as is apparent from the letter of 30th May, 1983 vide Annexure R-16, there is a separate set of rules for recruitment to the post of Soil Scientist.

Ambedkar

2. There is no order deputing the applicant to the post of Soil Scientist. As paragraph 7 of the aforesaid letter would indicate, the ad hoc appointment of the applicant as Zonal Agricultural Officer was terminated and then he was appointed to the post of Soil Scientist. His services as Soil Scientist, therefore, cannot count towards his ad hoc service as Zonal Agricultural Officer. There is a clear break in the service from 27.1.81 to at least 30, June 1983. His services as Zonal Agricultural Officer will count only from the subsequent date of the applicant's officiation as Zonal Agricultural Officer on ad hoc basis. Here again there is the difficulty that the applicant was reverted to the feeder post of Agriculture Officer(Rs.650-1200) from 3.6.85 till 30.6.85 which is admittedly another cadre. There is continuity in his ad hoc service only from 1.7.85 which is not enough to make him eligible for consideration for promotion to the post of Deputy Director, Agriculture. In view of this, the applicant cannot be considered for promotion to the post of Deputy Director(Agriculture) on regular basis. In view of this the Departmental authorities gave him ad hoc appointment as Deputy Director(Agriculture) and when they got Government orders dated 21 August 1987 vide Annexure R-2 to reduce the staff to the barest minimum by 1.10.87 they had no alternative but to terminate the ad hoc appointment of the applicant as Deputy Director (Agriculture) and revert him to his substantive post of Zonal Agricultural Officer. Mr Mohanty has further urged that the Chief Administrator, Dandakaranya Development



18 XIV

Authority has no authority to abolish the post of Deputy Director, Agriculture and hence his order abolishing this post has no validity and the post of Deputy Director, Agriculture should be deemed to be continuing. Mr Misra has drawn our attention to the draft notification of Government of India, Ministry of Labour & Rehab. (Department of Rehabilitation), New Delhi dated 4th January, 1975 which mentions that the President delegated to the Chief Administrator, Dandakaranya Development Authority until further orders the power to make all appointments to Central Civil Services Class I and Central Civil Services Class II posts, the maximum of the pay scale of which is Rs.1800/- per month or less. Appointment to such a post and creation and abolition thereof are ofcourse two different matters. However as the applicant does not have the requisite length of service to be eligible for consideration for promotion to the post of Deputy Director, Agriculture, any discussion of the power of Chief Administrator, Dandakaranya Development Authority is at best of academic interest having no bearing on the relief sought by the applicant. Moreover the authority that has the power to make appointment to a post has also the power to withhold appointment if so warranted by administrative consideration. It is the inherent power of the Departmental authorities to fill up a post or to keep it vacant according to the demands of administration and it was within the competence of the Chief Administrator, Dandakaranya Development Authority to decide whether there was need for continuing the post of Deputy Director, Agriculture. The Government also vide their letter

Amal

dated 21st August 1987 (Annexure R-2) directed Dandakaranya Development Authority to reduce the staff to the barest minimum by 1.10.87 and it was not possible for Chief Administrator, Dandakaranya Development Authority to act contrary to the instructions of the Government of India. We cannot, therefore, blame the Dandakaranya Development Authority for not filling up the post of Deputy Director, Agriculture or continuing the applicant's ad hoc appointment to that post. We have therefore found no merit in the application which stands rejected, leaving the parties to bear their own costs.

K.P. ACHARYA, MEMBER (JUDICIAL)



.....
23.9.88
Vice-Chairman

I agree
.....
23.9.88

.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack
September 23, 1988/N.J. Joseph, SPA.