

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.19 of 1988.

Date of decision : June 29, 1988.

Sri Madhusudan Pattanaik, aged
about 58 years, son of late Swapneswar
Pattanaik, at present working as
Caretaker, Office of the Postmaster General,
Orissa Circle, Bhubaneswar, Disr.Puri.

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Applicant.

Versus

1. Union of India represented through
Secretary, Ministry of Communication,
New Delhi.

2. Postmaster General, Orissa Circle,
At/P.O./P.S. Bhubaneswar, Dist-Puri.

3. Sri Raghunath Nanda,
S/o Not known
at present working as Duftry
in the Office of Postmaster General,
Orissa Circle, At/P.O./P.S. Bhubaneswar,
Dist.Puri.

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Respondents.

For the applicant ... Mr.A.K.Mohapatra, Advocate.

For the respondents ... Mr.A.B.Mishra, Senior Standing
Counsel (Central)

C O R A M:

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

A N D

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

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *M*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order of the competent authority passed vide Annexure-6 dated 11.1.1988 reverting the applicant to the post of a Selection Grade Duftry.

2. Shortly stated, the case of the applicant is that initially he was appointed as a Duftry in the Office of the Postmaster General, Orissa and in due course of time the applicant had been put in the post designated as Selection Grade Duftry. On 14.7.1986 vide Annexure-1 the applicant was appointed to the post of Caretaker in the same Office purely on ad hoc basis. On 11.1.1988 the applicant was reverted to his substantive post namely Selection Grade Duftry for which the applicant feels aggrieved and has invoked the jurisdiction of this Bench for interference.

3. In their counter the respondents maintained that no illegality has been committed in the case of the applicant being reverted to the post of Selection Grade Duftry because appointment to the post of Caretaker was purely on ad hoc basis.

4. We have heard Mr.A.K.Mohapatra-I, learned Counsel for the applicant and Mr.A.B.Mishra, learned Senior Standing Counsel (Central) at some length. Before we decide the questions mooted at the Bar it is worthwhile to note that admittedly the date of birth of the applicant is 26.9.1929 and accordingly he should have retired on superannuation on

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30th September, 1987. Admittedly, the post of a caretaker belongs to Grade C and the age of retirement on superannuation is 58 years and further admitted position is that the post of Selection Grade Duftry comes within the category of Group D and the retirement is to take effect on completing 60th year. Therefore, the undisputed position is that the applicant while working as a caretaker should have been made to retire on superannuation on 30th September, 1987. Instead of that through inadvertance or for any other reason the applicant was allowed to continue in the higher post till 10.1.1988 and on 11.1.1988 vide Annexure-6 the applicant was reverted to his former post of Selection Grade Duftry with the only intention that the applicant should be allowed to continue in service till he completes his 60th year. Mr. Mohapatra-1, learned counsel for the applicant emphatically submitted before us that the applicant should not have been reverted to the post of Selection Grade Duftry and he should have been given the pay scale of a Caretaker which is much more than the pay scale of a Selection Grade Duftry. In addition to the above, Mr. Mohapatra-1 submitted that previously when the applicant was appointed on leave vacancy to the post of the caretaker, the applicant had been appointed to the post of Caretaker on regular scale of pay prescribed for Caretaker. Even if all the contentions of Mr. Mohapatra-1, is correct, we are unable to agree with the submission made by Mr. Mohapatra-1, because under Annexure-1 the applicant was offered to render the services as Caretaker

on a pay prescribed for the post of a Selection Grade Duftry and in addition to the same he was allowed to draw deputation allowance. The applicant accepted such an offer and discharged his duties as Caretaker and drew the pay of a Selection Grade Duftry plus the special allowance admissible under the Rules and since the applicant had acquiesced^{to} this position, it is no longer open to the applicant to make a grievance at this point of time.

5. Mr. Mohapatra-1, then invited our attention to the when contents of Annexure-6 and contended that the authorities have said therein that the applicant has officiated in the post of Caretaker, he should be deemed to have officiated in the post of Caretaker and it should not be treated as ad hoc appointment. We have carefully gone through the contents of Annexures 1 and 6. The words used in Annexure-6 have been used in a loose way and should not be construed as such because in the original order of appointment in Annexure-1, it has been specifically stated that the applicant is appointed on ad hoc basis to the post of Caretaker and from Annexure-R/2 we find that the post of Caretaker is an ex-cadre post. If Mr. Mohapatra-1's contention is accepted on the basis of the contents of Annexure-6, no deputation allowance is admissible to an adhoc appointee in an ex cadre post and therefore, we think the word ' officiation' used in Annexure-6 has been used loosely and should not be construed as officiation on the part of the applicant in the post of Caretaker. In such circumstances,

we are of opinion that the competent authority has been rather kind to the applicant in reverting ^{him} ~~to~~ to the post of Selection Grade Duftry entitling him to continue in service till he completes 60th year.

6. In the above circumstances, we find no merit in in this application which stands dismissed leaving the parties to bear their own costs.

K. Sarangi
29.6.88
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Member (Judicial)

I agree.



K. Sarangi
29.6.88
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
June 29, 1988/S. Sarangi.