

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.282 of 1988

Date of decision : February 2,1990.

Shri Rajani Kanta Dutta Mishra,
son of late Shri Pandit Sudhakar Dutta
Mishra, aged about 37 years, at present
Asst. Storekeeper, Archaeological Survey
of India, Bhubaneswar Circle, Bhubaneswar.

... Applicant.

Versus

1. Union of India, represented by Director
General, Archaeological Survey of India.
Janpath, New Delhi-110011.
2. Superintending Archaeologist,
Archaeological Survey of India,
Bhubaneswar Circle, Bhubaneswar.

... Respondents.

For the applicant ... M/s. B.L.N. Swamy,
B.V.B. Das, Advocates.

For the respondents ... Mr. Ganeswar Rath,
Sr. Standing Counsel (Central)

C O R A M:

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

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

J U D G M E N T

USHA SAVARA, MEMBER (A) The brief facts of the case are that the applicant was temporarily appointed as a Typist Clerk in October, 1976 on a temporary basis. This appointment was extended for a fixed period of 90 days on N.M.R. on 9.9.1978 by the Assistant Superintending Archaeologist, Nalanda and the applicant was directed to join on or before 14.9.1978. The applicant continued in the same post till September, 1982. The Assistant Superintending Archaeologist selected the applicant for the post of Typist Clerk as a Muster roll typist as per Annexure-4. This appointment was made through the Employment Exchange, Bihar Sharif, Nalanda. On 30.7.1985 the Deputy Superintending Archaeologist vide office order dated 30.7.1985 appointed the applicant on regular basis as Museum Attendant in the scale of pay of Rs.196-220/- and he has continued to work as a regular employee since then.

2. A post of Assistant Storekeeper fell vacant in the Division and in response to an advertisement issued by the Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar, the applicant made an application and was called for an interview on 17.9.1986. He was duly selected by the Superintending Archaeologist for the post in the pay scale of Rs.950-1500/- and the selection was sent to the Director General, Archaeological Survey of India, New Delhi for approval. The approval was given by the Director General by his letter dated 12.2.1987 and after receipt of the approval appointment order was given on 20.2.1987 as per Annexure-6. The applicant joined the post on

(20) ~~111~~

6.3.1987 and continued to work there to date. On 1.9.1988, the applicant received a letter reverting him to the post of Museum Attendant and transferring him from Bhubaneswar to Nalanda, asking him to handover charge on 7.9.1988 afternoon. It is submitted by the applicant that since he is a confirmed Asst. Storekeeper, he could not be reverted without affording any reasonable opportunity and as such the order of reversion is bad and illegal and is liable to be set aside. The post of Asst. Storekeeper has not been abolished and so the order of reversion is bad and illegal.

3. An interim order was prayed for contending that since he had not been relieved, the order of reversion and transfer to Nalanda may be stayed. This interim relief has been allowed from time to time and the applicant has continued to work in the post of Assistant Storekeeper.

4. Mr. Swamy, learned Counsel appeared for the applicant and submitted that the applicant had all the qualifications and fulfilled all the conditions which were required for the post of Assistant Storekeeper. He has performed his duties to the satisfaction of his superiors and has not been given any adverse till date. In the circumstances, his reversion, without affording any reasonable opportunity is bad in law and is liable to be set aside.

5. On behalf of the respondents Mr. Ganeswar Rath, learned Senior Standing Counsel (Central) appeared and submitted that the applicant was only employed as Typist-Clerk on daily wages in October, 1976. His appointment

(21) ~~VIII~~

was not regular and he was not posted against any regular vacancy. His first regular appointment was as Museum Attendant by order dated 30.7.1985 and his appointment as Assistant Storekeeper on direct recruitment was temporary in nature. It is denied that any advertisement was circulated for the post of Assistant Storekeeper. Suitable nominations were called from the local Employment Exchange and the vacancy of the post was brought to the knowledge of the departmental candidates. He submits that although the appointment had been made after getting the approval of the Director General, it was later found to be erroneous. It is submitted by Mr. Rath that the mistake in appointing the applicant in the post of Assistant Storekeeper came to be detected on receipt of certain representations in the Director General's Office. It was brought to their knowledge that the applicant was, at the time of interview for the post, more than 34 years of age whereas the maximum age prescribed for direct recruitment to the post is 21 years. He had also not completed 3 years of service as regular Group 'D' departmental employee at that time. He was therefore not eligible and the instructions issued by the Government of India on the subject by the Department of Personnel and Administrative Reforms^{is} dated 20.7.1976 (Annexure-A). Having discovered the mistake the Director General's Office asked the Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar on 24.9.1987 to undo the appointment. Therefore, the applicant was reverted back to his previous post of Museum Attendant by Superintending Archaeologist vide his order dated 1.9.1988. It is therefore, submitted by Mr. Rath

that the application is liable to be dismissed.

6. We have heard learned counsel for both sides and perused various annexures filed by them. There is no denial of the fact that the applicant was selected for the post of Typist-Clerk through the Employment Exchange by the Assistant Superintending Archaeologist, Nalanda on muster roll on 25.9.1982. Thereafter, the applicant continued to work in that post till 30.7.1985 when he was appointed on regular basis as Museum Attendant. He applied for the post of Asst. Storekeeper on 1.9.1986 and was selected for the same post and issued with appointment letter on 20.2.1987. Mr. Rath has drawn our attention to Annexure-A which is a memo on the subject of Relaxation of upper age limit for departmental candidates for appointment to Group C and D posts in their own Department. The office memorandum is quoted below:

" The undersigned is directed to say that the staff side of the National Council(JCM) dated suggested that the departmental candidates who possess, the prescribed qualifications may be allowed to compete with relaxed age limit with the nominees of Employment Exchange/open market candidates for higher posts which are to be filled by direct recruitment in any office in the same department.

2. The request made by Staff Side of the National Council(JCM) has now been examined and it has been decided that for direct recruitment in Groups 'C' and 'D' posts/services, the upper age limit will be relaxable upto the age of 35 years in respect of persons who are working in posts which are in the same line or allied cadres and whereas relationship could be established that service rendered in the Department will be useful for efficient discharge of the duties in other categories of posts in the same Department. The age concession will be admissible only where an employee has rendered not less than three years continuous service in the same department. The question of determining the same line or allied cadres is, however, left to be

(23) ~~28~~

decided by each Ministry/Department and the age relaxation will be available for the posts under the control of the same Ministry/Department."

As laid down by the above memo the upper age limit for direct recruitment in Group 'C' & 'D' posts/services was relaxed upto the age of 35 years in respect of persons who are working in posts which are in the same line or allied cadres and where^a relationship could be established that services rendered in the Department will be useful for efficient discharge of the duties in other categories of posts in the same Department. This age concession will be admissible only when an employee had rendered not less than three years of continuous service in the same department. (The underlining is for emphasis). The question of determining the same line of allied cadres was left to be decided by each Ministry/Department. In the absence of any such directions by the Archaeological Department it is to be presumed that the services rendered by the applicant in this Department would be useful for efficient discharge of the duties in the other categories of post in which he had been appointed. The applicant has been working in the Archaeological Survey of India since 1976 when he first joined as Typist-Clerk on daily wage basis. From 1982 he was employed in the post of Typist-Clerk on Muster roll basis. From 1985 he worked as Museum Attendant and was thereafter promoted in 1987 as Assistant Storekeeper. Even if we ignore his services from 1976 to 1982, it is not possible to overlook his services in the Archaeological Survey of India from the year 1982 onwards. The Office memo dated

20.7.1976 clearly envisages the relaxation of age limit of an applicant or employee who has rendered not less than three years of continuous service in the same Department. It does not qualify the services as being necessarily on regular basis. The services are to be in the same Department, even if it is ad hoc service or temporary or on muster roll basis. Since the applicant fulfils this condition in no uncertain terms, he is fully eligible for relaxation of upper age limit and the order of appointment issued by the Director General was not an erroneous one.

7. In view of the circumstances mentioned above, we are of the view that the appointment of the applicant not being erroneous, the impugned order dated 1.9.1988 is to be quashed. The applicant will continue to hold the post of Assistant Storekeeper. We direct accordingly.

8. This application stands allowed. No costs.

.....
Member (Judicial)

2.2.90

.....
Member (Administrative)

