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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 399 of 1988

Date of Decision 12th February, 1992.

Jhari Sethi

Applicant

Versus

Union of India & Others Respondents

For the applicant

M/s. L. Mohapatra,
D.K. Mishra,
M.R. Mohanty,
Advocates

For the respondents

Mr. Ashok Mohanty,
Standing Counsel
(Central Government)

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C O R A M

HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *No*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

The only point for adjudication is whether the applicant is entitled to count the period adhoc officiation followed by regular appointment for the purpose of seniority. The ~~be~~ief facts of the case are that the applicant, who was initially appointed as Storekeeper under the Doordarshan Kendra, Cuttack, was promoted to the post of Head Clerk on adhoc basis by order dated 10.11.1982. He continued as Head Clerk on adhoc basis till 17.8.85, when he was given regular posting as Accountant. The post of Accountant and Head Clerk are of the same cadre and of same rank. Respondent No.4 and 5 joined the post of Accountant on regular basis with effect from 1.3.1985 and 8.4.1985 respectively. The applicant's prayer is for quashing Annexure-7, i.e. the order passed by Respondent No.2 rejecting the applicant's representation that his adhoc service be counted for seniority; for directing the respondents 1, 2 and 3 for taking into consideration the period of adhoc service rendered by the applicant for the purpose of his seniority; and to place the applicant above Respondent No. 4 and 5 in the seniority list on the ground that it is settled law that the period of adhoc officiation followed by regular appointment be taken into consideration for the purpose of continuing seniority and for confirmation. Shri D.K.Mishra, appeared for the applicant relied heavily upon the judgment in the case of 'Direct Recruits Class II Engineering Officer's Association vrs. State of Maharashtra(1990) 2 S C C 715.

2. The facts of the case are not contested. However, Shri Ashok Mohanty, learned counsel for the respondents submitted that the post of Head Clerk to which the applicant was appointed in 1982 was an adhoc vacancy due to the fact that Shri J.K.Chel, the then Head Clerk was appointed to the post of Administrative Officer purely on adhoc basis vide (Annexure-R/1). The Respondent Nos. 4 and 5 who are senior to the applicant, were not in Cuttack at the time when the post of Head Clerk fell vacant and so, due to exigencies of service, and as a stop-gap arrangement, the applicant was appointed on promotion to the post of Head Clerk. It was made clear to him in the letter of appointment dated 10.11.1987 that he would have no claim for permanent retention in the post. The post of the applicant as Head Clerk was a fortuitous circumstances primarily because Shri Chel's appointment as Administrative Officer was itself an adhoc arrangement and was regularised only on 8.4.1985.

In order to fill up the vacancy which arose on the departure of Sh.Chel the Government had to make an adhoc appointment so that the administration may continue to run smoothly. The learned counsel underlined the fact that it was the nature of vacancy and not the nature of post, which was the criterion for deciding whether an appointment was in a substantive capacity or whether it was to a subordinative post. Shri Mohanty relied upon the judgment of the Hon'ble Supreme Court in Leshaw Chandra Joshi vrs. Union of India & Others reported in AIR 1991, Supreme Court 284 to substantiate his contention that where an initial

appointment is only adhoc, and not according to rules, and made as stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The claim of the applicant that his adhoc service from 17.11.1982 is to be counted as regular service for the purpose of seniority is not justified and he cannot be shown senior to the Respondent Nos. 4 and 5, and therefore he is not eligible for the relief claimed by him and his application may be dismissed.

3. We have heared the learned counsel and given our anxious consideration to the issue raised by them. This vexed issue has been the subject matter of various case before the apex court. The quintessence of the various justmengs is that appointment to a post must be made according to rules and not by way of adhoc or stop gap arrangements made due to administrative exigencies. If the initial appointment was de bars the rules, the entire length of such service cannot be counted for seniority. By no stretch of imagination can it be said that the appointment of the applicant to the post of Head Clerk was in accordance with rules. The post fell vacant due to the appointment of Shri Chel as Administrative Officer on adhoc basis was filled due to administrative reasons by appointing the applicant, who was not the seniormost person, according to the seniority list, on adhoc basis, as a stop gap arrangement. Such stop gap arrangement cannot give rise to an inherent right to the benefits the entire temporary service for seniority. We are

supported in this view by the pronouncements of the Hon'ble Supreme Court in the case of Keshaw Chandra Joshi (Supra) in which all the earlier cases on the subject have been discussed and analysed.

4. In the facts and circumstances of the case, we are constrained to hold that the appointment of the applicant to the post of Head Clerk was not according to rules but was made as a stop gap arrangement, and, therefore, the entire period of officiation in such post cannot be taken into account for reckoning seniority. He cannot be placed, for the same reason, above Respondent Nos. 4 and 5 in the seniority list, and his prayers have to be rejected in toto, and the application has to be dismissed as being devoid of any merit. In the circumstances, there will be no order as to costs.

Deo 12.2.92
VICE-CHAIRMAN

B. K. Sahoo 12.2.92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 1992/ B.K.Sahoo