

19

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO : 432 of 1988

Date of decision : October 27, 1989

1. Shri Gurupada Roy,
S/o Late Gadhadhar Roy,
Aged 43 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar.
2. Shri Keshab Chandra Baroi,
S/o Shri Kalipada Baroi,
Aged 44 years, Senior Accountant
O/O Accountant General (A&E),
Orissa, Bhubaneswar.
3. Shri Dhruva Pada Paul,
S/o Shri Sarat Chandra Paul,
Aged 46 years,
Clerk, O/O Accountant General (A&E)
Orissa, Bhubaneswar.
4. Smt. Basabi Rani Choudhury,
S/o Shri B.K. Choudhury,
Aged 28 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar.
5. Shri Narayan Chandra Mohanty,
S/o Late Raj Kishore Mohanty,
Aged 42 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.
6. Shri Subash Chandra Nayak, S/o
Shri Ananda Chandra Nayak,
Aged 39 years, Clerk, O/O
Accountant General (A&E),
Orissa, Bhubaneswar.
7. Shri Muralidhar Panda,
S/o Late K.C. Panda,
Aged 48 years,
Clerk O/O Accountant General (A&E),
Orissa, Bhubaneswar.

*Manu Sept 7/10
N/7*

8. Shri Jagannath Swain,
S/o Late Laxman Swain,
Aged 38 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar .

9. Shri Bijoya Chandra Sahu,
S/o Shri Natabar Sahu,
Aged 27 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

10. Shri Asok Kumar Roy,
S/o Late Dulal Chandra Roy,
Aged 33 years, Clerk
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

11. Shri Ananda Kumar Biswas,
S/o Shri Manindra Nath Biswas,
Aged 38 years, Clerk,
O/O Accountant General (A&E),
Orissa Bhubaneswar.

12. Smt. Sabitri Bala Das,
W/o Shri M.K.Das,
Aged 31 years,
Clerk, O/O Accountant General (A&E),
Orissa Bhubaneswar.

13. Shri Rakhal Chandra Adhikari,
S/o Late Manohar Adhikari,
Aged 43 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar.

14. Shri Manabendra Chakrabarty,
S/o Late Jatindra Chakrabarty
Aged 50 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

15. Miss Sarojini Padhy,
D/o Late Appanna Padhy,
Aged 35 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

16. Shri Gadhadhar Das,
S/o Late Dasharathi Das,
Aged 36 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar.

Recd 20/10/10

17. Shri Mukul Acharyee,
S/o Late Mari Charan Acharyee,
Aged 50 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

18. Shri Nira jan Choudhury,
S/o Late Baikuntha Nath Choudhury,
Aged 38 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

19. Shri Maheswar Sahu,
So Shri Dasarathi Sahu,
Aged 31 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

20. Shri Pulin Chandra Biswas,
S/o Late N.C. Biswas,
Aged 45 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

21. Shri Mayadhar Majhi,
S/o Late Chaunsingh,
Aged 42 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

22. Shri Shyam Sundar Sahoo,
S/o Shri Banchanidhi Sahoo,
Aged 46 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

23. Shri Nityananda Biswas,
S/o Shri Chittaranjan Biswas,
Aged 29 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

24. Shri Girish Chandra Mishra,
S/o Shri Gopinath Mishra,
Aged 34 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

25. Shri B.L.Haldar,
S/o Shri Biswambar Haldar,
Aged 30 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

Heads 6
27/10

(22)

26. Shri Saktipada Chakrabarty,
 S/o Late Hem Chandra Chakrabarty,
 Aged 45 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

27. Shri Sankar Siuli,
 S/o Late Jadunath Siuli,
 Aged 33 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

28. Shri Arun Kumar Mund,
 S/o Shri Paramananda Mund,
 Aged 41 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

29. Shri Hrushikesh Mishra,
 S/o Late Dasarathi Mishra,
 Aged 45 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

30. Shri Gopinath Behera,
 S/o Late Bhramar Behera,
 Aged 43 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

31. Shri Chittaranjan Mishra,
 S/o Late Basudev Mishra,
 Aged 36 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

32. Shri Krushna Chandra Rath,
 S/o Late S.N. Rath,
 Aged 36 years, Section Officer,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar.

33. Shri Madan Mohan Rout,
 S/o Shri Muralidhar Rout,
 Aged 33 years, Clerk,
 O/O Accountant General, (A&E)..
 Orissa, Bhubaneswar.

34. Shri A.K.Chakrabarty,
 S/o Shri Haripada Chakrabarty,
 Aged 33 years, Clerk,
 O/O Accountant General (A&E),
 Orissa, Bhubaneswar

Manu S/10
 2/2

35. Shri P.Jagannath Rao,
S/o Shri P.Appa Rao,
Aged 35 years, Accountant,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

36. Shri V.Shiv Kumar,
S/o Shri V.Rama Rao,
Aged 32 years, Accountant,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

37. Smt. Swarnalata Mishra,
D/o Shri Braja Sundar Dash,
Aged 32 years, Accountant,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

38. Shri Ananta Charan Panda,
S/o Shri Dinabandhu Panda,
Aged 32 years, Accountant,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

39. Shri Surendra Ch.Das,
S/o Shri Madhab Das,
Aged 34 years, Clerk,
O/O Accountant General,
(A&E), Orissa, Bhubaneswar.

40. Shri M.S.Parameswaean,
S/o Late M.V.Subramania Juthavallecher,
Aged 46 years, Accountant,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

41. Shri Sudhirananda Mandal,
S/o Late T.N.Mandal,
Aged 37 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

42. Shri Abhilash Chandra Das,
S/o Late Nabin Chandra Das,
Aged 35 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

43. Shri Gobinda Chandra Rout,
S/o Late M. Rout,
Aged 37 years, Clerk,
O/O Accountant General (A&E),
Orissa, Bhubaneswar.

G.M

44. Shri Pitabash Jayasingh,
S/o Late K. Jayasingh, Aged 35 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar.

45. Shri Krishna Pada Mandal,
S/o Late P.C. Mandal, Aged 44 years,
Clerk, O/O Accountant General (A&E),
Orissa, Bhubaneswar.

..... Applicants

VERSUS

1. Union of India through its
Accountant General (A&E),
Orissa, Bhubaneswar.
2. Accountant General (Audit),
Orissa, Bhubaneswar.
3. Senior Deputy Accountant (Adm),
Office of the Accountant General (A&E),
Orissa, Bhubaneswar.

..... Respondents

For the applicants : M/s. S.Mishra-1,
S.N.Mishra
S.K.Ghose
Mrs.R.Sikdar, Advocates

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

C O R A M:

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

1. Whether the Reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J) This is an application under section 19 of the Administrative Tribunals Act, 1985 by 45 persons.

2. The facts averred by the applicants are that they were appointed under the Dandakaranya Development Authority, as Central Government Servants under the Ministry of Rehabilitation on different dates as noted against each in the 3rd column of Annexure-1 to the application. Subsequently, there was a reduction in the strength of the employees of Dandakaranya Development Authority and they were declared surplus with effect from the dates mentioned in col.4 of the said Annexure -1 and after that they were surrendered to the Central (Surplus Staff) Cell of Government of India for redeployment in vacancies in different Government Offices in accordance with the Scheme pursuant to the instructions of the Ministry of Home Affairs in their Office Memorandum No. F. 3/27/65/CS-II dated 25.2.1966. After that they were redeployed and were asked to join in the Offices of the Accountant General (Accounts and Entitlement)Orissa, and Accountant General (Audit), Orissa on dates mentioned in col.5 of Annexure-1 to the original application. At the time of redeployment the two Accountants General, Orissa offered appointment in which a condition was

" His/her seniority in the cadre of this office will be reckoned for all purposes, including allotment of residential accommodation with reference to the date of joining in this office only and he/she will rank junior to the junior most person on the date of joining this office".

Mer Engb
27.10.89.

(2b)

Two sample copies of the offers of appointment from Annexure-3 & 4 to the original application. In Unit IV Bhubaneswar about 1000 Central Government residential quarters are there for allotment to the employees of the Offices of the Accountant General (A & E) , Orissa, and Accountant General (Audit), Orissa. Besides these existing quarters, about 300 new quarters were nearing completion. Respondent No. 3 , Estate Officer in respect of those quarters, did not take into account their previous services in the Dandakaranya Development Authority and thereby their prospect of getting the facilities of Government accommodation according to their entitlement was dimmed. Their further case is that the rules relating to allotment of Government residential quarters are to be found in the Supplementary Rules for various places and Departments and the common factors in all these rules are that the allotment of quarters are to be made as per the priority dates and priority date means the earliest date from which the concerned officer has been continuously in service in the Government. In this regard they have sought reliance on S.R. 317. They have pleaded that according to the scheme of redeployment of surplus staff, the services of the applicants are to be treated as continuous from the dates of their initial appointment under the Dandakaranya Development Authority unless of course the other contingency of the lapse of six months from the date of surrender and no redeployment within that period happens. Throughout the period they were in the surplus cell till the dates of their redeployment they were drawing pay and allowances

Abdul
2/2/10

from the Government of India and on their redeployment they were allowed joining time and travelling allowance as on transfer. On these facts, the applicants have prayed for the relief of directing the Respondents 1 and 2 to ignore and delete the portion " including allotment of residential accommodation" from the offer of appointment and to direct Respondent No.3 to allot Government quarters ~~to the~~ taking their dates of appointment under the Dandakaranya Development Authority as priority dates.

3. The respondents in their counter have taken the stand that as in the offer of appointment it was specifically mentioned that the applicants would be deemed to be junior to the junior-most person in their respective cadres on the dates of their redeployment and as they accepted the offer and joined the Offices they are estopped from saying that they should not be treated as such junior to the junior-most officer for the purpose of allotment of Government residential accommodation. Their further stand is that it was open to the applicants to reject the offer but they not having done so, it must be deemed that they agreed that for the purpose of allotment of government residential quarters their respective dates of appointments would be the cut off dates for computing their seniority for the purpose. They have also taken the plea of limitation by saying that the application has been filed more than two years after the dates of their redeployment. They have also averred that as none of the applicants has stated of having made any representation to the departmental authorities

Abu Enay
27/10/81

they did not exhaust the remedies available to them under the service rules and as such, this Tribunal cannot certain the petition. As about the quarters and the rule quoted by the applicants, the case of the respondents is that the Rules relied on by the applicants have no application inasmuch as they relate to allotment of quarters from the general pool which would mean ~~that~~ ⁱⁿ a pool of quarters from which allotments are to be made to different departments of the Government and as such, the rule cannot apply to the case of quarters meant for any specified department. In addition to these, their case further is that the Rules were framed for allotment of Government residential quarters under the administrative control of the Accountant General, Orissa, Bhubaneswar in 1967 and those rules apply to the employees in the bifurcated Accountants General (A & E) and (Audit) and those rules provide that the interpretation to be put on the Rules by the Accountant General (A&E), Orissa would be final and as the Accountant General has interpreted the Rules that the allotment is to be made according to the date of actual joining in the Office of the Accountants General, this Tribunal's jurisdiction to state otherwise is ousted.

4. In Annexure-B to the counter a copy of the circular issued by the Comptroller of Auditor General of India bearing No. NGE/27/1986 has been given and it is said that in view of this circular the seniority for all purposes is to be regulated with reference to dates of their redeployment.

5. Mr.S.Misra-1, Learned counsel for the applicants and Mr. Ganeswar Rath, learned counsel for the respondents

have been heard at length and the documents annexed have been carefully perused. The real questions for consideration are whether the application is barred by limitation under section 21 of the Administrative Tribunals Act, 1985 and whether there can be an estoppel against the applicants in view of the condition mentioned in the offer of appointment to say that for the purpose of allotment of Government residential accommodation their services under the Dandakaranya Development Authority has to be ~~tasked~~ to the services they have been rendering in the Offices of the Accountant General (A&E) and (Audit).

6. So far as the question of limitation is concerned a reference may be made to Annexures-5 & 6 to the application. Annexure-5 is the copy of a representation made the applicant No.8, Jagannath Swain and Annexure-6, a copy of the letter of the Deputy Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension addressed to the Accountant General (A&E), Bhubaneswar dated 10.8.1988. It has been contended by Mr. Rath that the copy of the representation made by Jagannath Swain does not bear any date, there is no knowing when this representation was made. True it is that the date of representation cannot be found in the copy of the representation, Annexure-5 but on a reading Annexure-5 it would be apparent that this representation was made after 7.12.1987 (Refer para (iv) of Annexure-5). Mr. Ganeswar Rath, on the other hand has contended that even assuming that Jagannath Swain made a representation and it was not disposed

MR. Ganeswar Rath
10/12/87

of and the present application was filed on 28.11.1988 his claim may not be deemed to be barred but that would not be sufficient to say that others made their representations or if made, when they were rejected. From Annexure-A/6 it would be found that the Deputy Secretary to the Government of India, forwarded the representations with regard to residential accommodation, to the Accountant General (A& E) on 10.8.1988. From this it is definitely clear that till 10.8.1988 the representations made by S. Padhi and others were not disposed of. In paragraph 6(e) it has been stated that the applicants made representations and a copy of that was Annexure-5 and the reply to this paragraph is to be found in paragraphs 2 and 4 of the counter. In these two paragraphs, statements of facts have apparently been made under a mistaken impression, in paragraph 2 it has been mentioned that there is no mention in the application of filing of any representation or non-receipt of any final orders within six months from the date of preferring such representations and in paragraph 4 it has further been reiterated that in the application that no instance of any of the applicants preferring any representation or appeal to the competent authority has been cited. As already stated, Annexures A/5 and A/6 would go to show that in fact representations were made and it is not the case of the respondents that any order disposing of those representations was passed. Of course, from 10.8.1988, 6 months had not elapsed and in that sense the application could have been said to be premature but in view of the stand taken by the respondents it can be said

Mr. Justice
27.10.89

that what fate their representations would have met was known to them and so they approached this Tribunal. In this connection, it would be pertinent to note that the embargo on accepting the application by the Tribunal before lapse of six months is the ordinary rule and there would be exceptions and in view of the facts of the present case, I do not find any justification to say that the applicants should have waited. Further more it has been averred in the petition, and it is also not disputed, that allotment was being made to others and in the process the applicants would have been left with no quarters to be allotted to them.

7. The next question that falls for consideration is whether the acceptance of the offer of appointment containing the clause that for the purpose of allotment of Government residential accommodation they should be deemed to be junior to the junior most in the cadre on the date of their respective redeployment is valid or not. The offer and acceptance falls within the purview of law of contract, and it is well known that if acceptance is made in circumstances which would coerce the acceptor to submit to the offer, the Court or Tribunal is competent enough to grant relief or declare the invalidity of the contract. In this regard it has been urged by Mr. Rath, learned counsel for the respondents, that even if it be held that the acceptance was under coercion, the contract must fail in its entirety and it would not be permissible to accept a part of the contract and reject the other. To put his contention in other words it

*Manayat
27/10*

is that the applicants should exercise their option which is in legal parlance is known as doctrine of election. The Doctrine of election has got limited field of application. It is not inconceivable in law that a contract may be partly valid and partly invalid and against the invalid portion, the party to the contract could be granted relief; a case in point would be conveyance in absolute followed by limitation on the rights of the grantee. For this reason it is not possible to accept the contention of learned counsel, Mr. Rath that the appointment of the applicants should be deemed to be invalid if condition relating to allotment of quarters is found to be invalid.

8. Now, it may be examined if the applicants were really coerced to accept the offer of appointment as alleged. The applicants were admittedly declared surplus staff and had been transferred to the Surplus Cell. A scheme was prepared by the Government of India for the disposal of personnel resulting surplus due to improvements suggested by the Department of Administrative Reforms or reduction in posts suggested by Staff Inspection Unit of the Ministry of Finance. The Government of India issued various instructions which have been consolidated in Appendix 34 of the Civil Service Regulations and the instructions or the scheme regarding the disposal of surplus personnel is to be found in Annexure to the said Appendix 34. Para II(iv) of the Annexure to Appendix 34 is relevant. There it has been provided that the surplus personnel employed shall be transferred to the Central Cell. On transfer to the Central

Ms. No. 27.10.81

Cell such personnel would continue to receive pay and allowances in the previous scales. The Central Pool would, if necessary, i.e. where placements have not been decided upon and some delay is anticipated on this account, grant special leave to personnel on its rolls, which would be on full pay and allowances. It has further been provided in that paragraph that the time limit provided for in the subsequent paragraph (v) i.e. six months would be the time limit for special leave to an individual. Para (v)(h)&(i) are the most relevant ones and they may be quoted :

" (h) Those who do not opt to retire and cannot be placed and are also unwilling to undergo training in fresh skill shall be retrenched in accordance with the existing rules indicated in Annexure II. This procedure would also be adopted in cases where an individual refuses a placement ordered by the central cell.

(underlining is mine)

(i) The overall object would be not to allow any person to remain in the central pool for longer than six months. "

On a reading of these two paragraphs it would be apparent that if somebody is unwilling to undergo training in fresh skill he may be retrenched and also anybody who refuses placement ordered by the Central Pool has to be retrenched. Admittedly, the applicants were ordered a placement by the Central Cell for joining the Offices of the Accountants General (A& E) and (Audit) and if they would have refused to join those Offices for the reason of the conditions relating - being illegal - to the provision for residential accommodation, the net

*Revised
27/10/*

result would have been that they would have been retrenched. Having put in some years of service they had already grown overaged for fresh appointments and that would have led them to be without any employment. Though in a slightly different context, this Bench in the case of *Saktibrata v. Principal cum Asst. Director of Industries, Dandakaranya Development Authority* (1983(3)S.L.J.(CAT)442) had an occasion to observe that had they not accepted the employment and made representations they would have gone to the open street with begging bowls, that observation would also cover the facts of the present case. Therefore, it is manifest that the applicants had no other option than to accept the employment and shortly after their appointment in the Offices of the Accountants General (A&E), and (Audit) Orissa, they made representations regarding allotment of residential quarters to them. The applicants have relied on the CPWD Rules by the President of India under article 309 of the Constitution of India read with FR 45 & S.R. 317 where expression ' priority date' has been defined or explained. According to that rule for the purpose of allotment of quarters, it is the 'Priority date' which is to be taken into account and not seniority or otherwise, in the cadre which at times may be misleading due to supervening events, as in the instant case. 'Priority date' as defined in that rule is the earliest date from which the Government servant has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Central Government or State Government or on foreign service except for period of leave. It has already been stated above that after being declared surplus they were transferred to the Surplus cell and they were drawing their

*Ms. Copy
27.10.89*

pay and allowances at the rates they used to draw when they were working under the Dandakaranya Development Authority, and there was no cessation of such drawal at any time between the dates when they were declared surplus and when they joined the Offices of the Accountant General. When two provisions are seemingly contradictory, harmonious construction has to be made and in the instant case, rule relied on by the applicants being a statutory rule will have precedence over a contract which to some extent was vitiated by coercive circumstances. I would, therefore, accept the contention of Mr. S. Misra-1, learned counsel for the applicant, allotment of quarters is to be made taking the priority date as defined in the CPWD code as the basis and not the position in their gradation list on their redeployment. It is also pertinent to note that Annexure-B does not refer to allotment of quarters, hence is not relevant for the present purpose.

9. The learned counsel for the respondents has contended that that definition of priority date would apply when allotment is to be made from a general pool ~~is~~ when claims of different departments are to be considered, but not when the officers of only one department are to be allotted from the pool. The word "General" means common it may be general for one department only. An analogy is the meaning of public which may include residents of a hamlet only as well public of the whole country.

10. For all that has been stated above, it is to be

2nd Sept
2010

36

found that the clause in the offer of appointment " including allotment of residential accommodation" being against the provisions of statutory rules is invalid and that part of the contract being vitiated by coercive circumstances has to be deleted. Accordingly, the applicants succeed and that prayer for ignoring the clause in the offer of appointment relating to residential accommodation is declared invalid and allotment is to be made according to the 'priority dates' as defined in C.P.W.D. Rules. There shall be no order as to costs.

H. S. Sarangi
27.10.89
.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 27, 1989/Sarangi.

