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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.279 of 1989.

Date of decision: 5.1.1993

Hari Prasad Misra ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. A.K. Mohapatra,
P.K. Mohapatra, Advocates.

For the respondents ...

Mr. Aswini Kumar Misra,
Sr. Standing Counsel (CAT)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA , VICE-CHAIRMAN

A N D

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMN.)

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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.

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J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to direct the Respondents 1 and 2 to assign seniority to the applicant with effect from 15.10.1972 i.e. the date from which the applicant is continuously officiating in the post of Assistant Director, Marketing and Service Centre and to further direct the Respondents 1 and 2 to revise the seniority list as contained in Annexure-7 and thereafter to give promotion to the promotional posts to which his juniors have been promoted.

2. Shortly stated, the case of the applicant is that while he was working as Extension Officer (Industries Department), under the Government of Orissa, he was offered a post of Junior Field Officer in the pay scale of Rs.325-575/-, vide Annexure-1 dated 19.9.1969 and the applicant soon thereafter joined the said post. The post of Junior Field Officer was redesignated as Handicrafts Promotion Officer. While working as such, the applicant received a telegram from the Respondent No.2 appointing him on promotion to the post of Assistant Director, Handicrafts, Marketing & Service Extension Centre and the applicant joined the said post on 15.10.1972. The contents of the telegram was confirmed and was followed by a regular order of appointment dated 10.10.1972 contained in Annexure-3 and such appointment order was on officiating basis. Further case of the applicant is that Respondents 3 to 5 who were appointed along with the applicant were regularised in the post of Assistant Director and their seniority was fixed with effect from

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the date of regularisation. Even though the applicant had made representations his appointment to the post of Assistant Director, was not regularised and ultimately the applicant was regularised in the post of Assistant Director with effect from 1.1.1987. Thereafter the Respondent No.2 vide his letter dated 24.4.1988 contained in Annexure-7 issued a seniority list of Assistant Directors wherein the applicant had been shown below Respondents 3 to 36 and his date of seniority was fixed with effect from 1.1.1987. Being aggrieved by this fixation of seniority, the applicant has filed this application with the aforesaid prayer.

3. In their counter, the respondents maintained that 7 Officers including the applicant were appointed as Assistant Director temporarily on ad hoc basis pending finalisation of the recruitment Rules. According to the respondents, regularisation of the applicant in the post of Assistant Director stands in a different footing which is distinct from the other six officers because the applicant ~~who~~^{had} come on deputation and therefore he was given ^{ad hoc} promotion. At a particular stage it was decided to repatriate the applicant back to his parent department in September, 1974 ^{and} by his letter dated 10.1.1975 the applicant requested the Respondent No.2 to retain him as Assistant Director on ad hoc basis as direct recruit against the Union Public Service Commission quota and the applicant gave a firm undertaking that if he would not be selected by the

Union Public Service Commission, for the post of Asst. Director, he would go back to the State Government without claiming any lower post in the Office of the Respondent No.2. The applicant failed to get himself recruited through the Union Public Service Commission, as Assistant Director, Handicrafts and Respondents 8 to 12 were appointed as direct recruits on the recommendations of the Union Public Service Commission. Vide letter dated 9.7.1979 contained in Annexure-R/15 the applicant requested that his lien to the post of Block Level Extension Officer (Industries Department) under the Government of Orissa may be terminated and he may be permanently absorbed in the Office of the Respondent No.2. Consequently, the applicant was regularised and absorbed as Handicrafts Promotion Officer in the Office of the Respondent No.2 with effect from 17.9.1979. Although Departmental Promotion Committee was held on 23.12.1982 according to the provisions contained in Office of the Development Commissioner (Handicrafts), Assistant Director, Marketing and Service Extension Centre Recruitment Rules, 1982 for considering promotion of Handicrafts Promotion Officer to the post of Assistant Director, the applicant could not be considered as he did not comply with the eligibility criteria namely three years regular service as Handicrafts Promotion Officer and the applicant complied with the said eligibility criteria only on 16.9.1982. Soon after the applicant complied with the eligibility criteria his case was considered by the D.P.C. held on 18.10.1984 but the Departmental Promotion Committee did not recommend the case of the applicant for the post of Assistant Director (Handicrafts).

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The case of the applicant was considered by the Departmental Promotion Committee ^{held} on 19.9.1986 and the applicant having been found fit, the services of the applicant were regularised with effect from 1.1.1987. In addition to the above it is maintained that the case is barred by limitation and therefore, both on merits and on question of limitation the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. A.K. Mohapatra, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents.

5. The firm contention of the applicant is that in the order of appointment contained in Annexure-1 there is no mention regarding appointment of the applicant to the post of Junior Field Officer on deputation and therefore it is too late in the day for the respondents to contend that the appointment to the post of Junior Field Officer was on deputation. Accordingly, it was contended that the applicant's appointment should be taken as ^{direct} appointment purely on ~~promotional~~ ^{provisional} basis and should not be taken as a deputationist. True it is that there is no mention either in the order of appointment in Annexure-1 or in Annexure-3 (which is the order of promotion) to the post of Assistant Director that the applicant is a deputationist but the correspondence made by the applicant and the correspondence made by the Government of Orissa, by his authorities contained in Annexure-R/3 and R/4 etc. would clearly indicate that the applicant came to the office of the Respondent No.2 as a deputationist. Annexure-R/5

dated 16.12.1971 contains the office Order dated 16.12.1971. Therein it is stated that the deputation period of Shri Hari Prasad Misra(the present applicant) has been extended upto 2.10.1972. Copy of this order has been sent to the applicant. No objection has ever been raised by the applicant that he is not on deputation. Annexure-R/7 contains the order No.6565 dated 3/4th April,1972 in which it is stated that during the period of deputation, he would draw the pay scale of Rs.325-575/- plus other allowances. Copy of this order has been communicated to the applicant vide memo No.6566 dated 4.4.1972. Vide Annexure-R/8. The Ministry of Foreign Trade, Government of India had addressed a letter to the Under Secretary to the Government of Orissa, Industries Department stating that the applicant would be reverted and the name and designation of the Officer to whom the applicant should report to duty should be clearly intimated. Copy of this letter was also endorsed to the applicant and Vide Annexure-R/9 dated 20.3.1973 the applicant made a representation to his authority stating his difficulties for being reverted back to the Government of Orissa. Vide Annexure-R/11 the Joint Director, Marketing addressing a letter to the Director of Industries, Orissa, has mentioned that the deputation period of the applicant has been withdrawn and the deputation order passed vide Order No.6565 dated 4.4.1972 has ^{been} though/withdrawn yet Shri Misra may be allowed to continue on deputation until further orders. Copy of this letter was endorsed to the applicant. No objection has been raised by the applicant. From all these correspon-

dence there is absolutely no iota of doubt that the applicant had come to the Office of the Respondent No.2 on deputation.

6. The next important question on which the Bench should address itself is as to whether while on deputation the applicant is entitled to seniority over others who have been found fit by the Departmental Promotion Committee for regular promotion to the post of Assistant Director, Marketing & Service Extension Centre. In this connection it may be stated that in their counter the Respondents maintained that 7 Officers including the applicant had been working as regular Junior Field Officer (Redesignated as Handicrafts Promotion Officer) and they were promoted to the post of Assistant Director on adhoc basis. The applicant was permanently absorbed as Handicrafts Promotion Officer with effect from 17.9.1979 after he had offered himself for regular absorption and was concurred by the State Government of Orissa. Development Commissioner (Handicrafts), Assistant Director, (Marketing and Service Extension Centres) Recruitment Rules, were framed in the year 1982. The rule envisages that for promotion to the post of Assistant Director, Handicrafts three years regular service is required as the eligibility criteria for regular promotion to the said post. Since the applicant was absorbed on 17.9.1979, evidently the applicant completes three years of regular service by September, 1982. According to the Respondents 1 and 2, the respondents 13 to 19 who had fulfilled the eligibility criteria

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were considered and were given promotion. The case of the applicant was not considered as he had not gained the requisite qualification by then namely by the year 1981 as the Departmental Promotion Committee which was held on 23.12.1982 was considering the cases of Officers relating to the vacancy of 1981. In such circumstances, we find no illegality to have been committed by the appropriate authority and equally we find that the grievance of the applicant on this count is not well-founded.

7. On 13.10.1984 a Departmental Promotion Committee was held to consider the suitability of the different officers including that of the applicant but the applicant was not recommended by the Departmental Promotion Committee for promotion to the post of Assistant Director as he was not found to be suitable. Respondents 20 and 21 were promoted on the recommendation of the Departmental Promotion Committee. On 19.9.1986 another Departmental Promotion Committee considered the cases of applicant and many others and the said Departmental Promotion Committee found the applicant suitable along with Respondents 22 to 35 and on such recommendation of the Departmental Promotion Committee, the applicant was given promotion on regular basis to the post of Assistant Director, according to the merit list drawn up by the said Departmental Promotion Committee. Hence the services of the applicant were regularised with effect from 1.1.1987. So far as the findings of the Departmental Promotion Committee held on 23.12.1982 and 13.10.1984 are

concerned it has become a closed chapter for the applicant. There is nothing on record to indicate that the applicant had any grievance on this count because he has not approached any judicial forum to strike down the opinion of the said Departmental Promotion Committees finding the applicant unsuitable. In the prayer made in the present original application there is also no grievance laid by the applicant in regard to the findings of the Departmental Promotion Committee. The final seniority list as on 18.4.1983 contained in Annexure-7, which is sought to be quashed, has been drawn up in pursuance to the recommendations of the Departmental Promotion Committee finding different respondents suitable in their meetings held on 23.12.1982, 18.10.1984 and 19.9.1986. In such circumstances, we cannot find any illegality to have been committed by the competent authority in drawing up the seniority list as per Annexure-7 fixing the seniority position of different Officers vis-a-vis the present applicant finding place in Annexure-7 resulting from the recommendations of the Departmental Promotion Committee leading to the appointment of such officers till 18.10.1984.

8. It was urged on behalf of the applicant that once a particular Government servant has been appointed on officiating or adhoc basis then his period of service as such should be counted in his favour and accordingly his seniority should be fixed. Learned counsel for the applicant relied upon a decision reported in AIR 1990 SC 1607 (The Direct Recruit Class II Engineering Officers'

Association and others vrs. State of Maharashtra and others

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While summing up Their Lordships at paragraph 44 of the judgment held as follows:

- " (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.
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|-----|----|----|
| (C) | xx | xx |
| (D) | xx | xx |
| (E) | xx | xx |
| (F) | xx | xx |
| (G) | xx | xx |
| (H) | xx | xx |
| (I) | xx | xx |

xx xx. "

From the above quoted observations of Their Lordships it is clear that when the appointment/promotion either officiation or adhoc is according to rules then such period of service is to be counted to the credit of the particular Government servant towards his seniority. The distinguishing feature appearing in the present case is that Rules had been framed much later. The initial appointment was given to the applicant on adhoc basis just to carry on day to day work. Rules came into force on the date mentioned above which envisaged adjudication of suitability of a particular incumbent after he satisfies the eligibility criteria. As indicated earlier, and at

the cost of repetition it may be stated that the

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applicant had not completed 5 years of experience in the feeder post and therefore his case did not come within the consideration zone. After the applicant satisfied eligibility criteria, his case was considered and he was not found to be suitable, about which he has never put forth any grievance. It has become a closed chapter. Thereafter his case was considered. He was found suitable and then it was followed by the order of regularisation. In view of all these distinguishing features, the principles laid down by Their Lordships in the above mentioned judgment have no application to the facts of the present case.

9. Before we part with this case it must be mentioned that so far as the recommendations of the Departmental Promotion Committee held on 19.9.1986 is concerned, such recommendations must have been made in respect of vacancies already existing prior to 19.9.1986 or keeping in view the anticipated vacancies. On this point the averments finding place in the counter are vague. Nothing has been indicated in the counter as to the vacancy position and the reason for which the applicant's services were regularised on 1.1.1987 resulting from the recommendations of the Departmental Promotion Committee held on 19.9.1986. In case, vacancies were existing prior to 19.9.1986, and keeping in view the number of vacancies and the merit list prepared by the Departmental Promotion Committee if the applicant, according to the merit list was entitled to be promoted on regular basis prior to 19.9.1986, then, such promotion should be given to the applicant with effect from the date on which such vacancy had arisen and if the

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applicant was entitled to be promoted according to the merit list. In case, there was no such vacancy available to be filled up prior to 19.9.1986 and if any vacancy arose between 19.9.1986 and 31.12.1986 and if the applicant was entitled to be promoted to fill up such vacancies according to the merit list then the applicant's promotion should be antedated to such date. In case, no such circumstances exist, then regularisation of the services of the applicant with effect from 1st January, 1987 would remain unchanged. In case, the applicant's promotion is antedated in view of the directions given above, necessarily there must be recasting of the seniority list contained in Annexure-7 and we hope and trust the appropriate authority would give effect to the same within 60(sixty) days from the date of receipt of a copy of this judgment.

10. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Chandray
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MEMBER (ADMINISTRATIVE)

h. a. S. P.
5/1/93
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
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