

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 418 OF 1989

Date of decision: 15.7.1992.

Suresh Chandra Tripathy

.. Applicant

-Versus-

Union of India and others

.. Respondents.

For the applicant

.. M/s S.K.N. ^Vak-1,
A.K. Baral, K. Ray, Advocates.

For the Respondents

.. Mr. Ganeswar Rath, St. Counsel
(Central)

For the Respondent No. 2

.. Mr. K.C. Mohanty, Government
Advocate for the State of Orissa.

....

CORAM:

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

THE HONOURABLE 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.

JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to the opposite parties to appoint the petitioner in the post of L.D.C. in the office of the opposite party no. 3.

2. Shortly stated the case of the petitioner is that he passed B.A. Examination in the month of March, 1985 and in the year 1986, the petitioner completed the training in typing and stenography. A post of L.D.C. having fallen vacant in the office of the opposite party no. 3, names of the petitioner alongwith many others were sponsored by the Employment Exchange and the petitioner appeared at the interview on 6th November, 1986. The petitioner received reliable information that he had been selected for the post, and despite the fact that he made several representations for issuing the order of appointment, it did not yield any fruitful result. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the opposite parties nos. 1, 3, 4 and 5 namely, Secretary, Ministry of Labour, Regional Director, Central Board for Workers Education, Rourkela, Director, Central Board for Workers Education, Gokulpath, Nagpur and Deputy Director (Admn), Central Board for Workers Education, Rourkela maintained that the case is not only barred by limitation and is liable to be dismissed in limeline, but on questions of facts the case is devoid of merit and liable to be dismissed because of the following reasons.

The fact that the petitioner alongwith others had been recommended by the Employment Exchange and the fact that the petitioner had been selected and had been recommended to the Head Office i.e. Director for according approval for

11

appointment of the petitioner is admitted. The only ground on which it is urged, that the petition should be dismissed, is that one Shri A.K.Soni who was working as substitute LDC at Workers Education Centre, Indore since 1982, prayed for regularisation of his service in the Board, as per the decision of the Supreme Court, his services were regularised and he was posted at Workers Education Centre, Rourkela as LDC in the month of May, 1987 and simultaneously the Director disapproved the appointment of the petitioner for which no appointment order was issued to the petitioner. In view of the orders of the Director, Shri Soni joined at Rourkela in the month of May, 1987 and was transferred to Indore on his own request on 13.2.1989 in the same post of LDC. Consequently the next vacant post at Rourkela as per the roster point was reserved for Scheduled Caste Candidate. Hence there is no post vacant at Rourkela to accommodate the petitioner. Therefore, the application of the petitioner should be dismissed.

4. Opposite Party No.2 i.e. the District Employment Officer, Rourkela has filed a separate counter and therein it is maintained that on receipt of requisition from Opposite Party No.3, names of the petitioner alongwith others were recommended and since the petitioner though selected was not appointed. Representation was made to the employment exchange by the petitioner and under the rules, OP No.3 inspected the records and found that the appointment of Shri A.K.Soni has been afresh at Workers Education Centre, Rourkela by OP No.3.

5. We have heard Mr.A.K.Baral, learned counsel appearing for the petitioner, Mr.Ganeswar Rath, learned Standing Counsel for the Central Government and Mr.K.C.Mohanty, learned

Government Advocate for the State Of Orissa(OP No.2) on the merits of this case. The main question that needs for determination as to whether after the selection process having been completed and the petitioner having been selected, whether any illegality has been committed in denying appointment to the petitioner and equally whether any illegality has been committed in regularising the services of Shri Soni in the vacancy caused at Rourkela. Before we deal with this aspect, we think it just and proper to dispose of the contention of the learned Standing Counsel for the Central Government Mr. Ganeswar Rath regarding limitation. It was submitted by Mr. Rath that the case is barred by limitation. In our opinion, it is not barred by limitation because the petitioner made several representations praying for issuance of order of appointment and no reply was given to him when at last on 13th February, 1989, Shri Soni joined the post which must have come to the knowledge of the petitioner and therefore the cause of action arose in favour of the petitioner on 13th February, 1989. The application was filed on 18th December, 1989 i.e. within one year from the date on which the cause of action accrued in favour of the petitioner. Hence we are of opinion that the aforesaid contention of Mr. Rath regarding limitation carries no force.

6. Now coming to the merits of the case. We find from the counter that a special treatment has been given to Mr. Soni right from his appointment in the office of the Workers Education Centre at Indore. Shri Soni is said to have been appointed against a clear vacancy of Junior Stenographer.

The post of Junior stenographer at Indore was reserved for S.C. category and since no S.C. candidate was available, Shri Soni was appointed as substitute L.D.C. from 17.3.1982 and he was working in that capacity till he was regularised/ appointed against the post at Rourkela. Even though we have our own reservations in appointing Shri Soni against the post of junior stenographer which was reserved for a S.C. candidate we would not express any opinion on the subject because that is not an issue before us for decision, but we can only say that such appointment had been made on temporary basis till the post is filled up by a S.C. candidate after asking for de-reservation (if the de-reservation policy had not been cancelled by the Government by then) and no justifiable reason has been assigned in their counter for appointing Shri Soni as a substitute L.D.C. against a post which was not in existence. That apart, it is now necessary to be considered as to whether there was any justification in appointing Shri Soni against a vacant post at Rourkela for which there was a regular advertisement and several candidates were sponsored for that post by the Employment Exchange and the petitioner had been selected. We find no justifiable reason for depriving the petitioner of ~~from~~ his bread and butter in order to give a preferential treatment to Shri Soni who was then working in the head office as substitute LDC or junior stenographer against a post coming with the reserved category. Conceding for the sake of argument that there was no fishy transaction in regard to the appointment or regularisation of Shri Soni in the vacant post at Rourkela, admittedly

14

Shri Soni was ordered to be transferred to Indore on his own request. These circumstances are tale telling and appears to be very suspicious. The only irresistible conclusion that could be drawn is that Shri Soni was sent to Rourkela against a vacant post of LDC and sometime was awaited to get him back to Indore and this was achieved on 11th June, 1989. At the cost of repetition, we would say that the entire transaction beginning from the posting of Shri Soni at Rourkela and thereafter the transfer to Indore and paying no heed to the representation made by the petitioner cannot but lead us to an irresistible conclusion that all this was done only to help and accommodate Shri Soni who was directly in touch with the concerned authority. In a case of this nature, there cannot be any direct evidence but circumstances irresistibly and conducively points towards the fact that special treatment of favouritism was extended to Shri Soni at the cost of the petitioner: 'MEN MAY LIE, BUT CIRCUMSTANCES WILL NOT'. This wholesome and long established principle applies in full force to the facts of the present case.

7. By passing the recommendations of the Employment Exchanges have been strongly deprecated by Their Lordships of the Hon'ble Supreme Court in the Case of Delhi Development Horticulture Employees Union V. Delhi Administration reported in 1992 AIR/SCW 616. Of course this case related to regularisation of casual employees but our intention in relying on this judgment is to indicate the view of the Hon'ble Supreme Court to the effect that employment is being bypassed and employment is sought and given directly

15

for various illegal consideration including money. At paragraph 15 of the judgment, Their Lordships were pleased to observe as follows:

"Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal consideration including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertakings of Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

8. In addition to the above, we are of opinion that once a particular person has been empanelled for appointment, in no circumstances, the benefit should be denied to him. Our view gains support from a judgment of the Principal Bench

reported in 1992 (1) Administrative Tribunal Judgments 559 (Shri Makhan Singh and Others Vs. Union of India and others). Relying on ~~the~~ some judgments of the Hon'ble Supreme Court especially an unreported case of Union of India Vs. Iswar Singh Khetri and others disposed of by the Hon'ble Supreme Court in Civil Appeal No. 1900 of 1987 dt. 4.8.1989, the Bench held that the applicants before the Principal Bench who were Asst. Wiremen applied for a particular post and were empanelled after due consideration, authorities are bound to appoint persons who are borne on the panel. The principles laid down by the Hon'ble Supreme Court and that of ~~that of~~ the Principal Bench applies in full force to the facts of the present case. At the cost of repetition we may say that there was absolutely no justification to deny the appointment of the present petitioner.

9. Another striking feature cannot go unnoticed. Shri Soni was transferred on ~~his~~ own request. Such transfer must have been against a vacant post at Indore or the post held by Shri Soni at Roukela must have been transferred along~~at~~ with Shri Soni. No document has been filed in this case to indicate that the post held by Shri Soni at Rourkela stood transferred to Indore along with the physical movement of Shri Soni. We would presume ~~that~~ the post in question was transferred to Indore otherwise the post meant for a General candidate on the transfer of Shri Soni would necessarily pass on to a general candidate and thereafter the next vacant post according to the roster point will come to a SC candidate. This is another strong circumstance to indicate that special favouritism was shown to Shri Soni ^{so as to} ~~how~~ adjust him against the post of L.D.C. ~~lying~~

vacant in any part in India. Why all this was done? . In our opinion it was only to accommodate Shri Soni. This cannot but be malice-in-law. Therefore, we find that there is substantial force in the contention of the learned counsel appearing for the petitioner that the petitioner has been deprived of the appointment to this post to accommodate Shri Soni which is against all canons of Justice, equity and Fairplay .

10. We would not like to disturb the appointment/regularisation of the services of Shri Soni because he is not a party before us but we cannot allow the gross injustice of the aforesaid nature being ^{extended} ~~show~~ to the present petitioner. Therefore, the selection of the petitioner being admitted and depriving him of the bread and butter without any justifiable reasons, we direct that the petitioner is deemed to have been appointed against the said post of general candidate with effect from the date on which Shri Soni joined the post in question at Rourkela i.e. in the Month of May, 1987 . Since the Petitioner has not physically joined the post on the said day, he will not be entitled to any remuneration on the principle of 'no work no pay' but his remuneration would be payable from the actual date of joining the post in question and it is further directed that Opposite Party No.3 i.e. the Regional Director, Central Board of Workers Education Rourkela would accept the joining report of the petitioner and allot work to him.

11. Thus, the application stands allowed leaving the parties to bear their own costs.

b. J. S. S.
MEMBER (ADMINISTRATIVE)

Central Admn. Tribunal
Cuttack Bench/K. Mohanty



b. J. S. S.
15/7/92
VICE CHAIRMAN