

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, : CUTTACK.

ORIGINAL APPLICATION NO:68 OF 1989.

Date of decision: October 11, 1990.

Durga Prasad Panigrahi

.... Applicant

- Versus -

Union of India and others

.... Respondents

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For the applicant

: Mr. S.P. Mohanty, Advocate

For the Respondents

: Mr. Ganeswar Rath, learned  
Standing Counsel (Central)  
(Cuttack Bench)

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C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

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

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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 ? No.
  3. Whether Their Lordship's wish to see the fair copy of the Judgment ? Yes.
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J U D G M E N T

N.SENGUPTA, MEMBER (J),

In this application the reliefs sought for are to appoint the applicant as a Stenographer on regular basis or in the alternative to adjust him against the sanctioned post of Second Para Medical worker.

2. The applicant's case is that in 1978 the President of India sanctioned certain posts for Regional Leprosy Research Institute, Aska vide Annexure-1. By that order one post of Stenographer in the scale of pay Rs. 330-560/- and two para Medical Workers in scale of pay Rs. 260-430/- were sanctioned. In November, 1985 instructions were issued by the Directorate General of Health Services to fill-up immediately the vacant posts of Stenographer and Para Medical Workers. Accordingly, a selection Board consisting of four persons ~~were~~ was constituted and that Board after testing 19 candidates sponsored by the employment exchange selected him (the applicant) and he was appointed on 18.2.1986. Though in the instructions issued from the Office of the Directorate General of Health Services (D.G.H.S.) there was no indication of appointing any person on adhoc basis or imposing any conditions, the Medical Superintendent of the Regional Leprosy Research Institute, Aska while issuing the order of appointment to the applicant stated that the offer of appointment was purely provisional and on ad-hoc basis till a regular candidate

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was sponsored by the Staff Selection Commission or till he qualified himself for the post of Stenographer from the Staff Selection Commission, whichever was earlier. He( the applicant) had to accept such an offer as otherwise he would have remained unemployed and he joined service as a Stenographer. As in the letter of appointment it was mentioned to be adhoc and as he apprehended that his services could be terminated at any time, he applied for undergoing training prescribed for a Medical worker and his application was forwarded by his immediate superior authority whereafter he underwent the training successfully. On 6.1.1989 he was served with a notice that his services stood terminated as one Shri A.K. Sahoo was selected as a Stenographer and Shri Sahoo joined on 17.1.1989(FN). After the termination of his services as a Stenographer, he made a representation to adjust him against the second post of Para Medical Worker and no orders had been passed on that representation till he filled the application. However, he was appointed on adhoc basis as a Para Medical Worker in the Leave vacancy of Shri A. Panda till 3.3.1989. The applicant has stated that as he was initially selected by a selection Board and he discharged his duties satisfactorily, the termination of his service as stenographer was improper and unfair and that as after serving the organisation for some years he became overaged,

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he should be absorbed against the post of the Second Para Medical Worker.

3. The Respondents in their counter have maintained that a Stenographer was to be selected by the Staff Selection Commission after test and the applicant was given opportunity to appear at such a test but he could not succeed, therefore, he cannot claim to be retained in the service as a Stenographer. As regards, the claim of the applicant for adjustment against the second post of Para Medical Worker, the case of the Respondents is that the post remained vacant for a considerable number of years and the Government were not inclined to extend the sanction for continuance of the post, however, later the Government revived the post. According to the roster for reservation of posts for SC and ST candidates, the second post fell at a reservation point and as the applicant does not belong to SC or a ST category his prayer for adjustment against that post is misconceived.

4. We have heard Mr. S.P. Mohanty learned Counsel for the applicant and Mr. Ganeswar Rath, learned Standing Counsel (Central) for the Respondents at length. Mr. Mohanty has urged that according to the instructions the applicant was appointed initially and to make his appointment adhoc was wholly unjustified. Mr. Mohanty has referred to Annexure-2 to the application and has contended

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that the office of the D.G.H.S. (Leprosy Cell) directed the Medical Superintendent of Regional Leprosy Research Institute Aska for initiating action for immediate appointment through employment exchange or by getting the candidates sponsored from Staff Selection Commission against the posts mentioned there in and Stenographer post was at Sl. No. 10 of that Annexure. The contention of Mr. Mohanty is that as the applicant was sponsored by the Employment Exchange and there were 18 others from amongst whom the applicant was selected by the Selection Board, the selection was to be taken as regular and the appointment of the applicant would not have been made adhoc. In fact from Annexure-4 it would be found that within about three months action was taken for filling up the post of Stenographer and on 9.2.86 an offer was sent to the applicant to state whether he was agreeable to be appointed on the terms and conditions set forth in that Annexure. ~~Admittedly~~ <sup>Admittedly</sup> an appointment to a post - ~~the applicant~~ is partly contractual and partly a status, where an offer is made mentioning the conditions, that must form a part of the contract of service and unless it is proved that there was anything to vitiate the contract, a person after accepting the job cannot wriggle out of the conditions mentioned in the offer. In the instant case there is no allegation that there was any inducement by the Respondents compelling or persuading <sup>him to accept the offer</sup> the applicant was wellaware that his appointment was only

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ad hoc and was to ensure till the candidate recommended by the Staff Selection Commission joined. There is an additional fact that the applicant was given an opportunity to compete and qualify himself to be recommended by the SSC for appointment as a Stenographer. Mr. Mohanty has cited the case of Dr. A.K. Jain and others Vs. Union of India and others reported at page 203 of Vol. II of SC Services Law Judgments. In that case in fact the Hon'ble Supreme Court did not decide anything nor did it lay down any law with regard to regularisation of services of ad hoc employees. Having regard to the facts of that case the Hon'ble Supreme Court directed that the services of all Doctors appointed on ad hoc basis up to 1.10.1984 were to be regularised in consultation with the Union Public Service Commission (UPSC) on the evaluation of their work and conduct on the basis of their confidential Reports and the petitions of Doctors appointed after 1.10.1984 were dismissed. The judgment of the Hon'ble Supreme Court was delivered in September, 1987. The Hon'ble Supreme Court did not really say or direct to regularise the services of Doctors appointed prior to 1.10.1984 but what they directed was regularisation depending on their performance. So this case is not much <sup>of</sup> assistance to the applicant. In the circumstances we would say that the applicant cannot make a grievance about the termination of his service as a Stenographer.

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4. With regard to the post of second para Medical Worker, the contention of Mr. Mohanty is that the applicant qualified as a Para Medical Worker and as the Post was vacant, the applicant was to be absorbed or adjusted against the said post of second Para Medical Worker, more so in view of the fact that the applicant after serving the organisation for more than two years became over aged for appointment to any Government posts. In the counter of the Respondents a stand has been taken that according to the 100 point roster, the post of second Para Medical Worker falls at a point meant for a ST candidate, he cannot ask for adjustment against that post. From Swamy's compilation of the 100 point roster for Orissa it would be found that the 1st post is to be reserved for a ST and the second post for a general candidate. There is no material before us to know whether against the 1st post a general or a reserved candidate was appointed. According to the rules of reservation and the decision of the SC in the A. Ray Chaudhuri's case if only one post falls vacant in a year and it falls on a reserve point, it should be treated as unreserved, but the reservation should be carried forward in the next three recruitment years. Mr. Mohanty has referred to a letter of the Government of India Personnel and Training copy to be found at page 121 of the 1st edition of Swamy's compilation on reservation and concessions for SC and ST and has contended that the reservation would not be carried forward for a long period of 11 years. We are not impressed

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by this argument because the reservation is to be carried forward for three recruitment years and a recruitment year means a year in which a recruitment is actually made, after filling up the 1st post of Para Medical Worker. In fact as the sanction for the post was not there during the intervening period, no person could possibly have been appointed as the second para Medical Worker.

5. In view of the circumstances stated above we would direct that if the post of 1st Para Medical Worker was filled up by appointing a person belonging to ST or SC, the claim of the applicant for being adjusted against the second para Medical worker be considered and if the 1st post was filled up by a candidate of general category the applicant can have no remedy. The application is disposed of accordingly. Parties should bear their own costs.

*B. Mohanty* 11.10.90  
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VICE-CHAIRMAN



*M. S. Singh* 11.10.90  
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MEMBER (JUDICIAL)

Central Administrative Tribunal,  
Cuttack Bench, Cuttack/K. Mohanty