

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 513 of 1990

Date of Decision: 6.11.1992

Surendranath Samantray

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.U.N.Mishra
K.C.Pradhan
H.K.Bahiar Singh
M.Mohapatra

For the respondents

M/s. B. Pal,
O.N. Ghosh,
Advocates

C O R A M

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

AND

THE HONOURABLE MR. K. J. RAMAN, 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 ? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays that his services should be regularised from his date of appointment in the South Eastern Railway Mixed Higher Secondary School, Khurda Road.

2. Shortly stated, the case of the applicant is that on 12.9.1973 he was appointed as a substitute Primary School Teacher in the Khurda Road Railway School. After completion of three years he was regularised with effect from 15.9.1977 vide Annexure-2 dated 21.6.1979. Later, this order of regularisation was changed to the year 1978 vide Annexure-5 dated 29.6.1989. Hence, this application has been filed by the applicant.

3. In their counter, the respondents maintained that not only according to the orders passed by the Chief Personnel Officer in his letter dated 16.2.1978 regularisation date was changed to the year 1978 but also there being no arbitrariness or illegality in the ^{change} of such date, the case is devoid of merit is liable to be dismissed.

4. We have heard Mr. U.N. Misra, learned counsel for the applicant and Mr. B. Pal, learned Senior Standing Counsel (Railways) for the respondents. Though in the averments of the pleadings of the applicant, he wants regularisation from the year 1973 i.e. from the year of his appointment we do not find any force in this contention because the regularisation made in the year 1977 has some bearing to the facts of the present case. Though Mr. Pal argued before us that the date of regularisation with effect from the year 1978 is according to Rules

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and according to the law interpreted by the Chief Personnel Officer, but there ^{is} ~~is~~ no dispute regarding the fact that vide Annexure-2 dated 21.6.1979 the services of the applicant ^{were} ~~were~~ regularised with effect from 15.9.1977. At the cost of repetition we may say that vide Annexure-5 the date of regularisation was altered to 16.2.1978. However much Mr. Pal may contend that the changed date of regularisation is according to Rules but we cannot persuade ourselves to agree with his views for the following reasons. In Annexure-2 it would be found that the date of regularisation of the service of the applicant has been fixed to 15.9.1977 in terms of CPO-BRC's letter No. P/ED/54/213/XXI dated 16.2.1978 and in Annexure-5 dated 29.6.1979 one would find that in respect of the same letter of the same date the regularisation has been altered to 16.2.1978. This appears to us to be inconsistent. That apart once having regularised the services of the applicant with effect from 15.9.1977, any alteration to be effected to the service benefits of the applicant should be in compliance with the principles of natural justice. A civil right once having been vested on a Government employee, could be altered or changed only after the affected employee is given an opportunity of explaining himself. In this context, we are persuaded to quote the observations of Hon'ble Mr. ^{Jagat} R. N. Misra (as my Lord the Chief Justice then was) in the case K. I. Shephard and others vrs. Union of India and others reported in (1987) 4 SCC 431, which runs thus :

"... when a State agency acts administratively,

rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet."

In our opinion, the observations of the Hon'ble Supreme Court in the case of K.I.Shephard and others applies in full force to the facts of the present case. There is no evidence before us that before issuance of Annexure-5 ^{any} ~~no~~ notice was given to the applicant calling upon him to show cause. Hence, we are of opinion that principles of natural justice have been violated in this case. Therefore, we do hereby quash Annexure-5 and restore Annexure-2 and we would direct that the applicant is deemed to have been regularised in service as Teacher Gr.IV of S.E.Railway Primary School, Khurda Road with effect from 15.9.1977.

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

W.M.C.
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MEMBER (ADMN.)

..... 6. XI. 92
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 6, 1992/Sarangi.

