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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 247 of 1991

Cuttack this the 3rd day of May, 1995

Dinabandhu Behera

...

Applicant(s)

Versus

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? ✓


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

03 MAY 95


(D. P. HIREMATH)
VICE-CHAIRMAN

6 (6)
CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH:CUTTACK

Original Application No.247 of 1991

Cuttack this the 3rd day of May, 1995

C O R A M:

THE HONOURABLE MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

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Dinabandhu Behera, S/o, Sri Purna
Chandra Behera, aged about 43 years,
working as U.D.C. in the office of
the Regional Labour Commissioner,
Central, Bhubaneswar.

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Applicant

By the Advocate: Mr.P.Venkataswaralu,

Versus

1. Union of India represented through the Secretary to Government, Ministry of Labour, Government of India, Shrama Shakti Bhawan, Rafi Marg, New Delhi
2. The Chief Labour Commissioner, Central, Shram Shakti Bhawan, Rafi Marg, New Delhi
3. The Regional Labour Commissioner (Central) Plot No.637, PO:Sahidnagar, Bhubaneswar-751007 (Dist:Puri)

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Respondents

By the Advocate: Shri Ashok Mishra,
Sr.Standing Counsel (Central)

O R D E R

D.P.HIREMATH, V.C.: The petitioner challenges his
from
reversion/Adhoc U.D.C. to L.D.C. by the order dated
31.7.1991 which came to be passed after this Tribunal
decided Original Application 386 of 1989. The facts

(7)

are brief and simple. The petitioner was appointed as Lower Division Clerk in 1969 and promoted to the post of Upper Division Clerk on adhoc basis in 1977. When he apprehended that he was not going to be regularised in that post, he approached this Tribunal in the aforesaid Original Application and prayed for regularisation. The Tribunal considered his prayer in extenso together with the prayer that he was working on adhoc basis for nearly 14 years by the time the judgment in O.A.386/89 came to be passed in the year 1991 and therefore, direction be made to regularise him in that post. The reasoning of this Tribunal ^{while} ~~by~~ disposing of the application is material as the same disposes of the present contentions as well and therefore, we extract the same here below:

" We have heard Mr.B.L.N.Swamy, the learned counsel for the applicant and Mr.Ganeswar Rath, the learned Senior Standing Counsel (Central) for the respondents and perused the relevant papers. Mr.Swamy has urged that the applicant has been promoted to the cadre of Upper Division Clerk with effect from 21.9.1977 (Enclosure-I) and the recruitment rules came into force only next year in December and as such the recruitment rules should not apply to the case of the applicant. We are unable to agree with Mr.Swamy because the appointment of the applicant as UDC was not on a regular basis and the applicant has to be regularised under the Recruitment Rules. Mr.Swamy thereafter pleaded that as the applicant has worked as UDC for long 11 years he can not be sent away to his substantive post unceremoniously, if he does not succeed in the examination. We are unable to accept this plea also on the ground that the posts that are available under the seniority-cum-fitness quota will have to

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go to these LDCs who are senior to the applicant. Mr.Ganeswar Rath the learned counsel for the Respondents has pointed out that there are three others in the cadre of LDCs who are senior to the applicant, namely, S/Shri S.Uram, P.C.Rai and D.Tanty. Mr.Rath has further said that one of them namely Shri S.Uram has since declined the promotion as he wanted to work at Rourkela as LDC and the resultant vacancy in the seniority-cum-fitness quota has gone to the next senior LDC, namely Shri P.C.Rai. According to Mr.Rath, therefore, there is no vacancy available under this quota for the applicant. As there is no post now available, the applicant will have to wait his turn according to his seniority as LDC, or he will have to take his chance under the examination quota. Though the examination was fixed sometime on 14th and 15th October, 1989 no information has been supplied to us whether the applicant took that examination or not."

2. In our view the aforesaid grounds for disposal of the application by passing the order dated 19.4.1991 could be an effective answer ^{to} for the present application as well, because the order of reversion came to be made soon-after disposal of the Original Application 386 of 1991, and thereafter, in the year 1991 itself this present application came to be filed with a similar prayer for regularisation of his services quashing the reversion order. As on the point the Tribunal also made clear that either the petitioner has to wait ^{for} his seniority ^{to} becomes operative in the L.D.C. cadre or take a chance in the examination quota. In July, 1992, we were told that he was promoted basing on seniority. When the

Original Application came to be disposed of, there were three officials senior to the applicant. One declined promotion and other two got it. This is how the petitioner took his turn and got the promotion. As this Tribunal considered his adhoc officiation in the same post for the length of time which is now also urged and which has been sufficiently answered by this Tribunal, we do not find any ground to consider the same point again in this application. *Principles of Res judicata apply.* as well. We do not find any merit in this application.

The same is dismissed. No costs.


 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)

03 MAY 95


 (D.P. HIREMATH)
 VICE-CHAIRMAN

B.K.Sahoo//