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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 419 of 1991

Date of Decision: 5.10.93

Muralidhar Sahu

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

5/10/93
VICE-CHAIRMAN

[Signature]
MEMBER (ADMINISTRATIVE)
05 OCT 93.

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Respondents

For the applicant:

M/s.G.A.R.Dora
Advocate

For the respondents:

Mr.Ashok Mohanty
Standing Counsel
(Central Government)

C O R A M:

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

AND

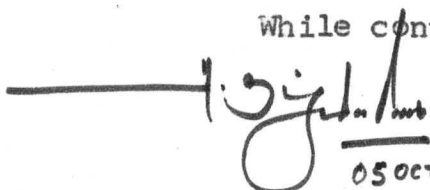
THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN): In this application the petitioner, Shri Muralidhar Sahu, Publicity Inspector (Oriya), South Eastern Railway, has prayed for quashing of the orders contained in Chief Personnel Officer, S.E. Railway, Calcutta, Memo No.P/H-5/3/C.Case/MDS dated 27.8.1991, fixing the applicant's seniority in the category of Publicity Inspectors with effect from 3.5.1991; and to direct the respondents to concede that his seniority will count from 4.9.1980, with a further direction that he shall be granted the consequential benefits, if any.

2. The applicant was recruited through the Railway Selection Commission as Accounts Clerk, Gr-I.

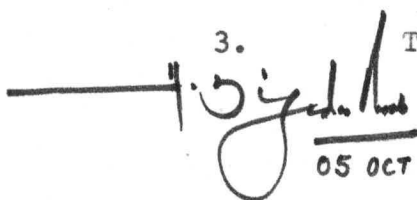
While continuing in the said post, his name was sponsored


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for appointment as Publicity Inspector (Oriya). He was selected and appointed, in an adhoc capacity, to the said post and he assumed duties thereof on 4.11.1980. Orders were issued on 8.6.1982 reverting him to his parent cadre of Accounts Clerk Gr-I whereupon he approached the Orissa High Court against the said order. His reversion was stayed by the Hon'ble High Court and the case itself got subsequently transferred to this Tribunal. The application, renumbered T.A.NO.238 of 1986, was disposed of on 21.1.1987 by allowing his prayer. The reversion order issued earlier was thus finally set aside and the applicant was permitted to continue in the post of Publicity Inspector. Against the said orders of the Tribunal, the respondents went upto Hon'ble Supreme Court in an Civil Appeal (4752/89). The Apex Court ordered on 6.9.1990 that the applicant would continue to hold the position of Publicity Inspector and shall also be entitled to participate in any future regular selection for the post. The Court pointedly did not express any opinion on the question of law involved in the case. Pursuant to the above order, the applicant was permitted to participate in a regular selection test and qualified in the written as well as viva-voce test. Resultantly, he was duly empanelled in the cadre of Publicity Inspectors, but with effect only from the date of his empanelment, viz. 3.5.1991. His service was also declared duly regularised with effect from the same date.

3. The grievance of the applicant is that


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as he has been working undisturbed against a clear vacancy of Publicity Inspector from 4.9.1980, his seniority should ~~rightly be~~ counted from that date, and not from 3.5.1991. He submitted a representation to his superiors to the same effect, but it was rejected. Hence this application.

4. The case of the respondents is that there really was no regular selection for the post of Publicity Inspector, and that the applicant was allowed to merely officiate on an adhoc basis pending a final regular selection at a future date. They state that a candidate in order to be eligible for consideration for appointment to the post should have been a substantive holder of the pay-scale of Rs.260-400/-. According to them, the applicant was not in this pay scale. The respondents further maintain that the applicant did not pass an examination prescribed under Appendix-II of the relevant rules, and that the Hon'ble Supreme Court observed in their order that the applicant had not been selected in accordance with law. They, however, admit that the applicant did qualify in a subsequent examination and was, therefore, regularised with effect from 3.5.1991, which is the date of his empanelment. They argue next that the law is well settled on the point that the period of officiation will not count for the purpose of seniority. It is their final contention that, since the applicant had been working only on an officiating, adhoc basis, he cannot claim any ante-dated seniority.

5. In his rejoinder to the counter filed by the respondents, the applicant disputes that he was not in the pay scale of Rs.260-400/-, and that his selection and appointment as Publicity Inspector had in fact placed him



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in the grade of Rs.330 to Rs.560/-. He asserts that the examination prescribed under Annexure-II of the rules is a pre-requisite only for continuing in the Accounts Wing, and not at all relevant to the duties of the post he was officiating in. He invites attention pointedly to the fact that the Supreme Court did not observe anywhere that he was not selected in accordance with law. In all truth, he points out, he was neither called, nor permitted, to appear at a regular selection, obviously based on a wrong understanding or interpretation of regulations. That he could not qualify in the prescribed examination for selection to Publicity Inspectors Cadre was, under the circumstances, not on account of any fault, deficiency or failure on his part, but due to inaction or incorrect interpretation of rules by the authorities. He finally points out that on the first (and only) occasion he was called upon to appear at the said examination, he qualified in the written as well as viva-voce test with merit.

6. From the facts revealed in course of the hearing as well as from the record placed before us, it is evident that, initially, the applicant *volunteered* for being considered for appointment as Publicity Inspector in response and fulfilment of the requirements of the authorities themselves. His name was duly sponsored. The same was accepted. He was duly selected and appointed - though admittedly on an *ad hoc* basis - against a clear vacancy. He has not merely worked continuously since, for well over 10 years, but seems actually to have taken his duties seriously and conscientiously, as judged from




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encomiums earned from departmental and non-departmental sources. The argument advanced by the learned Standing Counsel for the respondents that the period of officiation can not count for seniority is not acceptable. In AIR 1990 SC 1607 (Direct Recruit Class-II Engineers Officers Association & Others vs. State of Maharashtra & Others) the Hon'ble Supreme Court has laid down a categorical and unambiguous dictum in this context. The following observations of Their Lordships are relevant in this case.

" Once an incumbent is appointed to a post according to rule, the seniority has to be counted from the date of his appointment and not according to date of his confirmation. 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 services in accordance with rules, the period of officiating services will be counted."

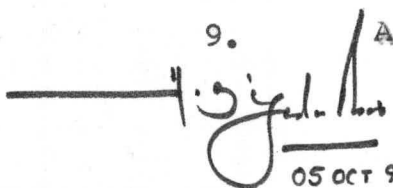


7. It is the contention of the respondents that the passing of a prescribed ^{Accounts} examination was obligatory in all cases; and that the petitioner, not having so passed it, is not, on that score, entitled to any of the claimed reliefs. This is an aspect and a question that has been fully dealt with by this Tribunal in its judgment dated 21.1.1987, while the self-same argument was advanced by the respondents during the hearing of the earlier Transferred Application as well. This Bench held on that occasion that the petitioner had really nothing at all to do with accounts in the selectional post occupied by him. They did not feel inclined on this score to direct the petitioner to appear

at the said examination. The position on this remains unchanged even now. The issue of passing of a prescribed examination by the applicant thus stands disposed of, ^{and does} not merit reopening at this juncture. We have also perused the order dated 6.9.1990 passed by Hon'ble Supreme Court in Civil Appeal No.4752 of 1989 and find that, contrary to what has been stated by the respondents in para-5 of their counter, the Supreme Court has not made any observation on the exact manner of the applicant's selection, and has in fact expressed no opinion on any questions of law involved in the case before them.

8. In the light of the discussion above, it is clear that the applicant has continued to serve in the post of Publicity Inspector after his selection from 4.9.1980. His performance was by all indications not unsatisfactory in any manner. If he continued to occupy a selection post in an adhoc capacity against a clearly-declared vacancy, it was due to the fact that he was never called upon, or allowed, to appear for regular selection. The first and the only time he was called upon to do so - pursuant, be it noted, to the orders of the Supreme Court - he qualified with apparent ease in the very first attempt. And all this while he has been discharging, undisturbed, the duties of a selectional post. In view of these facts, and also in the light of the definitive dictum of the Hon'ble Supreme Court referred to in para (supra), we hold that the applicant is indeed entitled to the reliefs claimed by him.

9. Accordingly, we quash the orders contained in


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Chief Personnel Officer Memo No.P/H-5/3/C.Case/MDS dated 27.8.1991 and direct that the seniority of the applicant be fixed with effect from 4.9.1980 in the category of Publicity Inspector, and that all consequential service-benefits, including monetary benefits, if any, be calculated and paid to him within 90 days from the date of receipt of this order. Thus the application stands allowed. No costs.

[Signature]
 VICE-CHAIRMAN 5/10/93

[Signature]
 MEMBER (ADMINISTRATIVE)
 05 OCT 93

Central Administrative Tribunal
 Cuttack Bench Cuttack
 dated the 5.10 1993/B.K. Sahoo

