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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:

Original Application No. 445 of 1991

Cuttack this the 8th day of Nov. 1995

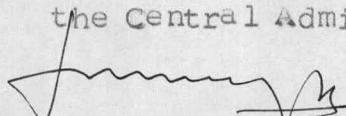
S.K. Routray ... Applicant(s)

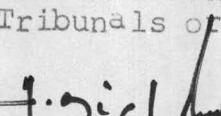
Versus

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.

P. 
(P. SURYA PRAKASH)
MEMBER (JUDICIAL)


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 445 of 1991
Cuttack this the 8th day of Nov 1995

C O R A M:

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

AND

THE HONOURABLE MR. P. S. SURYA PRAKASH M, MEMBER (JUDICIAL)

...

Suresh Kumar Routray, aged about 27 years, Son of Alekh Prasad Routray, At/PO:Sipura, Dist:Cuttack, at present working as Hindi Typist, Employees State Insurance Corporation, SSIC, Bhawan, Janpath, Unit-IX, Post:Bhubaneswar, District:Puri

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Applicant

By the Advocate: Shri H.P.Rath

Versus

1. Union of India, represented by the Secretary to Government, Ministry of Labour, New Delhi
2. Director General Employees State Insurance Corporation Panchadip Bhawan, Kotta Marg, New Delhi-110002
3. Regional Director, Employees State Insurance Corporation, Regional Office (Orissa Region) E.S.I.C. Bhavan, Janpath Unit-IX, Bhubaneswar-7

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Respondents

By the Advocate: Mr. P.N. Mohapatra,
Addl. Standing Counsel

M/s. Devanand Mishra
Deepak Mishra
A. Deo, B.S. Tripathy

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O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): The applicant, Shri Suresh

Kumar Routray, was initially appointed Hindi Typist on an adhoc basis in the Office of the Regional Director,

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Employees State Insurance Corporation, Bhubaneswar, on 17.7.1989. His name had been duly sponsored by the Employment Exchange, and a test was also conducted on 23.6.1989 before he was offered the adhoc appointment. The initial engagement was tenable for three months. The same was, however, subsequently extended and the applicant continued to work in the Corporation as under :

17.7.1989	to	12.1.1990
16.1.1990	to	14.2.1990
15.2.1990 till further orders		

The applicant continues to date on the same basis. On 10.9.1991, the applicant represented to the Director-General, E.S.I.C. for regularising his ongoing adhoc appointments. This was in continuation of an earlier representation made in January, 1990.

2. The grievance of the applicant is that the respondents are about to make a fresh selection to fill up the post in which he has been working all this while, and prays for a direction to be issued to the respondents to regularise his services from 12.7.1989, and to award all consequential service benefits.

His prayer is based on the following grounds :-

- i) non-consideration of his case for regularisation is bad in law and amounts to exploitation of labour;
- ii) the Hon'ble Supreme Court has disapproved adhocism as a continuing administrative practice in making essential appointments;
- iii) repeated and periodic renewal of adhoc appointments has been disapproved also by the Department of Personnel and Administrative Reforms vide instructions

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contained in Annexure-9 to the Original Application;

- iv) the Guwahati Bench of this Tribunal had earlier directed the regularisation of the services of one Munindra Kalita, who was identically placed as the applicant and consequently his services were duly regularised thereafter;
- v) he has been working efficiently and has gathered sufficient familiarity with the work in course of the past six years.

3. The respondents in their counter-affidavit submit that the application is barred by limitation. It is not, however, explained, how precisely limitation is attracted.

iii) The applicant's service has not been continuous during these spells of appointment, the same having been terminated at least twice on 13th October, 1989, and 12th January, 1990.

iv) The regularisation of services cannot be claimed as a matter of right. A specific recruitment regulation exists in the Corporation which precludes the consideration of the applicant's case. It is explained that although the said regulation pertains to LDCs of the Corporation, the post of the Hindi-typist, being 'identical' to LDC, is governed by the same procedure. The applicant cannot be considered for regularisation of his service since recruitment of Hindi-typist is to be made through the agency of Staff Selection Commission. An L.D.C. is required to possess a knowledge of English typing at the rate of thirty-five words per minute, while a candidate for the post of Hindi-typist should pass a written-test,

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and also Hindi typewriting-test. They state that Munindra Kalita's case is not similar to that of the applicant because the services of Kalita had been terminated giving rise to the case which came up before the Guwahati Bench, whereas the present applicant still continues in service.

They also assert that there is no post carrying the designation of Hindi-typist in their organisation.

4. a) In a rejoinder to the counter-affidavit, the applicant asserts that the post of Hindi-typist duly exists in the Office of the Regional Director, F.S.I.C., Bhubaneswar, in support of which he produces four documents (Annexures 2 to 6 to the Rejoinder).

b) It is pointed out by him that the Employment Exchange had been addressed in the very first instance for sponsoring the name(s) of candidates for the post only of Hindi-typist. As regards the respondents' claim that the post of Hindi-typist is not borne on their establishment, the applicant files Annexures 14, 15 and 16 to rejoinder to prove the existence of the post of Hindi-typist. It is the contention of the applicant that the post of Hindi-typist is distinct and different from L.D.C., and that the two cannot be equated for the simple reason that these posts exist independently of one another in the sanctioned establishment of the Corporation. The applicant has also produced another Annexure (No.17) which shows the existence of L.D.C., U.D.C., and Hindi-typist, separately, and reinforces his contentions on the basis of certain instructions issued

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by the Government of India on the implementation of its Official Language policy. The instruction at para 3(2) of the document envisages the making available of a minimum number of Hindi posts for a proper and adequate implementation of the Official Language Policy. The Corporations under the Government of India ~~are~~ included in this scheme ^{are} and governed by the same instructions. A Hindi-typist is shown as among the minimum staff for whose creation guidelines were issued by the Government in August, 1973, and reiterated in April, 1981. Furthermore, whereas the Finance Ministry had banned in 1984 the creation of all new posts, an exception had been duly made in respect of Hindi posts since such posts were required to be created for ensuring compliance of the provisions of Official Language Act and Rules, and were, therefore, considered absolutely necessary. It was added that the implementation of the Official Language Policy and providing the infrastructure for it came under the category of assurances given to the Parliament. The guidelines to be followed for determining the number of Hindi posts in various offices of the Central Government in regions B and C, included posts of Hindi Typist.

Para 3(3) of the Policy instructions made it incumbent on all administrative heads of Central Government Offices to ensure strict compliance of the Official Language Act and Rules, and of all directions pertaining thereto. It was in fact their statutory obligations to do so.

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5. The facts of the case are simple and straight-forward. The applicant was duly sponsored by the Employment Exchange before he was offered the initial adhoc appointment in the respondent organisation. He was duly subjected to a typing-test prior to his initial appointment. He has been continuing in the post almost continuously except for some 'technical'-breaks, apparently ordered to forestall the benefit of unbroken service to him. There is no whisper of any unsatisfactory performance on the part of the applicant. It is not clear how the respondents deny the existence of the post of a Hindi-typist in their establishment, in the face of overwhelming documentary evidence to the contrary. Similarly, it is not understood how they can equate this post with that of L.D.C. whose mode of recruitment has been spelt out in the regulation.

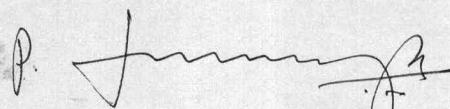
It is also seen that the facts of the case (Shri Munindra Kalita vs. Union of India O.A.45/88, C.A.T., Guwahati Bench) cited by the applicant are identical in every respect with the facts of this case. The mere fact of Munindra Kalita having filed his application after the termination of his service does not make any material or significant difference as all the remaining facts are precisely the same as those of the applicant's case. It is noted, furthermore, that the services of the applicant himself were terminated atleast twice in the past.

6. In view of the clear facts which have emerged

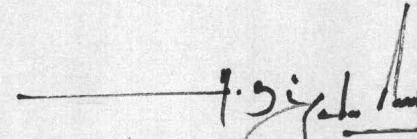
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it is held that the applicant has established his claim convincingly. The ratio of Munindra Kalita's case is fully applicable to this case as well. We, therefore, direct the respondents to consider the case of the applicant for regularisation of his services with effect from the date of his initial appointment as per law. The same shall be done and suitable orders communicated, after detailed consideration of the applicant's claim, within 60 (sixty) days from the date of receipt of these orders.

Thus the Original Application is disposed of. No costs.



(P.SURYA PRAKASHAM)
MEMBER (JUDICIAL)



(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

SEP 95

B.K.Sahoo//

Promised in the open court on 8-11-95.

Transcriber:

Member (Administration)
on law at Cuttack.