

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.10 OF 1992

Cuttack, this the 17th day of September, 1997

Bijaya Chandra Gouda

Applicant

Vrs.

Union of India and others ...

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

Som
(A.K.MISRA)
MEMBER(J)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

17.9.97

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK**

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Cuttack, this the 17th day of September, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI A.K.MISRA, MEMBER (JUDICIAL)

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Bijaya Chandra Gouda,
son of Sri Purna Chandra Gouda,
Village & P.O-Sumandal,
P.O-Kodala, District-Ganjam, at present
working as L.D.Clerk,
Office of the Chief Postmaster General, Orissa Circle
At/PO-Bhubaneswar,
District-Puri Applicant

Advocates for applicant - M/s Devanand Misra,
A.Deo,
B.S.Tripathy &
P.Panda.

Vrs.

1. Union of India, represented by its Secretary,
Department of Posts,
Dak Bhavan,
New Delhi.
2. Chief Postmaster General, Orissa Circle,
At/PO-Bhubaneswar,
District-Puri.
3. Assistant Director (Staff),
Office of the Chief Postmaster General,
Orissa Circle,
At/PO-Bhubaneswar,
District-Puri.
4. Shri Ramachandra Jena,
Caretaker, Office of the
Chief Postmaster General,
Orissa Circle, At/PO-Bhubaneswar,
District-Puri

Advocates for respondents - Mr.A.K.Misra(for Resp.1 to 3) & M/s S.K.Das, P.R.Panda and D.Satpathy (for Resp.4)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 14.1.1991 appointing respondent no.4 to the post of Caretaker (ex-cadre), Circle Office, Bhubaneswar, on regular basis. There is also a prayer for a direction to appoint the applicant to the post of Caretaker and to give him the differential 25% duty allowance for the past period he had worked as Caretaker. The facts of this case fall within a small compass and can be briefly stated.

2. According to the applicant, he was initially recruited as a Group-D employee in the office of respondent no.2 on 10.5.1979 and was promoted to the post of Daftary on 18.5.1982. While working as Daftary, in order dated 16.3.1988 (Annexure-1) he was ordered to work as Caretaker on ad hoc basis with effect from 21.1.1988, or till such time regular arrangement was made. It was also mentioned in this order that he would be entitled to deputation (duty)

*Somnath Som
17.9.92*

allowance as admissible under normal Rules and he would have no claim for regular absorption in the said post.

Again in order dated 31.10.1988 (Annexure-2) the applicant was ordered to work as Caretaker on temporary and ad hoc basis until further orders in place of one Lochan Naik. It was mentioned in this order that the above appointment of the applicant was provisional and subject to modification on receipt of clarification from the Department of Posts. It is submitted by the applicant that while working as Caretaker, he applied for the post of Lower Division Clerk as at that time the pay scale of Lower Division Clerk was higher than that of post of Caretaker. He appeared at the departmental examination for promotion to the post of Lower Division Clerk, came out successful and was appointed as Lower Division Clerk from 28.12.1989. According to the applicant, in July 1990 applications were called for to fill up the post of Caretaker and he applied for the post on 23.7.1990. By the time the pay scale of the post of Caretaker had been revised to Rs.950-1500/-.

Respondent no.2 in his letter dated 13.8.1990 (Annexure-4) directed the applicant to give unconditional offer for his reversion to the cadre of Daftary from the post of L.D.C. and also an undertaking that if in future the pay scale and

*Somnath Jm.
17.9.91*

10 16

other benefits attached to the post of L.D.C. change, he would not make any claim to go back to that post. He was also asked to give an undertaking in writing that once he is reverted to the post of Daftary, no guarantee would be given for his appointment to the post of Caretaker, which would be according to the result of the D.P.C.. The applicant in reply sent a letter dated 20.8.1990 (Annexure-5) in which he submitted that he would have no objection to give the necessary declaration to forego the post of L.D.C., provided he was selected and appointed as Caretaker taking into account his past experience as Caretaker. As such the applicant wanted that he should be selected and appointed as Caretaker before he gave his willingness to revert to the post of Daftary and to forego all claim to the post of L.D.C. As he did not give an unconditional declaration required of him, his case was not considered by the D.P.C. and respondent no.4 was selected and appointed. In the context of the above facts, the applicant has come up with the prayers referred to above.

*Sonam J. J. M.
17.9.97*

3. Respondents in their counter have pointed out that initially posts of Caretaker in the Department used to be filled up under Indian Posts &

Telegraphs (Caretakers) Recruitment Rules, 1972 and according to these Rules, Caretakers are to be selected by promotion from amongst permanent and quasi-permanent officials below the rank of Caretakers of the Division/Unit of recruitment who have passed middle school standard examination. There were certain other requirements which are mentioned in the copy of the Rules at Annexure-R/2. Subsequently, the Ministry of Finance, in Office Memorandum dated 27.2.1980 (Annexure-R/1), laid down that posts of Caretaker should be treated as ex-cadre posts and deputation (duty) allowance would be admissible as per normal Rules where caretaking duties would require full time attention. It was also laid down in this Office Memorandum that the level of the post of Caretaker should be decided depending upon the size of the office, number of people working, duties and responsibilities involved etc. This Office Memorandum indicated that norms to determine the level of post of Caretaker would be issued in due course. It was also laid down that in future, no separate category or cadre of Caretakers should be filled in by direct recruitment. After issue of this Office Memorandum by Ministry of Finance, the Department of Posts & Telegraphs in their letter dated

17

*Sanjeev Jha,
17.9.97*

10.10.1980 (Annexure-R/3) laid down that in future, post of Caretaker would be ex-cadre post and would be filled up according to the norms which were to be prescribed later. The norms were circulated by the Ministry of Finance in their letter dated 23.1.1990. This provided for the scale of pay of the Caretaker depending upon the size of the building and according to the norms indicated in the order dated 18.7.1990 of the Department of Posts, the post of Caretaker for Circle Office, Bhubaneswar, was given the scale of pay of Rs.950-1500/- . This order is at Annexure-R/5. The respondents' case is that prior to bifurcation of Postal and Telecommunication Wings of the combined Department, there was a post of Caretaker for the office building for both the Wings. The incumbent Caretaker retired on 30.6.1986. Thereafter, Chief General Manager, Telecommunication, Bhubaneswar, made appointment to the post of Caretaker in respect of their portion of the building in November, 1987. For the Postal portion of the building, the post of Caretaker was filled up from the departmental officials of Group-D cadre including Daftaries in the office of respondent no.2. In 1988 the post of Caretaker fell vacant and willingness of Group-D staff including Daftaries was called for. Since the officials senior

18

*Somnath Jom.
17.9.97.*

to the applicant expressed their unwillingness to work as Caretaker on ad hoc basis and as the applicant opted to work as Caretaker temporarily on ad hoc basis, he was appointed on 16.3.1988. While working as Caretaker the applicant applied for sitting at L.D.C.Examination, came out successful and became L.D.C. When in 1990, according to the norms, the scale of pay of Caretaker was fixed at Rs.950-1500/-, the applicant wanted to be considered for the post of Caretaker. His unconditional option was asked for which he did not give and therefore, D.P.C. did not consider his case. The respondents have pointed out that as the post of Caretaker had become an ex-cadre post, only willing persons from amongst Group-D staff including Daftaries were considered subject to giving their willingness. But as the applicant did not give his unconditional willingness, his case was not considered. In view of the above, the respondents have contested the prayers of the applicant.

4. We have heard the learned lawyer for the applicant and the Senior Panel Counsel appearing on behalf of the official respondents and have also perused the records. Nobody appeared on behalf of respondent no.4, but the counter filed by him has been taken note of.

14

20

5. The last prayer of the applicant asking for 25% duty allowance for the period he worked as Caretaker on ad hoc basis can be considered first. The respondents have pointed out that according to Department of Personnel & Training's circular dated 10.4.1986 (Annexure-R/6) deputation (duty) allowance where admissible shall be at the rate of 5% of the basic pay subject to a ceiling of Rs.250/- when the post to which appointment has been made by way of transfer and the earlier post held by the concerned person are at the same station. It has been submitted by the learned Senior Panel Counsel appearing on behalf of the respondents that according to this instruction, the applicant was entitled to get 5% deputation (duty) allowance for the period he worked as Caretaker and this amount has already been paid to him. In consideration of this, we find no merit in the applicant's claim of getting 25% duty allowance and this prayer is, therefore, rejected.

*Submitted
17.1.97*

6. As regards his second prayer for appointment to the post of Caretaker, from the instructions quoted earlier, it is clear that the post of Caretaker is an ex-cadre post. Nobody has a right to claim an ex-cadre post which by its very nature is outside the cadre. At the best, one has a right to be

21

15

considered. In this case, the applicant was holding the post of L.D.C. carrying the same scale of pay as Rs.950-1500/- and therefore, he could not have been considered for appointment to the post of Caretaker, moreso because he was asked to give his willingness to revert to the post of Daftary for being considered for appointment to the post of Caretaker and he did not give his unconditional willingness to revert to the post of Daftary. Therefore, no illegality has been committed by the respondents in not considering his case. As his case was not considered by the D.P.C., the question of taking into account his past experience as Caretaker also does not arise. This prayer, therefore, is held to be without any merit and is rejected.

7. As regards the first prayer to quash the appointment of respondent no.4, it is noted that respondent no.4 was duly selected by the D.P.C. and the applicant has not urged any ground other than non-consideration of his case for quashing the appointment of respondent no.4. As we have already held that the case of the applicant has been rightly not considered, this prayer also must fail and is accordingly rejected.

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17.9.97*

8. In the result, therefore, the application
is held to be without any merit and is rejected, but,
under the circumstances, without any order as to costs.

AKM
(A.K.MISRA)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

17.9.97

AN/PS