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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK & NCH: CUTTACK.

Original Application No. 330 of 1992.

Date of decision : January 20, 1993.

D.C. Patnaik ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. L. Mohapatra,
M.R. Mohanty,
B.K. Nayak, Advocates.

For the respondents ...

Mr. Ashok Misra,
Senior Standing Counsel (Central)

C O R A M:

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

A N D

THE HONOURABLE MR. S. R. ADIGE, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Ans. Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P. ACHARYA, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to be issued to the respondents to refix the seniority of the applicant in the grade of Superintendent taking into consideration the entire period of officiation from 10.5.1984 to 13.10.1989.

2. Shortly stated, the case of the applicant is that he is now working as a Superintendent on regular basis in the Office of Development Commissioner, Small Industries Service Institute and has been posted at Cuttack. On 10.5.1984 the applicant was promoted to the post of Superintendent from the feeder post on adhoc basis vide Annexure-3 and the applicant joined the post in question on 30.7.1984, being posted at Rayagada. Later, on 15.11.1989 the services of the applicant in the cadre of Superintendent was regularised with effect from 13.10.1989 vide Annexure-4. The applicant made a representation for refixation of his seniority with effect from 30.7.1984 contained in Annexure-5. This representation did not yield any fruitful result and therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that in the order of appointment it was specifically mentioned that such adhoc or officiating promotion would not vest any right over the applicant so as to claim his service benefits. Promotion was purely on adhoc basis without conferring any right on the applicant and therefore, his prayer for refixation of seniority with retrospective effect does not arise and being inconceivable the case is devoid of merit and is liable to be dismissed.

Q/H

4. We have heard Mr.L.Mohapatra, learned counsel for the applicant and Mr.Ashok Mishra, learned Senior Standing Counsel(Central) for the respondents on the merits of the case.

5. All the facts stated above are undisputed. The only question now remains to be determined is as to whether regularisation should take effect from the date on which the applicant had joined in the promotional post of Superintendent at Rayagada. Mr.Mohapatra relied upon the latest pronouncement of the Hon'ble Supreme Court reported in AIR 1990 SC 1607(The Direct Recruit Class-II Engineering Officers' Association and others vrs. State of Maharashtra and others). At paragraph 44 of the judgment Their Lordships have concluded as follows:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) 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 service in accordance with the rules, the period of officiating service will be counted. "

6. To summarise the conclusion of Their Lordships in the aforesaid case it can be safely stated that whenever a particular officer is promoted on officiating basis and he has officiated in the promotional post continuously and uninterruptedly according to rules, such period of officiation must be counted to the credit of the concerned

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officer while fixing his seniority. Ofcourse, Mr. Mchapatra also relied upon two other judgments namely Judgments reported in AIR 1989 SC 278 and AIR 1991 SC 518. In both the judgments Their Lordships have taken the very same view and before we part with this case we must mention that the decision reported in AIR 1990 SC 1607 is the judgment of the Constitution Bench. Therefore, applying the principles laid down in all the three judgments to the facts of the present case, we have no hesitation in our mind to hold that the applicant having uninterruptedly and continuously officiated in the post of Superintendent since 30.7.1984 till his date of regularisation i.e. 15.11.1989, the competent authority has no other alternative but to compute this period in favour of the applicant for fixation of his seniority and therefore we do hereby direct the respondents to refix the seniority of the applicant according to the norms indicated above.

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

R. J. Rajgopal 20.1.93
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MEMBER (ADMINISTRATIVE)

K. Gopal 20.1.93
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 20, 1993, Sarangi.

