

7

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

1

ORIGINAL APPLICATION NO.614 OF 1992
Cuttack, this the 4th day of May, 1998

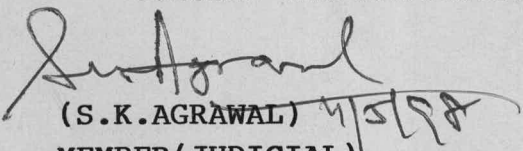
Subodh Chandra Debnath Applicant

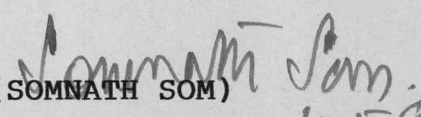
Vrs.

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 .


(S.K.AGRAWAL)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

4.5.98

2

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.614 OF 1992
Cuttack, this the 4th day of May, 1998

CORAM:

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

.....

Subodh Chandra Debnath,
aged about 46 years
son of late Harekrishna Debnath
Vill-Khairulla Chowk,
P.O/Dist. Midnapur (West Bengal) Applicant

By the Advocates - M/s R.B.Mohapatra
& D.R.Rath
Vrs.

1. Union of India,
represented by the Chief of the Naval Staff
(for DIS P & A),
Naval Headquarters,
New Delhi, Pin-110 011.
2. The Director of Logistics Support (P&A),
Naval Headquarters,
New Delhi-110 011.
3. Flag Officer,
CCommanding-in-Chief
Headquarters,
Eastern Naval Command,
At/PO-Vishakhapatnam (A.P)
4. Commanding Officer, INS Chilka,
At/PO-Chilka, Dist.Puri (Orissa)
5. Sri P.Krishna Murty,
Store Keeper,
Headquarter,
Eastern Naval Command,
At & PO-Vishakhapatnam (Andhra Pradesh) ...Respondents
- By the Advocate - Mr.Ashok Mohanty
Sr.C.G.S.C.

.....

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to respondent nos.2 and 3 to place the name of the applicant in between serial Nos.225 and 226 of draft seniority roll of Store Keepers as per Naval Headquarters (DSL) No.SE/2076 dated 4.12.1989 taking into consideration the initial appointment of the applicant as a casual ^{Assistant} Store Keeper for the purpose of fixation of seniority. There is also a prayer that the date of promotion of the applicant should be ante-dated to 30.5.1983 at par with respondent no.5 and one Mr.J.V.Ratnam.

2. Facts of this case, according to the petitioner, are that he was appointed as casual ^{Assistant} Store Keeper on 21.8.1972 along with respondent no.5 and one J.V.Ratnam under respondent no.3 in Naval Store Department. While working as such, his service was regularised as Assistant Store Keeper along with respondent no.5 on 4.4.1975. On 1.2.1977 the applicant was transferred to the Naval Office at Calcutta. Respondent no.5 remained in the office of respondent no.3 and Mr.J.V.Ratnam was transferred to Naval Headquarters at Delhi. In August 1983 ^{the applicant,} respondent no.5 and

Mr.J.V.Ratnam were promoted to the post of Store Keeper with effect from 9.9.1983, 10.8.1983 and 29.8.1983 respectively. On promotion, respondent no.5 remained at Eastern Naval Command, Visakhapatnam, Mr.J.V.Ratnam moved from Naval Headquarters at New Delhi to N.S.D., Vizag and the applicant was transferred from Calcutta to Naval Headquarters (DLS), New Delhi. Subsequently, the applicant was transferred and posted as Store Keeper in INS, Chilka, and has been continuing as such till date. On 4.12.1989 the departmental respondents published one seniority list of Store Keepers in all the Naval Commands. In this seniority list, the applicant's name was just below the name of respondent no.5. Subsequently, the seniority list dated 4.12.1989 was amended vide order No.SE/2076 dated 15.1.1990 on the basis of the decisions of the Hyderabad Bench of the Tribunal in OA No. 402/86 and O.A.No.231/88. The applicant's case is that respondent no.5 and he joined service as casual Assistant Store Keeper on the same day on 21.8.1972. But in the seniority list, serial no. of the applicant was shown as 267 (computerised number 1628) whereas respondent no.5's name was shown against serial no.195 (computerised no.1552). After this amendment, the date of promotion of respondent no.5 as Store Keeper was ante-dated retrospectively from 30.5.1983 along with Mr.J.V.Ratnam. The appliccant made a

S. Som.

representation on 22.12.1989 that in the seniority list his date of first entry in service should be noted as 21.8.1972. In reply he was informed by respondent no.4 vide copy of staff minute sheet dated 19.2.1990 at Annexure-A/3 that the date of the petitioner's appointment as casual Assistant Store Keeper need not be shown in the seniority list. His regular appointment as temporary Assistant Store Keeper is from 4.4.1975 and therefore, that date has been shown in the seniority roll. The petitioner submitted a further representation dated 19.2.1990 at Annexure-A/4 and was informed in order dated 1.10.1990 (Annexure-A/5) that the matter is under examination at Naval Headquarters in connection with certain court cases. The case of the applicant would be referred to Naval Headquarters and the decision when reached would be communicated to him. Ultimately in order dated 15.3.1991 (Annexure-A/6) the petitioner was intimated that seniority of Mr.J.V.Ratnam and respondent no.5 was altered as a result of the directive of the Hyderabad Bench of the Tribunal in OA no.402/86 and O.A.No. 231/88. The benefit of the directive of the Central Administrative Tribunal could be extended under the law only to the petitioners in those cases and therefore, the request of the applicant for granting seniority to him at par with respondent no.5 and J.V.Ratnam cannot be acceded to. He filed

J. Sam.

12

a further representation on 9.11.1991 (Annexure-A/7) on which his superior officer at Chilka in his letter to Naval Headquarters at Annexure-A/8 suggested that the date 21.8.1972 should be shown against the name of the petitioner as the date of his appointment as Casual Assistant Store Keeper and his representation was also forwarded. This was followed by a reminder dated 19.2.1992 at Annexure-A/9. But there being no reply from Naval Headquarters, the petitioners has come up in this O.A. with the prayers referred to earlier. To put it simply, the case of the petitioner is that he along with respondent no.5 and J.V.Ratnam were appointed as Casual Assistant Store Keeper and were continued as such with intermittent breaks for a few days. They were all regularised from subsequent dates. In case of respondent no.5 and Mr.J.V.Ratnam, their regularisation has been taken from the dates of their initial appointment as casual Assistant Store Keepers ignoring the breaks on the basis of the order of the Hyderabad Bench of the Tribunal in the two O.As. referred to earlier and accordingly their service as casual Assistant Store Keeper has been taken into account for the purpose of counting their seniority. Accordingly, respondent no.5 has been given ante-dated promotion from 30.5.1983 along with Mr.J.V.Ratnam. But in the case of the petitioner his

J.V.Ratnam.

13
request for the same treatment of counting his service as Casual Assistant Store Keeper after ignoring the breaks and also for ante-dating his promotion like respondent no.5 has been turned down on the ground that the decisions of the Hyderabad Bench in those two cases are applicable to the petitioners in those cases and such benefit cannot be extended to the present applicant.

3. The respondents in their counter have stated that the applicant continued as Casual Assistant Store Keeper from 21.8.1972 to 31.3.1975 with intermittent breaks in service as per details given in page 2 of the counter. His services were regularised as temporary Assistant Store Keeper with effect from 15.11.1975 and his seniority was counted from 4.4.1975 because from that day he continued without any interruption. The date of initial appointment as Casual Assistant Store Keeper of respondent no.5 and Mr.J.V.Ratnam was also 21.8.1972 like the petitioner and originally their seniority was counted as temporary Assistant Store Keeper with effect from 4.4.1975. Respondent no.5 and Mr.J.V.Ratnam filed OA No.231/88 and O.A.No. 402/86 before the Hyderabad Bench of the Tribunal. On the direction of the Tribunal, their seniority was counted from the date of initial appointment as Casual Assistant Store Keeper ignoring the breaks in service and on the basis of the recommendation of

S. Som.

14

the Review D.P.C., revised select list was issued on 25.4.1989 and the seniority list was circulated in order No.2076 dated 4.12.1989 referred to earlier. The applicant's name was at serial no.307 whereas the names of respondent no.5 and Mr.J.V.Ratnam were at serial nos. 225 and 226. Their seniority in the grade of Store Keeper was ante-dated to the date of promotion of their immediate junior M.B.Rathod from 30.5.1983. The respondents have stated that representations have been filed by the petitioner, but these could not be entertained on the ground that the decision of the Hyderabad Bench was applicable only to the cases of respondent no.5 and Mr.J.V.Ratnam. The departmental respondents have further stated that the applicant had sought for permission for filing a writ petition in the High Court and in order dated 1.1.1992 at Annexure-R/5 the Commanding Officer, INS, Chilka, was informed that Naval Headquarters have been requested to consider his request for permission to file petition before Court/CAT. In the context of the above facts, the respondents have opposed the prayers of the petitioner.

S. J. Singh

4. We have heard Shri R.B.Mohapatra, the learned lawyer for the petitioner and Shri ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the departmental respondents, and have also perused the records.

5. A similar matter came up before the Hon'ble Supreme Court in the case of Union of India and others v. M.Dharani and others, 1997 SCC (L&S) 1484. In that case, the respondents before the Hon'ble Supreme Court were engaged as Tracers in the Directorate of Installation, Naval Training, Cochin. They were appointed in short term vacancies either against leave vacancies or to meet additional commitments of urgent nature of the Navy. They were continued in employment with breaks in service. Their services were regularised with effect from 30.8.1991. They moved the Ernakulam Bench of the Tribunal claiming regularisation from the date of their initial appointment as casual workers and for all consequential benefits. The same having been allowed by the Tribunal, Union of India came up in appeal before the Hon'ble Supreme Court in the above case. In paragraph 2 of the judgment in that case, their Lordships have noticed the circulars dated 26.9.1966 and 24.11.1967 issued by the Ministry of Defence and the corrigendum dated 27.5.1980 of the circular dated 24.11.1967 and also the circular dated 31.1.1991. Paragraph 2 of the judgment is extracted below:

"2. Under the Ministry of Defence letter No.3(3)/65/118203 dated 26.9.1966, as amended from time to time, the terms and conditions under which the service of casual employees could be regularised were set out. Under clause (a) of that letter non-industrial personnel who had been employed for more than one year without break should be converted into regular

16

employees with effect from the date of their initial employment as casual employees if the commandants etc. are satisfied that their services will be required on a long-term basis. The terms and conditions of regularisation of service of casual non-industrial employees were further laid down in the letter of the Ministry of Defence dated 24.11.1967. Clause 2 of this letter sets out that the past service rendered from the date of appointment by such of the casual non-industrial personnel who are converted as regular non-industrial employees, will be treated as having been rendered in the regular capacity. However, by a further letter from the Ministry of Defence (corrigendum) dated 27.5.1980, amendments were made, inter alia, in clause 2 of the letter of 24.11.1967. Clause 2 of the letter of 24.11.1967 as amended provided that on regularisation the employees will be entitled to all benefits as for regular employees excepting seniority, probationary period and grant of quasi-permanent status which aspects will be regulated under orders issued from time to time. Service rendered on casual basis prior to appointment on regular basis shall not count for seniority. Thus after the letter of 27.5.1980, on regularisation, for determining the seniority of employees whose services were regularised, their service as casual employees could not be taken into account. All these letters were superseded by the letter of 31.1.1991 issued by the Ministry of Defence. It said that henceforth, the terms and conditions of employment of casual labour and regularisation of their services will be done on conditions laid down in the letter of 31.1.1991. The revised instructions which would govern such regularisation are set out therein. Under clause 3, the regularisation of service of non-industrial casual personnel already appointed shall be regulated as laid down in that clause. Sub-clauses (f) and (g) of clause 3 are as follows:

"3. (f) Seniority of employees appointed to regular establishments

J. Som -

will be reckoned with only from the date of regular appointment.

3.(g) Service rendered on casual basis prior to appointment in regular establishment shall not be counted for the purpose of pay fixation, etc."

It is to be noted that in the instant case the petitioner's service was regularised from 4.4.1975. Therefore, his case will be covered by the circular dated 24.11.1967. As noted by the Hon'ble Supreme Court, clause 2 of this letter sets out that the past service rendered from the date of appointment by such of the casual non-industrial personnel who are converted as regular non-industrial employees, will be treated as having been rendered in the regular capacity. On this basis, the petitioner's service from 21.8.1972 will have to be counted as regular service. A corrigendum to this circular was issued on 27.5.1980 in which clause 2 of the letter dated 24.11.1967 was amended and it was provided that on regularisation the employees will be entitled to all benefits as for regular employees excepting seniority, probationary period and grant of quasi-permanent status which aspects will be regulated under orders issued from time to time. It was also mentioned in the corrigendum that the service rendered on casual basis prior to appointment on regular basis shall not count for seniority. But this corrigendum can have only prospective effect and Hon'ble

S. J. M.

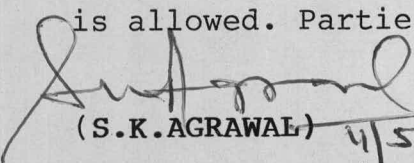
18
Supreme Court have observed on this point as follows:

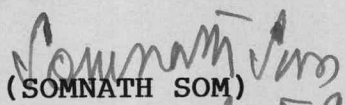
".....Thus after the letter of 27.5.1980, on regularisation, for determining the seniority of employees whose services were regularised, their service as casual employees could not be taken into account."

From this, it is clear that the effect of the corrigendum will be only from the date of issue, i.e. 27.5.1980. As the petitioner's service was regularised on 4.4.1975, the circular dated 24.11.1967 would apply to his case and therefore, his service as Casual Assistant Store Keeper from 21.8.1972 will have to be taken into account as regular service and for the purpose of counting his seniority. In other words, the petitioner will have to be given the same benefit which has been allowed by the Hyderabad Bench of the Tribunal to respondent no.5 and Mr.J.V.Ratnam. We order accordingly. The seniority list should be accordingly revised and his promotion as Store Keeper should also be ante-dated to the date of promotion of his immediate junior in the revised seniority list, but he will not be entitled to any financial benefits for such ante-dating of promotion.

6. In terms of the above order, the application

is allowed. Parties to bear their own costs.


(S.K.AGRAWAL)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN