

13

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 620 OF 1992
Cuttack, this the 28th day of May, 1999

Man Mohan Mohanty 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*.

.....
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

28.5.99

8

14

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 620 OF 1992
Cuttack, this the 28th day of May, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Man Mohan Mohanty, aged about 48 years,
son of late Padma Charan Mohanty,
Village/PO-Khalikote, District-Ganjam,
at present working as L.D.C. in INS, Chilka,
At/PO-Chilka, District-Puri ... Applicant

Advocate for applicant - Mr.R.B.Mohapatra

Vrs.

1. Union of India, represented by Chief of Naval Staff, Government of India, Ministry of Defence, New Delhi-110 001.
2. Flag Officer, Commanding in Chief, Headquarters, Eastern Naval Command, At/PO-Visakhapatnam (Andhra Pradesh)
3. Commanding Officer, INS Chilka, At/PO-Chilka, District-Puri (Orissa) ... Respondents

Advocate for respondents - Mr.S.B.Jena,
A.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 declaration that he is entitled to hold the post of Stenographer Grade III as per examination held in October 1983 and to get further promotion to the post of Stenographer Grade II on the basis of his discharging duties of Stenographer over and above his work as L.D.C. and exclusively as Stenographer for fifty-two days. He has also asked for consequential service and financial benefits.

Vijay

2. Facts of this case, according to the petitioner, are that he retired from Armed Forces after serving around seven and half years. During his service in the Armed Forces he was working as Stenographer/Personal assistant from January 1970 to September 1978. After retirement he made an application to Flag Officer, Commanding in Chief, Eastern Naval Command (respondent no.2) and Commanding Officer, INS Chilka (respondent no.3) for appointment as Stenographer against a regular vacancy in INS, Chilka. Though he applied for the post of Stenographer, he was called to interview for the post of LDC and after the interview was held on 26/27.4.1979 he was issued offer of appointment in letter dated 26.5.1979 at Annexure-A/2 in the post of Temporary (Casual) L.D.C. for two months from 1.5.1979. Thereafter his casual appointment as LDC was extended from time to time and ultimately his services were regularised in the post of LDC with effect from 4.2.1980. In addition to the duties of LDC the applicant was working as Stenographer/Personal Assistant under respondent no.3 from 1.5.1979 to 28.2.1981. The applicant came to know that a post of Personal Assistant in INS, Chilka was lying vacant. He applied for the same and his application was also recommended by respondent no.3 on 17.4.1980 but no action was taken on his representation. He made further representations on 3.1.1981 and 25.3.1983 but without any result. The applicant's case is that as per Rule 3 of Recruitment of Ex-serviceman in Central Civil Services and Posts Rules, 1979, no vacancy reserved for ex-serviceman should be filled up otherwise than on the result of a competitive examination to be held by appointing authority, by a general candidate until and unless the appointing authority has obtained a non-availability certificate from

S. Jam

the Employment Exchange and verified the non-availability of a suitable candidate by reference to the Director General, Resettlement. It is stated that respondent no.2 in violation of the above rule did not take proper steps. The applicant was prepared to be transferred from INS, Chilka to Headquarters of Eastern Naval Command, Visakhapatnam, as Stenographer Grade-III. But his prayer was turned down on the ground that there was no vacancy of Stenographer Grade-III in Visakhapatnam. It was indicated that the case of the applicant would be considered as and when vacancy in Stenographer Grade III arises. The applicant was informed of this in letter dated 6.4.1984 at Annexure-A/6. The applicant has further stated that whenever vacancies arose in the post of Stenographer meant for ex-servicemen, general candidates have been appointed depriving the applicant of his legitimate claim. In order dated 6.2.1984 (Annexure-A/7) the applicant's service as LDC was made quasi-permanent with effect from 1.5.1982. In order dated 6.4.1984 (Annexure-A/8) the applicant's officiating promotion as Stenographer Grade-III on casual basis during the leave vacancy was approved from 14.2.1984 to 5.4.1984. The applicant made a further representation on 1.8.1984 (Annexure-A/9). After lapse of one year, an offer of appointment was issued on 2.5.1985 (Annexure-A/10) giving him temporary (casual) appointment as Stenographer Grade-III with reference to an interview held on 20.10.1983. But conditions of appointment intimated in the letter at Annexure-A/10 and which the applicant was asked to accept were stringent. As per condition in paragraph (k) of the letter at Annexure-A/10 the applicant was intimated that he will have lien on the quasi-permanent post of LDC for a period of two years and during this period if he is not absorbed as Stenographer Grade III he will have to revert to the post of LDC. In this

SJM

offer of appointment the applicant was appointed under Officer-in-charge, T.P.(East), INS Circars-II, Bheemunipatnam. The applicant filed a representation at Annexure-A/11 for retaining him at INS, Chilka as Stenographer Grade-III, but no action was taken on this representation dated 3.6.1985. He filed a further representation on 31.8.1992 (Annexure-A/12) in response to which he was informed in letter dated 13.10.1992 (Annexure-A/13) that in October 1983 he was given casual appointment at INS Chilka as Stenographer Grade III for a period of fifty-two days. After that he was also offered appointment as Stenographer Grade III in T.P. (East), INS Circars-II, Bheemunipatnam, but the applicant refused the same. It was also intimated that the post of Stenographer Grade II can be filled up only by promotion from Stenographer Grade-III and accordingly he cannot be appointed as Stenographer Grade II. It was also intimated that the applicant was selected for the post of Stenographer Grade III through a test, but he refused to join as Stenographer Grade III in Bheemunipatnam and therefore, his selection cannot stand for a period of nine years and accordingly he was intimated that his earlier selection is forfeited and he is at liberty to sit for the examination again for the post of Stenographer Grade-III which is likely to be ordered in near future. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

S. Jam. 3. Respondents in their counter have stated that the applicant was interviewed and selected for the post of LDC and was appointed as temporary (casual) LDC for two months initially from 1.5.1979 and his services as LDC were regularised with effect from 4.2.1980. The respondents have

further stated that question of considering him automatically for the post of Stenographer keeping in view his past experience does not arise. Moreover, there was no vacancy of Stenographer Grade III at INS, Chilka, at that time. It is further stated that for appointment to the post of LDC the applicant was considered against a general vacancy and not against ex-serviceman quota and there has been no violation of any rule. It is further stated that in October 1980 the applicant appeared as a departmental candidate for the post of Stenographer Grade III along with the candidates sponsored by the Employment Exchange, but he was not found fit for the post of Stenographer Grade III by the Recruitment Board at INS, Chilka. The applicant was declared quasi permanent in the grade of LDC from 1.5.1982. It is further stated that although test and interview for the post of Stenographer Grade III were held after October 1980, the applicant appeared for a test only in October 1983 and at that stage he was declared qualified and was selected for appointment to the post of Stenographer Grade III against anticipated vacancy. He was also posted as Stenographer Grade III against a leave vacancy at INS, Chilka, for the period 14.2.1984 to 5.4.1984. After the leave vacancy ceased to exist, the applicant was reverted to the post of LDC from 6.4.1984. For want of vacancy he could not be offered appointment as Stenographer thereafter. The applicant represented and declared his willingness for appointment in any other establishment. Thereafter he was offered post of Stenographer Grade III on temporary (casual) basis and posted to the office of Officer-In-Charge, TP(East), Bheemunipatna. He was also given two years lien which was as per rules. The respondents have stated that other terms and conditions of appointment are general in nature and equally applicable to all. The applicant, however, did not accept the post and refused appointment at

J. Jam.

the outstation. It is further stated that there was no vacancy of Stenographer Grade III at INS Chilka against which the applicant could be considered. It is further stated that the post available at INS Chilka is for Stenographer Grade II and as per Recruitment Rules the same has to be filled up by promotion from eligible Stenographers Grade III. The respondents have further stated that after the applicant's retirement from Army his suitability for any post has to be adjudged afresh as per rules. His contention that he should not be tested for the post of Stenographer Grade III is not based on any rule. The respondents have also stated that the applicant was offered a post of Stenographer Grade III at Bheemunipatna on temporary casual basis. Although the post was casual initially, it was likely to continue and had he accepted the post at that time, he could have derived regularisation eventually if he had the seniority for regular appointment. But as the applicant refused that offer, no injustice was done to him. In the context of the above facts, the respondents have opposed the prayer of the applicant.

4. We have heard Shri R.B.Mohapatra, the learned counsel appearing for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have perused the records.

5. The first point urged by the learned counsel for the petitioner is that at the time of initial appointment at INS, Chilka, he was interviewed for the post of Stenographer but was recruited as temporary (casual) LDC in which post he was subsequently regularised. The respondents have pointed out that the applicant was interviewed for the post of LDC and was appointed as such. They have also stated that at that time there was no post of Stenographer Grade-III. In the offer of appointment which is
J.Som

at Annexure-A/2 it has been specifically mentioned that his interview held on 26/27.4.1979 was for the post of LDC. In view of this, it is not possible to hold that the applicant was interviewed for the post of Stenographer but offered the post of LDC. The applicant has not shown any record to prove that he was interviewed for the post of Stenographer Grade-III. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

6. It is further urged by the applicant that during 1.5.1979 to June 1982, besides his duties as LDC, he was also working as Stenographer at INS,Chilka. During this period he was also a departmental candidate for the post of Stenographer Grade-III against a vacancy reserved for ex-serviceman, but the result of this interview was not intimated till February 1982. The respondents have mentioned in their counter that in October 1980 the applicant appeared at the interview for the post of Stenographer Grade III along with candidates sponsored by Employment Exchange, but he was not found fit for the post by the Recruitment Board. Ultimately, in a test held in October 1983 he was declared qualified and was empanelled for appointment to the post of Stenographer Grade III against future vacancies. On his giving willingness for appointment to any other establishment he was offered the post of Stenographer Grade III at Bheemunipatna, but he refused the appointment. The respondents have stated that as the applicant refused that appointment as Stenographer Grade III at Bheemunipatna even after giving his willingness to go to any other place outside INS,Chilka, his empanelment for appointment as Stenographer Grade III cannot remain valid indefinitely and therefore the applicant has to appear again in a test for selection to the post of Stenographer Grade III. The

SJM

✓ applicant has submitted that ^{as} he was working as Stenographer/Personal Assistant during his career in the Armed Forces, he need not appear at a test once again. This contention is wholly without any merit because he retired from Armed Forces in 1978 and on the basis of his work as Stenographer/Personal Assistant, he cannot be appointed straightaway in the post of Stenographer. He has to appear at the test for the post of Stenographer Grade III and it has to be seen that he has the requisite speed in stenography and typing at the level required for Stenographer Grade III. Then only he can be appointed as Stenographer Grade-III. The applicant has prayed for a declaration that he is entitled to hold the post of Stenographer Grade-III as per the test held in October 1983 and he has the right to get promotion to the post of Stenographer Grade II on the basis of his discharging duties as LDC and Stenographer. For promotion to Stenographer Grade-II, the applicant has to be first appointed as Stenographer Grade III on a regular basis. He must put in the requisite number of years of service as Stenographer Grade-III. Then only he can be considered for promotion as Stenographer Grade II. The fact that he has been doing stenography work over and above his duties as LDC could not entitle him to be considered for promotion as Stenographer Grade-II.

7. So far as the other part of his prayer is concerned, the applicant has prayed for a declaration that he is entitled to be considered for appointment as Stenographer on the basis of the selection test held in October 1983. It is no doubt true, as has been averred by the respondents, that after his empanelment on the basis of the test held in October 1983, the applicant was offered the post of Stenographer Grade III at Bheemunipatna which he

1b

22

refused. But because of this, he should not lose his prospect of being appointed as Stenographer moreso because he has averred that over and above his duties as LDC he is also discharging the duties and responsibilities of a Stenographer. This has been mentioned by him in paragraph 4.3 of the O.A. and this averment has not been denied by the respondents in paragraph 6 of the counter. Moreover, with regard to the applicant working as Stenographer over and above his duties as LDC the respondents have made the following averment in paragraph 13 of the counter:

".....Any duties were merely voluntary at his own willingness and this will not bestow a right to claim any regular appointment without his selection to the grade of Steno-III by specific order of appointment...."

From the above averment, it does appear that the applicant is willingly and voluntarily doing the work of a Stenographer over and above his duties as LDC. This coupled with his selection and empanelment for the post of Stenographer Grade-III in the test held in October 1983 should entitle him to be considered for the post of Stenographer Grade III on the basis of the test held in October 1983 even though many years have passed in the meantime.

JSM.

8. The main problem of the applicant is that he has been claiming appointment as Stenographer Grade III at INS Chilka. The respondents have pointed out that there is no vacancy of Stenographer Grade III at INS, Chilka and therefore, he cannot be appointed as Stenographer Grade-III at INS, Chilka. The applicant has himself mentioned in paragraphs 13 and 14 of his representation at Annexure-A/9 that there are two posts of Stenographer Grade-III at INS, Chilka and both the posts have been filled up by two general candidates. As the posts have already been filled up and there is no vacancy, the applicant cannot be considered

23

for the post of Stenographer Grade-III at INS, Chilka. In view of this, this Original Application is disposed of with a direction to the respondents that in the next general vacancy arising in the post of Stenographer Grade-III, an offer of appointment should be made to the applicant. Such offer of appointment will be outside INS, Chilka because there is no vacancy at INS, Chilka, in the rank of Stenographer Grade-III. If the applicant refuses to move out of INS, Chilka, for the post of Stenographer Grade III, then he will not be able to claim the post any further only because of his qualifying for the post in October 1983.

9. With the above observation and direction, the O.A. is disposed of but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
28.5.93
VICE-CHAIRMAN

AN/PS