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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 240 OF 1993.

Cuttack, this the 20th day of July, 1999.

Nalini Kanta Mohanty. Applicant.

Versus

Union of India & Others. Respondents.

ORIGINAL APPLICATION NO. 442 OF 1993

Bijay Kumar Pattanayak & Others. Applicants.

Versus

Union of India & 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)

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(SOMNATH SOM)
VICE-CHAIRMAN
20.7.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 240/1993

Nalini Kanta Mohanty,
Son of Late Jaya Krishna Mohanty,
Now working as Lower Division Clerk,
in the Office of the Director,
Small Industries Service Institute,
Vikash Sadan, College Square, Cuttack-3. ... Applicant.

By legal practitioner: M/s. Antaryami Rath, & A.C. Rath,
Advocates.

- Versus -

1. Union of India represented by the
Secretary, Ministry of Industry,
Department of Industrial Development
Nirman Bhavan, New Delhi.
2. Development Commissioner,
Small Scale Industries,
Government of India,
Nirman Bhavan, New Delhi.
3. Director, Small Industries Service
Institute, Vikash Sadan, College Square,
Cuttack-3.
4. Shri B.K. Patnaik, LDC, SISI
5. Shri R.N. Das, LDC in SISI,
6. Shri M.R. Das, LDC in SISI?
7. Shri R. Rout, LDC in SISI,
8. Shri S.K. Mohapatra, LDC in SISI,
9. Shri Sham Burh, LDC in SISI,
10. Shri R.C. Mohapatra, LDC in SISI
11. Shri G.K. Das, LDC in SISI.

S.S.M.
(Notice to Respondents vide Sl.No. 4 to 11 may be
sent C/o. Director, Small Industries Service Institute,
Vikash Sadan, College Square, Cuttack-3)

.. Respondents.

By legal Practitioner: Mr. A. Routray, Additional Standing
(Res. Nos. 1 to 3) Counsel (Central).

By legal practitioner: Mr. B.S. Tripathy, Advocate.
Respondents 4 to 11.

ORIGINAL APPLICATION NO. 442/1993.

1. Bijay Kumar Pattanayak, aged about 32 years, Son of Baidyanath Pattanayak, at present working as Lower Division Clerk, Small Industries Service Institute, Vikash Sadan, College Square, Cuttack-3.
 2. Rabinarayan Dash, aged about 29 years, Son of Rajakishore Dash,
 3. Manoranjan Das, aged about 30 years, Son of Pramod Kumar Das.
 4. Ranjit Rout, aged about 31 years, Son of Alekh Chandra Rout,
 5. Sukanta Kumar Mohapatra, aged about 31 years, Son of Sachidananda Mohapatra,
 6. Shem Burh, aged about 28 years, Son of Juel Burh.
 7. Ramesh Chandra Mohapatra, aged about 31 years, Son of Bhaskar Mohapatra,
 8. Gatikrushna Das, aged about 24 years, Son of late Khirod Chandra Das,
- (Sl.Nos. 2 to 8 are working as Lower Division Clerk, Small Industries Service Institute, Vikash Sadan, College Square, Cuttack-3.)

... Applicants.

-Versus-

1. Union of India represented by its secretary, Ministry of Industries Department of Industries, Nirman Bhawan, New Delhi.
2. Development Commissioner, Small scale Industries Government of India, Nirman Bhawan, New Delhi.
3. Director, Small Industries Service Institute, Government of India, Bikas sadan, Cuttack.
4. Assistant Director, Office of the Director, S.I.S.I., Vikas Sadan, College Square, Cuttack.
5. Nalinikanta Mohanty, Lower Division Clerk, Office of the Director, Small Industries Service Institute, Vikas Sadan, College, Square, Cuttack.

... Respondents.

By legal practitioner; Mr. B. S. Tripathy, Advocate.
(for Applicant.)

By legal practitioner; Mr. A. Routray, Additional Standing
(For Respondents 1 to 3) Counsel (Central)

By legal practitioner; M/s. A. Rath, & A. C. Rath, Advocates.
(for Res. No. 5).

C O R A M

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

CUTTACK, this the 20th of July, 1999.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

These two applications have been heard
jointly.

2. In Original Application No. 240 of 1993,
the private Respondents 4 to 11 are applicants in Original
Application No. 442 of 1993. Applicant in Original Application
No. 240 of 1993 is private Respondent No. 5 in Original
Application No. 442 of 1993. The matter for adjudication is
the same in both the cases. Therefore, one order will govern
in both these Original Applications but the facts of both
these Original Applications are re-counting separately.

3. In Original Application No. 240 of 1993,
applicant, Nalini Kanta Mohanty, has prayed for a direction
to the Departmental Respondents to assign him position in
the seniority list above the Private Respondents 4 to 11

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taking into account the period of his service from 26-6-1983 to 13-1-1992 in the grade of Lower Division Clerk. He has also prayed for the consequential service benefits.

4. The case of the applicant in original Application No. 240 of 1993 is that, he was initially appointed as a Peon on 24-8-1979 under the Director, Small Industries Service Institute (Respondent No. 3). He was a Matriculate and was appointed as a temporary Lower Division Clerk w.e.f. 20-6-1983. Even after continuing for more than six years, as Lower Division Clerk, his appointment as Lower Division Clerk was not regularised even though in accordance with Small Scale Industries Organisation (Class-III & IV Posts) Recruitment (Amendment) Rules, 1971 (Annexure-2), 10% of vacancies in the posts of LDC, shall be reserved for being filled up by Class IV employees (Borne on regular establishment of these offices) subject to the certain conditions. The first condition was that the selection shall be made through a Departmental Competitive Examination confined to such Class-IV employees, who fulfil the requirement of minimum educational qualification, namely matriculation or equivalent thereto. The second condition was that the maximum age for appearing at this examination, shall be 40 years (45 years for the SC or ST employees). The third condition was that at least five years of service in Class-IV is essential. Lastly, it was mentioned that the maximum number of appointments by this method shall be limited to 10% of the vacancies in the cadre of Lower Division Clerks occurring in a year & unfilled vacancies would not be carried over to the next year. Applicant has stated that in the year 1983 and 1984, three posts of LDC

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and three posts of UDC were sanctioned. Thus, six posts of Lower Division Clerk, including three resultant vacancies were available in the year 1984. Accordingly, one post, should have been reserved to be filled up by Class IV employees, 10% of six being more than 0.5. This was laid down in Home Ministry's Circular dated 20.3.1970 which is at Annexure-4. But no such examination was held in 1984 and in any case, no intimation was sent to the applicant to enable him to appear at the examination but these six posts alongwith two more posts were filled up by private Respondents 4 to 11 ignoring the claim of applicant, who was continuing as Lower Division Clerk on temporary basis since 20.6.1983. Applicant approached the Tribunal in OA No. 211 of 1990. Applicant has further stated that while Original Appl. No. 211 of 1990 was pending, Respondent No. 3, advised the Applicant to withdraw the application so that his case, could be considered sympathetically. Accordingly, applicant, withdrew the Original Application with liberty to file fresh application, in case he feels aggrieved. Thereafter, by order dated 30.3.1992, at Annexure-6, his services were regularised in the grade of Lower Division Clerk w.e.f. 14.1.1992. Applicant has stated that he is entitled to be appointed as Lower Division Clerk against one of the vacancies which occurred in 1984 and therefore, he has prayed that his ^{up-}interrupted service from 20-6-1983 should be considered for fixing his seniority and in the context of the above, he has come up with the prayers referred to earlier. Before referring to the counter of the

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Departmental Respondents, it would be better to refer to the averments of the applicants in Original Appl. No. 442 of 1993 because the Departmental Respondents have taken the same stand in both these applications and it is not necessary and it would be repetative to refer to the counter of the Departmental Respondents in the context of the both the applications.

5. Applicants in Original Application No. 442 of 1993, as already noted, are the Private Respondents 4 to 11 in Original Application No. 240 of 1993, have prayed in Original Application No. 442 of 1993 for a direction for setting aside the order of regularisation of Respondent No. 5 in the post of Lower Division Clerk vide order dated 30.3.1992. Their case is that, they have been appointed as Lower Division Clerk in the office of the Director, Small Scale Industries Service Institute and their seniority position in the gradation list has already been published. This gradation list is at Annexure-1. In the gradation list, these applicants are shown Senior to Respondent No. 5 who is applicant in Original Application No. 240 of 1993. Applicants, have referred to the initial appointment of Respondent No. 5 as Gr. 'D' employee, the fact that he was allowed to work as LDC on ad-hoc basis w.e.f. 20.6.1983 filing of OA No. 211 of 1990, withdrawal of OA No. 211 of 1990 by Respondent No. 5 and subsequent regularisation of the service of Res. No. 5 in order dated 30.3.92 w.e.f. 14.1.92. They have also stated that they are challenging the order of regularisation of Respondent No. 5 as on the basis of such regularisation, Respondent No. 5 has started claiming his

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seniority over the applicants in Original Application No.442 of 1993 and has filed Original Application No.240 of 1993 .These applicants have also stated that regularisation of Respondent No.5's service on the recommendation of the DPC is wrong because such selection has to be made through Departmental Competitive Examn. It is further stated that the SSC ,Calcutta had earlier rejected Respondent No.5's candidature for consideration as LDC as he was over-aged.They have also mentioned that Development Commissioner,Small Scale Industries,New Delhi, had dis-approved the regularisation of Respondent No.5 as LDC.In the context of the above facts,they have come up with the prayers referred to earlier.

6. Departmental Respondents have already filed counter on 1st July,1993.Subsequently, a revised final counter has been filed on 24th of November,1993 after serving copy on the other side and this revised final counter is being referred to.Departmental Respondents have stated that applicant in OA No.240 of 1993 and Respondent No.5 in OA No.442 of 1993 was appointed as Lower Division Clerk,on 20.6.1983 on ad-hoc basis as a stop-gap arrangement and not on regular basis .This was clearly mentioned in the order of appointment,at Annexure-R/1 in which it was mentioned that the appointment is purely on adhoc basis till the post is regularly filled up through the Subordinate Service Commission.As regards applicant's plea that he should have been taken as LDC in the 10% quota,Departmental Respondents have pointed out that

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such promotion to the Post of LDC from Gr.D staff, can be considered only after the qualified Gr.D staff appeared and passed a competitive examination. In the case of the applicant in OA No.240/93, no such competitive examination was held. Respondents have enclosed documents to show that the applicant in OA No.240/93 was simply allowed to appear at an interview along with outside candidates and was selected for the post. It is also mentioned that under the Rules, before such promotion to LDC from the post of Gr.D, five years service as Gr.D is essential but by 20.6.1983, applicant Nalinikanta Mohanty, had not completed five years of service. Departmental Respondents have further stated that applicant never applied for promotion to the post of LDC under 10% quota meant for Gr.D staff. They have further stated about the applicant's filing of Original Application No.211/90. They have also stated that since applicant was only qualified Gr.D staff, the Office had taken a lenient view and advised applicant to withdraw the said OA No.211/90 in his own interest. Applicant accordingly withdrew the case and he was regularised in the post of LDC w.e.f. 14.1.1992 in order dated 30.3.1992. Respondents have further stated that at the time of his appointment on 20.6.83 there was only one LDC post lying vacant consequent upon resignation of one Shri P.K.Sahu. Subsequently, three posts in the Gr. of LDC were sanctioned in the year 1983. In 1984, three LDCs were promoted to the post of UDC and consequently, three resultant vacancies in the grade of LDC were available. Therefore, seven vacancies occurred in the grade of LDC; four vacancies in 1983 and 3 vacancies in 1984. Respondents, have stated that private Respondents 4 to 10 in OA No.240/93

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were appointed through SSC and private Respondent No.11 was appointed by the Department on compassionate ground, consequent upon the death of his father. Respondents have stated that applicant can not be taken to have been promoted to the post of LDC from Gr.D against 10% quota and his promotion being temporary on adhoc basis till the appointment of regular person selected by the SSC, that period worked by him as a LDC, can not count towards his seniority and his seniority has rightly been counted from the date of his regularisation. On the above grounds, Respondents have opposed the prayer of the applicant in OA No. 240/93.

7. We have heard Mr. Antaryami Rath, learned counsel for the applicant, Mr. B. S. Tripathy, learned counsel appearing for private Respondents 4 to 11 and Mr. A. Routray, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents in Original Application No. 240/1993. Similarly, in OA No. 442/1993, we have heard Mr. B. S. Tripathy, learned counsel for applicants, Mr. A. Rath, learned counsel appearing for private Respondent No. 5, and Mr. A. Routray, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents in Original Application No. 442/1993 and have also perused the records in both the original Applications.

8. Learned counsel for applicant in OA No. 240/93 has stated that the services of the applicant as LDC should be regularised w.e.f. 20.6.1983 and he should be given seniority above private Respondents 4 to 11 in that case.

He has based his above prayer on two conditions; firstly that his appointment as LDC w.e.f. 20.6.1983 should be taken to be a promotion from Gr.D post to LDC under 10% quota provided for in the amendment Recruitment Rules, referred to earlier. This contention of the learned counsel for applicant in OA No.240/93 is of without any merit because for such promotion, the concerned Gr.D employee must have five years service as Gr.D. In this case, admittedly, by 20.6.1983, applicant did not have five years of service as Gr.D. The second point is that for such promotion, the qualified Gr.D employees must appear at a Departmental competitive Examination. In this case, no such examination was held. Lastly and more importantly, according to the averments of the applicant himself in original Application No.240/93, in 1983 and 1984, three posts of LDC and three posts of UDC were sanctioned working out to six posts of LDC and according to the learned counsel for applicant, for these six posts of LDC 10% i.e. 0.6 post which works out to one post, and in accordance with the Home Ministry's Circular dated 20.3.1970, at Annexure-4, this should have been gone to 10% quota. The amendment Rules, quoted by applicant in his petition itself specifically provide that promotion from Gr.D to LDC would relate to 10% of the vacancies occurring in a particular year and vacancies of one year can not be carried over to the next year. In view of this, it is not open for the applicant to claim that the vacancies for 1983 and 1984 should be clubbed together and against the six posts or seven posts as mentioned by Respondents, in their counter for both these two years, taken together, one vacancy will fall to be filled up in the 10% quota for promotion from Gr.D to LDC.

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In view of the above, it is clear that applicant can not claim that his appointment w.e.f. 20.6.1983 should be deemed to have been made against the 10% quota. In any case, he has never applied for promotion under this quota. From the contemporaneous notes and orders recorded in the file annexed by the Departmental authorities, it is seen that applicant was directed to appear at an interview along with outsiders and on being successful in the Interview, he was given adhoc appointment as LDC. Thus, this contention of the learned counsel for applicant is held to be without any merit and is rejected.

9. The second contention of the learned counsel for applicant is that since he was working as adhoc LDC for long years from 1983 and since he was regularised in 1992, the period of his adhoc appointment should count towards his seniority. In support of his contention, learned counsel for Applicant, has relied on the decision of the Hon'ble Supreme Court in the case of NARENDER CHADHA AND OTHERS VRS. UNION OF INDIA AND OTHERS reported in AIR 1986 Supreme Court 639. We have gone through this decision. Facts of that case are widely different. In that case, after constitution of the Indian Economic Service, persons ^{who} have not found suitable for holding the post of Indian Economic Service, were allowed to hold those posts continuously for a period of 15 to 20 years and in the circumstances of that case, the Hon'ble Supreme Court held that their services can not be treated as adhoc appointees. In para-14 of their order, the Hon'ble Supreme Court

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have specifically mentioned that they make it clear that it is not their view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in the type of case before them where persons have been allowed to function in higher posts for 15 to 26 years with due deliberation and care, it was held by Their Lordships that it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all. In the instant case, post of LDCs in the Office of the Respondent No. 3 are to be filled up either by getting names from SSC or by way of promotion from Gr.D staff against 10% vacancies occurring in a particular year. Any other mode of appointment, is obviously de hors the Recruitment Rules. But as in the instant case, because of applicant's long appointment in the post of LDC from 20.6.1983 and considering the fact that he was ^{the} only qualified Gr.D staff at the time of his appointment as LDC, Departmental Authorities have decided to regularise the service w.e.f. 14.1.1992 in their order dated 30.3.92. It has been submitted by the learned Additional Standing Counsel appearing for the Departmental Respondents that the case of applicant was considered by the DPC and 14.1.92 is the date of recommendation of the DPC and that is how he has been regularised from that date in order dated 30.3.1992. We have already held that the applicant can not claim that he has been promoted to LDC under 10% quota. Strictly speaking

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his case also does not come under the rules for direct appointment as LDC but when the Departmental Authorities considering his long period of service ~~on~~ adhoc basis, have decided ~~to~~ regularise his service w.e.f. 14.1.1992, applicant can not claim that his regularisation should be from 20.6.1983 more so when his original appointment order makes it very clear that his adhoc appointment is till receipt of names from SSC. Notwithstanding this, he has been continued even after SSC nominees, private Respondents 4 to 10 came and joined. But that would not give him any right to claim regularisation from 20.6.1983. This claim, is, therefore, held to be without any merit and is rejected. In consideration of the above, we hold that the applicant in Original Application No.240/93 has not been able to make out a case for ^{any of} the reliefs claimed by him in the Original Application.

10. In the result, Original Application No.240 of 1993 is rejected but in the circumstances there shall be no order as to costs.

11. Before parting with this case, one submission of the learned counsel for the applicant in OA No.240/93 has to be mentioned. Learned counsel for applicant has referred to Annexure-5 which is a reply dated 25/26.11.92 to the petitioner on his representation and in this letter, it has been mentioned in para 5 that question of counting adhoc service of applicant is under consideration of the Head of office. It is submitted by learned counsel for

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applicant that Departmental Authorities are still considering the counting of his adhoc service. We note this submission of the learned counsel for applicant but as he has come up to the Tribunal in this petition making specific prayer which has been rejected by us, it would not be proper for us to issue any direction to the Departmental Authorities with regard to para 5 of this letter at Annexure-5 to the O.A.

12. AS regards Original Application No. 442 of 1993, applicants therein have claimed ~~that~~ regularisation of service of Respondent No. 5 in that petition and applicant in OA No. 240/93 should be held illegal. The first point to be noted in this connection is that Respondent No. 5, in this Original Application has been regularised w.e.f. 14.1.1992 and in the seniority list, he has been placed at a position below these applicants. Thus, by regularisation of the services of Respondent No. 5 from 14.1.1992 and placing him below the applicants in the seniority list, interest of applicants is no way adversely affected. In view of this, these applicants can not be taken to be "persons aggrieved" by the order of regularisation of Respondent No. 5 from 14.1.92. They would have a cause of grievance, if Respondent No. 5 is placed above them in the seniority list. This prayer made by Respondent No. 5 in OA No. 240/93 has already been rejected in our orders above. In consideration of this, we hold that Original Application No. 442/1993 is also without any merit and is rejected but without any order as to costs.

P. G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
20-7-99