

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 251 OF 1993.

Cuttack, this the 27th day of August, 1999.

NANDI KISHORE SAHU.

....

APPLICANT.

- 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)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.8.99

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

NANDI KISHORE SAHU,
Aged about 38 years,
S/o.late Jagannath Sahu,
Working as L.D.C. Income Tax Office,
Bolangir Ward, At/Po/Dist. Bolangir. APPLICANT.

By legal practitioner: M/s. H. P. Rath, D.K. Dey, Advocates.

- VERSUS -

1. Union of India represented through
Secretary to Government, Ministry of
Finance, Department of Revenue,
New Delhi.
2. Commissioner of Income Tax,
Government of India, Orissa Range,
At/Po. Forest Park, Bhubaneswar,
Dist. Puri.
3. Deputy Commissioner of Income Tax,
Sambalpur Range, At/Po/Dist. Sambalpur.
4. Income Tax Officer, Bolangir Ward,
At/Po/Dist. Bolangir.

... RESPONDENTS.

By legal practitioner : Mr. A. K. Bose, Senior Standing Counsel
(Central).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for a direction to the Respondents to consider the past service of applicant rendered in his earlier Department before re-deployment w.e.f. 30.3.1973 and to give promotion to the applicant to the post of Upper Division Clerk/Head Clerk w.e.f. the date of promotion of his juniors and to fix up his seniority accordingly. The third prayer is for consequential service and financial benefits.

2. Applicant's case is that he initially joined as Lower Division Clerk in the Office of the Divisional Engineer, Rehabilitation Reclamation Organisation, Mana Camp Raipur (Madhya Pradesh) on 30.3.1973. The Rehabilitation reclamation Organisation was wound up with effect from 1.7.1983. Applicant, alongwith some others were declared surplus w.e.f. 1.7.1983 and their services were transferred to the Surplus Cell of Department of Personnel and Administrative Reforms, Ministry of Home Affairs, New Delhi. This order, which is at Annexure-3, provided that they will continue to remain in their old job until further orders or for a period of six months from 1.7.1983. By way of re-deployment, applicant was posted as LDC under the Respondents and he joined in the office of the Inspecting Assistant, Commissioner of Income Tax on 2.12.1983. While working in that office as LDC, he took and cleared the Departmental Examination for Ministerial Staff held on

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June, 1987. published result declaring him to have passed the examination is at Annexure-6. Applicant has stated that even though by that time he had put in 15 years of continuous and regular service under the Central Govt. as LDC, he was not considered for promotion to the post of Upper Division Clerk by 1988. He filed representation for getting promotion but without any result. He also filed representation praying for restoration of his seniority in the cadre of LDC in his new office, after taking into account his service as LDC in his earlier office but the same was not acted upon. In view of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayers of applicant on the ground that according to the instructions such redeployed personnel can not count their previous service in the new organisation for the purpose of seniority and promotion. It is also stated that in the appointment order issued to the applicant in the redeployed post, it was specifically mentioned that his previous service would not be taken into account for the purpose of seniority and promotion and the applicant ~~has knowingly~~ ^{§ 3(m)} accepted the appointment and joined under the Respondents. On the above grounds, Respondents have opposed the prayers of applicant.

J. J. M.

4. This matter has come up for hearing from the warning list which has been notified more than a month ago. Today when the matter was called, learned counsel for the petitioner and his associate were absent. No request has also been made on their behalf seeking adjournment.

AS this is a 1993 matter where pleadings have been completed long ago, it is not possible to drag on the matter indefinitely. We have, therefore, heard Mr. Anup Kumar Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

5. Applicant has stated in his petition that a similar matter has been considered by the Hyderabad Bench of the Tribunal in OA No. 970/89 and the order of the Tribunal is at Annexure-8. It is also stated that in that order, the Tribunal has taken note of an earlier matter decided by the CAT, Chandigarh Bench in the case of Tarlok Singh Vrs. Union of India and others. It is stated that the case of applicant is squarely covered by the earlier decision. Respondents have pointed out that in the case before the Hyderabad Bench the applicant did not ask for change of seniority on the basis of his past service in his original organisation. Respondents have also stated that according to the Home Ministry's circular dated 1.4.1989, service in the earlier organisation can not be taken into account for the purpose of computation of seniority. It is further stated that this instruction of the Home Ministry dated 1.4.1989 was not placed before the Hyderabad Bench and their decision is also justifiable because the prayer is different in both the cases.

6. We have considered the above rival contentions of the parties carefully.

7. In a similar matter before this Tribunal in OA Nos. 160, 161 and 163 of 1993 decided on 27.5.1994

this Tribunal held that the past services rendered in the parent organisation would count for the purpose of seniority as well as experience and against the said order of this Tribunal the Union of India filed appeal before the Hon'ble Supreme Court (CIVIL APPEAL NOS.

6201-03 of 1995) UNION OF INDIA AND OTHERS VRS. K. SAVITRI AND OTHERS. The Hon'ble Supreme Court while adjudicating the matter have been pleased to observe as follows:

"xx xx . The Tribunal, therefore, was wholly in error in directing that the past services of the employees should be counted for granting them the benefit of seniority and experience for promotion in the All India Radio. In the aforesaid premises, the impugned orders of the Central Administrative Tribunal, Cuttack Bench, in Original Application Nos. 160, 161 and 163 of 1993 are set aside and those OAS are dismissed and these appeals are allowed."

Moreover, applicant's seniority in the new organisation under the Respondents has been fixed on the date of joining. Applicant has not challenged the seniority within a reasonable period. This aspect has also to be kept in view.

8. In view of the law laid down by the Hon'ble Supreme Court in the case of Union of India and others Vrs. K. Savitri and others in Civil Appeal Nos. 6201-03 of 1995, we hold that this Original application has no merit and is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN
8.8.99

KNM/CM.