

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.293 OF 1993.

Cuttack, this the 5th day of August, 1999.

Prafulla Ch.Barik.

....

Applicant.

Vrs.

Union of India & Others.

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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.
5.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 293 OF 1993.
Cuttack, this the 5th day of August, 1999.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

..

PRAFULLA CHANDRA BARIK,
Aged about 52 years,
S/o. Late Ghanashyam Barik,
Village-Sundarada, Po. Pahanga,
Dist. Cuttack, at present working
as Peon in the Office of the Chief
Postmaster General, Orissa,
At/Po. Bhubaneswar, Dist. Khurda. Applicant.

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

- Vrs. -

1. Union of India represented by the
Director General (Posts), Dak Bhwan,
New Delhi-110 001.
2. Chief Postmaster General,
Orissa Circle, At/Po. Bhubaneswar,
Dist. Khurda. ... Respondents.

Corrected vide

Order dt. 28.1.2000.

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

Somnath Som
V.C. 28.1.2000

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O R D E R

Member (J)

MR. SOMNATH SOM, VICE-CHAIRMAN:

S. Som

In this Original Application under section
19 of the Administrative Tribunals Act, 1985, applicant
has prayed for a direction to the Respondents to absorb
the applicant against any Gr.C post with retrospective
effect from 1.12.1986 with consequential service benefits.
The second prayer is for a direction to the Respondents to

6

pay the salary of the applicant in the scale of pay of Rs. 950-1500/- admissible to Gr.C post with effect from 1-12-1986. The third prayer is for payment of arrears alongwith interest.

2. The case of applicant is that, he was initially appointed as Agriculture Kamadar in DNK Project on 10.9.1961. He was promoted to the post of Trained Kamadar in the scale of Rs. 210-270/- w.e.f. 23.6.1973 and was confirmed in the said post w.e.f. 29.12.1986. Applicant has mentioned that Trained Kamadar is a Gr.C post. With the closure of the DNK Project establishment, applicant was declared surplus w.e.f. 1.8.1986 and his services were placed at the disposal of the Central Surplus Cell, under the Ministry of Personnel and Training and Public Grievances w.e.f. 1.8.1986. Applicant, thereafter was redeployed as a Peon and posted in the Office of the Chief Postmaster General, Orissa Circle, Bhubaneswar. He was relieved from his earlier organisation on 30.11.1986 and he joined as Peon in the Office of the Superintendent of Post Offices, under the CPMG, Orissa Circle, Bhubaneswar (Respondent No. 2). Applicant states that he was earlier holding a Gr.C post in the DNK project but on being redeployed, he was posted against a Gr.D Post. It is further stated that he was allowed pay protection carrying the scale of pay attached to Trained Kamadar Post i.e. Rs. 210-270/-. Applicant accepted this lower grade with the hope that in the event of availability of Gr.C post, he will be adjusted against a Gr.C Post. Applicant has further stated that there are vacancies in Gr.C post but his case has not been considered. Applicant

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has stated that the Trained Kamadar in DNK Project had the scale of pay of Rs. 210-270/-. Earlier the post of Patawaries, which was also a Gr.C post was in the scale of Rs. 210-270/- like Trained Kamadar. Later on in order dated 16.6.1987, at Annexure-4, the scale of Patawaries in DNK Project was increased to Rs. 260-350/- w.e.f. 1.1.1973. Applicant has stated that as the post of Trained Kamadar is also a Gr.C post, the same scale of pay of Rs. 260-350/- should have been given to him, while he was working as a Trained Kamadar in DNK Project. It is further stated that according to the 4th Pay Commission scale which came into force w.e.f. 1.1.1986, the replacement scale of Rs. 260-350/- was revised to Rs. 950-1500/- w.e.f. 1.1.1986. Therefore, applicant has stated that he should be allowed the scale of pay of Rs. 950-1500/- w.e.f. 1.12.1986 by the respondents. In the context of the above facts, applicant has come up with the prayers referred to earlier.

3. Respondents, in their counter, have stated that applicant was initially appointed as Agriculture Kamdar in the Dandakaranya Project in the scale of Rs. 75-85/-, and he was promoted to the post of Trained Kamdar in the scale of Rs. 85-128/- w.e.f. 28.6.1972. The pay scale of Trained Kamdar was revised to Rs. 210-270/- w.e.f. 1.1.1973 as per the recommendation of IIIrd Pay Commission and Rs. 800-1150/- with effect from 1.1.1986 as per the recommendation of the 4th Pay Commission. Applicant was confirmed in the post of Trained Kamdar w.e.f. 29.12.1980. It is further stated that on the closure of the DNK Project and on the

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applicant becoming surplus, he was offered the post of Peon/Waterman in the scale of Rs.196-232/-. Respondents have further pointed out that the applicant was offered the Post of Peon cum Waterman in the scale of Rs.196-232/- in order dated 20.10.1986 by the Ministry of Personnel & Training and placed on redeployment in the above post, in the Office of the Postmaster General, Orissa, which was later on redesignated as CPMG, Orissa Circle, Bhubaneswar. In this order, at Annexure-R/1, it has been specifically mentioned that applicant originally belongs to Gr.C cadre in his parent organisation but is being redeployed in a Gr.D Post. It was indicated by the Department of Personnel & Training that on his joining he should be asked to exercise option if he is so desired to retain his previous classification as personal to him in preference to Gr.D status accruing to him by virtue of present appointment. He should also be specifically mentioned that in case, he opts to retain the Gr.C status, he would be superannuating at the age of 58 years instead of 60 years which presumably is the age of superannuation for Gr.D employees in the Postal organisation. Respondents have stated that the applicant joined in the office of Respondent No.2 on 8.12.1986. He opted to retain his previous classification as personal to him and therefore, he has been retained as Gr.C employee even though against a Gr.D post. It is also stated that he has been placed in the scale of Rs.800-1150/- which was previously drawing in the post of Trained Kamdar although he is working presently in a Gr.D post in the scale of Rs.750-940/-. Respondents

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have opposed the prayer of applicant regarding getting the higher scale of Rs.260-350/- on the ground that subsequent to the revision of the scale of pay of Patawaries, the scale of the Trained Kamdars have not been revised and therefore, the applicant is not entitled to get the higher scale of Rs.260-350/-. Respondents have also pointed out that the applicant is a non-matric and in an earlier case before this Tribunal in OA No. 383 of 1988 filed by one Shri R.K.Nayak, this Tribunal had directed that he should be adjusted in a Gr.C post. This example has been referred by the petitioner in his petition. Respondents have pointed out that Shri R.K.Nayak is a matriculate whereas the present applicant is a non-matric. On the above grounds, the Respondents have opposed the prayers of applicant.

4. Applicant in his rejoinder has submitted that two other employees namely Chakradhar Biswal and Sarat Kumar Dash, who were appointed as Peons in the Office of the CPMG, Orissa and who have come on redeployment from DNK Project, have been promoted to the post of LDC in order dated 4-4-1990, at Annexure-6 and therefore, the applicant has claimed that he should also be adjusted against a regular Gr.C post. *on* the above grounds, applicant, in his rejoinder, has reiterated his prayers made in the Original Application.

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5. This 1993 matter has come up for hearing from the warning list today. When the matter was called, Shri H.P. Rath, learned counsel for applicant and his associate were absent nor was any request made on their behalf seeking

adjournment. In view of this, it was not possible to drag on the matter indefinitely. ^{*}we have, therefore, heard ~~Mr. A.K.~~

* Mr. A. Routray, learned Additional ~~Judge, learned Senior~~ Standing Counsel appearing for the Respondents and have perused the records.

6. The second prayer of applicant to give him the scale of pay of Rs. 260-350/- and the consequent replacement scale of Rs. 950-1500/- can be taken up first. Applicant has based his claim on the ^{analogy} ~~anomaly~~ of the revision of the scale of pay of patwaries in the DNK Project. Originally, Patwaries and Trained Kamadars in the DNK Project were enjoying the same scale of pay of Rs. 210-270/- . In order dated 16.6.1987 at Annexure-4, the scale of pay of Patwaries were increased from Rs. 210-270/- to Rs. 260-350/- w.e.f. 1.1.1973 and all the Patwaries were also allowed the arrear financial benefits w.e.f. 1.1.1973. Applicant has stated that as the Trained Kamadars also had the scale of pay of Rs. 210-270/- like the Patwaries, their scale should also be revised to Rs. 260-350/- and they should have been allowed the scale of Rs. 260-350/- and its replacement scale of Rs. 950-1500/-. This claim of applicant, is without any merit because as a matter of fact, the scale of pay of Trained Kamadars have not actually been revised. Just because two posts had the identical scales of pay, it does not necessarily mean/follow that if the scale of pay of one group is increased, necessarily the scale of pay of other group/post should also be increased automatically. As in this case the scale of pay of Trained Kamadars have not been increased to Rs. 260-350/- and the applicant has not got that scale while he was working in

*Corrected
vide Order
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Somnath Jm
28.1.2000
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Member (J)

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DNK Project, there is absolutely no case for him to claim this scale of pay and its replacement scale of Rs.950-1500/- on his joining in the Office of the Res.No.2 on 8.12.1986. This prayer, is therefore, held to be without any merit and is rejected.


7. The first prayer of the applicant is to give a direction to respondents to adjust him against a Gr.C post. According to the existing instructions, when an organisation is closed down and the staff becomes surplus, they are to be redeployed against the existing vacancies in other organisations. In the instant case under the orders of the Ministry of Personnel and Training, applicant was adjusted against the post of Peon cum waterman in the Office of the Res.No.2. This instruction, at Annexure-R/1, specifically provides that the applicant who was earlier holding a Gr.C post is being redeployed against a Gr.D post in the Office of the Res.No.2 and therefore, the applicant was given an option to retain his Gr.C status and Gr.C scale of pay even though would be deployed against a Gr.D post carrying the lower scale of pay. The disadvantage is, therefore, that if applicant retains the Gr.C post as personal to him, his age of superannuation will be 58 years instead of 60 years as in case of other Gr.D employees. Accordingly, applicant opted to retain Gr.C post as personal to him and therefore, he was allowed the higher scale of Rs.800-1150/- which is the replacement scale of Rs.210-270/- which he was getting earlier as a Trained Kamdar in the DNK Project. In view of this, we find that the applicant is retaining his Gr.C status as also the Gr.C scale of pay.

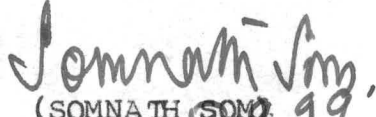
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Therefore, there is no question of giving him any higher scale or payment of any arrears to him. This prayer is also held to be without any merit and is rejected.

8. The next prayer of applicant is to adjust him against a Gr.C post. Applicant was admittedly holding a Gr.C post in DNK Project and because of the closure of the Project, by way of redeployment, he was adjusted against a Gr.D post while allowing him to retain his Gr.C status as also the Gr.C scale of pay. But as he was earlier holding a Gr.C post, there is a case for adjusting him against a Gr.C post in case he has the qualification for the same. In view of this, this prayer of applicant is disposed of with a direction to the Departmental Authorities that they may consider the applicant for his adjustment against a regular Gr.C post in case he is entitled to be so considered in accordance with the Recruitment Rules for the post, in other words, in case he has the requisite qualification for the Gr.C post.

9. In the result, therefore, the Original Application is disposed of in terms of the observations and directions made above. No costs.


(G. NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.