

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.340 OF 1993
Cuttack, this the 22nd day of December, 1998

Chandra Sekhar Dash

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*

l.m.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
22/12/98

11

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 340 OF 1993

Cuttack, this the 22nd day of December, 1998

CORAM:

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

.....

Chandra Sekhar Dash,
aged about 39 years,
son of Shri Surendra Kumar Dash,
of village/PO-Kantipur, P.S-Binjharpur,
Dist.Jajpur, at present working as
Technical Assistant in Central Cattle
Breeding Farm, Chiplima, P.O-Basantapur,
Via-Godabhaga, Dist.Sambalpur Applicant

Advocate for applicant - Mr.R.B.Mohapatra..

Vrs.

1. Union of India, represented by
the Secretary to Government of India,
Ministry of Agriculture,
Department of Animal Husbandry & Dairying,
at-Krishi Bhawan,
New Delhi.
2. Director In-charge, Central Cattle
Breeding Farm, Sunabeda,
At/PO-Sunabeda, Dist.Koraput (Orissa).
3. Director In-charge,
Central Cattle Breeding Farm,
Chiplima,
P.O-Basantapur, Via-Godabhaga,
Dist.Sambalpur (Orissa).
4. Sunam Patra Biswasi,
Technical Assistant,
Central Cattle Breeding Farm,
Sunabeda, P.O-Sunabeda-2,
Dist.Koraput (Orissa).....

Respondents.

Advocate for respondents - Mr.U.B.Mohapatra,
Addl.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 regularisation of his appointment in the post of Technical Assistant in Central Cattle Breeding Farm (CCBF), Chiplima, with all consequential and financial benefits. He has also prayed for quashing the order dated 8.4.1993 in which the applicant was transferred from CCBF, Sunabeda to CCBF, Chiplima, as ad hoc Technical Assistant.

2. The facts of this case, according to the petitioner, are that he was originally appointed as Attendant in CCBF, Sunabeda, on 5.6.1975. He underwent Livestock Inspector Training and was promoted to the post of Stockman on 1.1.1979. After continuing as Stockman for fifteen years, his case went before the Departmental Promotion Committee for his promotion against the permanent vacancy in the post of Technical Assistant at CCBF, Sunabeda. The D.P.C. recommended his name for appointment to the post of Technical Assistant in CCBF, Sunabeda. One Sunam Patra Biswasi (respondent no.4) was also working at CCBF, Sunabeda, as Stockman and in that cadre he was junior to the applicant. But without considering the seniority of the applicant, respondent no.4 was promoted to the post of Technical Assistant against the vacancy at CCBF, Chiplima, by superseding the applicant in 1986. While respondent no.4 was working as Technical Assistant at CCBF, Chiplima, he made a representation to Secretary, Department of Animal Husbandry and Dairying, Government of India (respondent no.1) for his transfer from Chiplima to Sunabeda. This representation was recommended by the then Minister of State for Food Processing, Shri Giridhari Gomango. Sunabeda was the native place of respondent no.4. The Employees' Association of CCBF, Chiplima, protested against illegal appointment of

SJM.

respondent no.4 and enquiry was also conducted. In order to patch up the matter the Ministry adjusted respondent no.4 against the permanent vacancy of Technical Assistant at CCBF, Sunabeda, against which post the applicant's name was recommended by D.P.C. Because of this, instead of giving regular appointment/promotion to the applicant in the post of Technical Assistant at CCBF, Sunabeda, the impugned order dated 8.4.1993 was passed appointing him on ad hoc basis as Technical Assistant and he was transferred to CCBF, Chiplima, in order to adjust respondent no.4 by way of transfer from CCBF, Chiplima to CCBF, Sunabeda. Originally, the applicant was given appointment order on 8.4.1993 for ad hoc appointment for eighty-nine days to the post of Technical Assistant, CCBF, Sunabeda. This order is at Annexure-A/1. On the same day, by the impugned order dated 8.4.1993, which is at Annexure-A/2, he was transferred from CCBF, Sunabeda to CCBF, Chiplima, and respondent no.4 was transferred from CCBF, Chiplima to CCBF, Sunabeda, and it was indicated that respondent no.4 would move first and relieve the applicant at Sunabeda. The applicant filed a representation to respondent no.1 vide Annexure-A/3. After getting both the orders dated 8.4.1993 respondent no.2 Director-in-charge, CCBF, Sunabeda, issued order dated 19.4.1993 at Annexure-A/1 appointing the applicant on ad hoc basis to the post of Technical Assistant for a period not exceeding 89 days with effect from 19.4.1993. On the very next day, 20th April 1993 joining report of respondent no.4 was accepted and the applicant was relieved from CCBF, Sunabeda. The applicant had no other option but to go to CCBF, Chiplima and joined there as Adhoc Technical Assistant vide his joining report 26.4.1993 at Annexure-A/5. While the applicant was continuing as Technical Assistant in CCBF, Chiplima,

S. Jam.

Director-in-charge, CCBF, Chiplima (respondent no.3) issued a circular inviting applications from Stockmen of different Farms to fill up the post of Technical Assistant in CCBF, Chiplima. This notice is at Annexure-A/7 in which it has been mentioned that the post is likely to be filled up by SC candidate and if required it may be dereserved. The applicant states that from this it is clear that when respondent no.4 was transferred from Chiplima to Sunabeda, he was transferred along with his post and this was done at the instance of the then Union Minister of State for Food Processing, Shri Giridhari Gomango. The petitioner submitted his application for the post of Technical Assistant in response to the circular dated 26.5.1993 without prejudice to his claim for regular appointment to the post of Technical Assistant as per decision of D.P.C. conducted at Sunabeda. The applicant further states that DPC under chairmanship of Director-in-charge, CCBF, Chiplima, did not select the applicant on the ground that the vacancy of Technical Assistant at CCBF, Chiplima, was meant for SC candidate. This, according to the applicant, is in violation of the 40 point roster principle. In view of the above, the applicant has come up in this petition with the prayer referred to earlier. By way of interim relief, the applicant had prayed that his status quo as Technical Assistant should be maintained. On the date of admission of this application on 13.7.1993 it was directed by the Tribunal that the services of the petitioner should not be terminated until further orders.

S. Jam. This stay order has continued for the last five years.

3. Departmental respondents 1 to 3 in their counter have pointed out that as the applicant was appointed on ad hoc basis as Technical Assistant for eighty-nine days, he

cannot claim to be regularised. They have further stated that his appointment on ad hoc basis for eighty-nine days was made because the post of Technical Assistant at CCBF, Chiplima, was reserved for ST candidate. They have also stated that the applicant cannot question his transfer order from Sunabeda to Chiplima. It is stated that the applicant was relieved from CCBF, Sunabeda to join at CCBF, Chiplima, in order dated 8.4.1993 as a vacancy was created at Chiplima because of transfer of respondent no.4 to Sunabeda from Chiplima. It is further stated that the post of Technical Assistant at CCBF, Sunabeda, was reserved for ST candidate and therefore, the DPC in their meeting held on 2.4.1993 recommended the applicant for promotion to reserved (ST) vacant post on ad hoc basis for a period of 89 days or till such time the post is filled up on regular basis whichever is earlier. It is further stated that the post of Technical Assistant is a selection post to be filled up by inviting application from the Stockmen working in all the seven CCBFs. As regards promotion of respondent no.4, it is stated that in 1986 Director, CCBF, Chiplima, called for applications from all the seven CCBFs and as per recommendation of DPC, the offer of appointment was given to respondent no.4 as the DPC found him more suitable. One A.T.Vaidya, an SC candidate also applied but not through proper channel and therefore, his application was not considered by DPC in 1986. The respondents have stated that after seven years of the appointment of respondent no.4 in 1986, the applicant cannot question the same. It is further stated that as a matter of fact, on complaint of Employees Association of CCBF, Chiplima, an enquiry was conducted in 1988. On the basis of enquiry it was found that respondent no.4, who is a general category candidate was selected against a vacancy reserved for

S. Jim

ST candidate without, however, getting the vacancy de-reserved. In view of this, Ministry of Agriculture advised to fill up the next vacancy of Technical Assistant by an SC candidate. This letter of Ministry of Agriculture is at Annexure-R/2. The respondents have further stated that the applicant was issued an appointment order on 19.4.1993 at Annexure-A/1 giving him ad hoc appointment against reserved ST post of Technical Assistant, CCBF, Sunabeda, for a period of 89 days. Thereafter by an order of competent authority he was transferred to CCBF, Chiplima as ad hoc Technical Assistant and was relieved on 20.4.1993. It is stated that the representation submitted by the applicant was not sent through proper channel and therefore, Director, CCBF, Sunabeda, has no knowledge about the representation. The respondents have further stated that respondent no.4 was not transferred from CCBF, Chiplima to CCBF, Sunabeda, along with his post and this contention of the applicant is incorrect. The respondents have further stated that the appointment of the applicant was for a period of 89 days as vacancy at Chiplima where he was transferred was reserved for SC and it was indicated that in case SC candidates are not available, it will be filled up by general candidate. It is further stated that for the post of Technical Assistant at Chiplima, DPC met on 3.7.1993 and followed the 40-point roster and carried over the vacancy reserved for SC from point no.1 to 2 and from 2 to 3. Accordingly, the vacancy falling under point no.3 on roster went to a candidate belonging to SC community and on consideration of the C.R. and relevant documents, one SC candidate A.T.Vaidya, who is senior to the applicant, has been recommended for appointment as Technical Assistant. The applicant has been kept as the second choice in case Shri Vaidya does not join his duty and the post is got

dereserved. The respondents have further stated that the applicant cannot be regularised in the post of Technical Assistant at CCBF, Sunabeda, which is meant for ST candidate nor against the post of Technical Assistant at Chiplima which is meant for SC. But in case the selected SC candidate A.T.Vaidya does not join, the post will be got reserved and the applicant will get regular appointment. On the above grounds, the departmental respondents have opposed the prayers of the applicant.

4. Respondent no.4 was given notice, but he did not appear nor did he file any counter.

5. The applicant in his rejoinder has stated that the post of Technical Assistant at CCBF, Sunabeda, is not meant, according to the roster point, to be filled by ST candidate. The applicant has prayed that the Roster Point Register should be obtained and checked up. The applicant has reiterated that the transfer of respondent no.4 from Chiplima to Sunabeda along with his post was done at the instance of the then Union Minister of State for Food Processing, Shri Giridhari Gomango. The applicant has further stated that one post of Technical Assistant has fallen vacant at CCBF, Sunabeda, consequent upon retirement of Mohammad T.Hussain on 28.2.1993, a general candidate. The applicant has further stated that in the meantime the vacant posts of Stockman both at Chiplima and Sunabeda have been abolished with effect from 1.4.1995 by order at Annexure-11 and therefore, there is no post for the applicant to revert in case he is not regularised. In view of this, respondent no.3, Director, CCBF, Chiplima, sent a proposal for de-reservation of the post of Technical Assistant at CCBF, Chiplima, so that the applicant can be regularised. In view of the above, the petitioner has reiterated his prayers in the O.A.

S.Jom

6. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the departmental respondents, and have also perused the records. The Roster Point Registers of CCBF, Sunabeda and CCBF, Chiplia and the minutes of the DPC meeting held on 3.7.1993 for the post of Technical Assistant at CCBF, Chiplima have been produced by the learned Additional Standing Counsel and these have also been perused.

7. In this application the petitioner has prayed for quashing the order dated 8.4.1993 at Annexure-A/2 transferring the applicant as Technical Assistant on ad hoc basis from CCBF, Sunabeda to CCBF, Chiplima and transferring respondent no.4, Technical Assistant, CCBF, Chiplima to CCBF, Sunabeda. In pursuance of the above order of transfer, the applicant has already gone and joined at CCBF, Chiplima and respondent no.4 has also come and joined at CCBF, Sunabeda. In view of this, the order at Annexure-A/2 has already been implemented and there is no case for quashing the above order. In view of this, the prayer for quashing the order of transfer is held to be without any merit and is rejected.

8. The learned counsel for the petitioner has mentioned in course of his submissions that in the order dated 8.4.1993 at Annexure-A/2 the applicant has been shown as Technical Assistant on ad hoc appointment and he has submitted that this is incorrect because the applicant was recommended for the post of Technical Assistant by the D.P.C. and therefore, his appointment as Technical Assistant at Sunabeda should have been on

regular basis. We are unable to accept this contention in view of the fact that the post of Technical Assistant at Sunabeda was reserved for S.T.candidate. The respondents have also stated that because of this, the D.P.C. in their meeting on 2.4.1993 recommended the applicant for promotion to the reserved (ST) vacant post of Technical Assistant at Sunabeda on ad hoc basis for a period of 89 days or for such time the post is filled up on regular basis whichever is earlier. As the D.P.C. had recommended him for ad hoc appointment on the above grounds, the applicant's appointment on ad hoc basis to the post of Technical Assistant at Sunabeda cannot be found fault with. This contention of the learned counsel for the petitioner with regard to the order dated 8.4.1993 at Annexure-A/2 is also held to be without any merit and is rejected.

9. The last prayer of the petitioner is that he should be regularised in the post of technical Assistant at CCBF, Chiplima with all consequential and service benefits. The respondents in their counter have pointed out that the D.P.C. meeting held on 3.7.1993 followed the 40-point roster and noted that the vacancy of Technical Assistant at CCBF, Chiplima, is meant for an SC candidate. We have checked up the Reservation Roster Register of CCBF, Sunabeda and found that the post of Technical Assistant which fell vacant at CCBF, Sunabeda and against which the DPC had recommended the applicant to be appointed on ad hoc basis for eighty-nine days was meant for an ST candidate. This is because the first vacancy in the roster point meant for an ST candidate was filled up in 1975 by one Dr.K.Das who was a general

S.J.m

candidate. Coming to the Reservation Roster Register of CCBF, Chiplima, we find that the first vacancy in the roster falling to an SC candidate was filled up by one Sadasivaiah in 1982 who was a general candidate and this was carried over to vacancy in roster point 3 which was ordered to be filled up by an SC candidate. Thus, we do not agree with the submission of the learned counsel for the petitioner that the Roster Point Register was not correctly maintained.. In that vacancy meant for SC **candidate** in the post of Technical Assistant at CCBF, Chiplima, the D.P.C. in their meeting on 3.7.1993 had recommended one A.T.Vaidya, a **Scheduled Caste** candidate who is senior to the applicant. The D.P.C. has also recommended the applicant as second in order of merit for promotion as Technical Assistant. Further and more importantly, the DPC has specifically recommended that the fate of the applicant C.S.Dash, ad hoc appointee should be decided first by the competent authority before promoting Shri A.T.Vaidya. As the post of Technical Assistant in CCBF, Chiplima, is meant for SC candidate as per the Roster Register and a **Scheduled Caste** employee has **been** recommended as the first choice, the applicant cannot be regularised against that post. This prayer of the applicant is also held **to be** without any merit. But at the same time, as per the recommendation of the D.P.C. the applicant's position will have to be determined first before promoting Shri A.T.Vaidya, the recommended candidate. The applicant has also brought on record the fact that the post of **Stockman** to which he has to revert,

S. Vom.

S. Vom.

21
 has already been abolished and that is why respondent no.3 in his letter dated 15.2.1997 has recommended for dereservatin of the post of Technical Assistant at CCBF, Chiplima. The applicant has also pointed out that in the meantime one post of Technical Assistant has fallen vacant at CCBF, Sunabeda, consequent upon retirement of general category incumbent Md.T. Hussain on 28.2.1993. In view of this, we direct respondent no.1 to consider and pass orders on the proposal dated 15.2.1997 of respondent no.3, copy of which is at Annexure-11. Respondent no.1 is also directed to consider the case of the applicant for the vacant post of Technical Assistant at CCBF, Sunabeda. This should be done within a period of 60 (sixty) days from the date of receipt of copy of this order.

10. The Original Application is disposed of in terms of the above observation and direction but without any order as to costs. The stay order will stand vacated.

(G.NARASIMHAM)
 MEMBER (JUDICIAL)

Somnath Som
 (SOMNATH SOM) 22.12.98
 VICE-CHAIRMAN