

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 368 OF 1993.

Kishore Chandra Biswal. ... Applicant.
-versus-
Union of India & Others. ... Respondents.

ORIGINAL APPLICATION NO. 376 OF 1993.

J.N.Rao Sharaff. ... Applicant.
-versus-
Union of India & Others. ... Respondents.

CUTTACK, THIS THE 1ST DAY OF DECEMBER, 1998.

(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.

S. S. Somnath Som
Vice-Chairman

Sd/- G. Narasimham
Member (Jud)

Original order
is kept with the
D.A. NO. 368/93

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 368 of 1993

Kishore Chandra Biswal, S/o. late H.K. Biswal
Aged about 48 years, presently serving as
Clerk Grade-I, All India Radio, At/PO/PS-
Jeypore, Dist. Koraput, Orissa-764 005.

... APPLICANT.

- Versus -

1. Union of India represented through its Secretary, Ministry of Information and Broadcasting, Government of India Shashtri Bhavan, New Delhi-1.
2. The Director General, All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-1.
3. The Station Director, All India Radio, At/PO/PS. Cuttack, Dist. Cuttack, (Orissa)-1.
4. The Station Director, All India Radio At/PO/PS. Jeypore, Dist. Koraput, Orissa Pin. 764005.

... RESPONDENTS.

ORIGINAL APPLICATION NO. 376 of 1993.

J. Narasinh Rao Sharaff, S/o. late R.N. Sharaff,
aged about 44 years, presently serving as
Clerk Grade-II, All India Radio, Po. Jeypore,
Dist. Koraput, Orissa.

... APPLICANT.

- Versus -

1. The Union of India represented through its Secretary, Ministry of Information and Broadcasting, Government of India, Shashtri Bhavan, New Delhi-110 001.
2. The Director General, All India Radio, Akashvani Bhavan, Parliament Street, New Delhi-1.
3. The Station Director, All India Radio, Po. Cuttack, Dist. Cuttack, Orissa-1.
4. The Station Director, All India Radio, Po. Jeypore, Dist. Koraput, Orissa.

... RESPONDENTS.

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By legal practitioner : M/s. R. B. Mohapatra,
 for the applicants in
 both the cases. J. K. Nayak,
 U. K. Bhatta,
 N. R. Routray,
 Advocates.

By legal practitioner : Mr. Akhaya Kumar Mishra,
 for Respondents in
 both the cases. Additional Standing
 Counsel (Central).

C O R A M

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

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

CUTTACK, THIS THE 1st DAY OF DECEMBER, 1998.

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :-

Both these applications centered round a common point of Law which needs determination to decide, the seniority and eligibility of the applicants for promotion to the Post of Clerk Gr.I. Though both the Original Applications were heard separately, this common order will dispose of both the Applications.

2. Both the applicants were initially appointed as Lower Division Clerk in the Rehabilitation Reclamation

Organisation (Department of Rehabilitation) Government of India .Consequent upon winding up of the said Organisation, applicants were rendered surplus and transferred to the rolls of Central (Surplus Staff)Cell, under the Department of Personnel & Administrative Reforms, Ministry of Home Affairs, Government of India for their re-deployment elsewhere. Both of them were re-deployed on transfer as Clerks Gr.II in All India Radio.

Applicant Shri Kishore Chandra Biswal in Original Application No.368/93 was initially appointed as Lower Division Clerk in the Rehabilitation Organisation on 3-1-1967 and was rendered surplus in that Organisation on 1-6-1980. On being re-deployed, he joined as Clerk, Gr.II in All India Radio on 7-8-1980.

So far as the other Applicant Shri J.Narayasingh Rao Sharaff in Original Application No. 376 of 1993 is concerned, he was initially appointed as Lower Division Clerk on 4-6-1973 and was rendered surplus on 1.10.1983. On being redeployed, he joined under the All India Radio, as Clerk Gr.II on 28.11.1983.

Promotion to the Post of Clerk Gr.I under All India Radio, is made from the feeder cadre of Clerk Gr.II and to be eligible for promotion one should have put in five years of service in that grade. Admittedly, their past services in the Rehabilitation Reclamation Organisation were not taken into account for considering five years service in the Clerk Gr.II required for promotion to the

Clerk Gr.I. Their representations for consideration of their past services were went unheeded. Hence, these applications for direction to the Respondents to consider the past services of both the applicants rendered in the earlier Department before re-deployment, as qualifying service for eligibility and promotion to the posts of Clerk Gr.I with effect from the dates of promotion of consequential their Juniors with all service and financial benefits retrospectively.

3. According to the Applicants, under law, their services in the previous organisation have to be taken into account while judging the qualifying service in Clerk Gr.II to consider their eligibility for promotion to Clerk Gr.I. Respondents Department, on the other hand, contend that such past service, can not be taken into consideration for counting the period of five years qualifying service.

Hence the main point for determination is whether employees having been rendered surplus in the Parent Department on being redeployed, can claim the benefit of counting of past services rendered by them for the purpose of seniority and experience in the re-deployed organisation i.e. in All India Radio.

4. There is no dispute that if the earlier past service of the applicants were taken into account in counting the requisite service required for eligibility for promotion to Clerk Gr.I, the applicants would have been eligible to be considered for promotion.

5. As per the All India Radio, Class III Posts (Recruitment) Rules, 1964, the posts of Clerk Gr.I are to be filled up by promotion from amongst the Clerk Gr. II with minimum five years of service in that grade. Learned Counsel appearing for the Applicants Mr. R. B. Mohapatra, placed reliance on OA No. 970/89 disposed of by the Central Administrative Tribunal, Hyderabad Bench on 22-6-90 (Annexure-4). This is a case of promotion to the Post of Assistant Engineer, under All India Radio. Applicant, there in, on redeployment, joined as Jr. Engineer on 16.8.1983. Prior to that, he served in the Office of the Superintending Engineer, Irrigation Circle, Dandakaranya Project under the Ministry of Internal Security and Home Affairs for sometime on ad-hoc basis and was, later on, regularised by order dated 26-12-1984. However, by order dated 13-2-1983, he was declared, alongwith others, as Surplus. Question arose, whether his past service could be taken into account in counting eight years of service required for eligibility to be considered for promotion to the Post of Assistant Engineer. The qualification for

eligibility for promotion was eight years regular service in the grade of Junior Clerk in All India Radio. Relying on some decisions of other Benches, it was held that applicant's past service in the Parent Department will have to be taken into account as qualifying service for the purpose of eight years required for eligibility for promotion to the cadre of Assistant Engineer. Even this Tribunal, in OA Nos. 160, 161 and 163 of 1993, under similar circumstances, decided in favour of the applicants therein.

Learned Additional Standing Counsel, on the other hand, contended that the decisions of this Bench in OA Nos. 160, 161 and 163 of 1993 have since been reversed by the Hon'ble Supreme Court taking a contrary view. A xerox copy of the decision of the Hon'ble Supreme Court in Civil Appeal Nos. 6201-08/1995 has been filed. The Hon'ble Apex Court after going through the Civil Services (Redeployment of Surplus Staff) Rules, framed under Article 309 of the Constitution and the scheme framed under these rules, held that the past service rendered prior to re-deployment, shall not count towards seniority in the new organisation/new post which a surplus employee joins after he is re-deployed. Further the Hon'ble Supreme Court held that under the relevant recruitment rules of All India Radio, minimum of five years service in that grade is required to be considered

for eligibility for promotion. By observing so, the Hon'ble Supreme Court set aside the decisions of this Tribunal.

6. In view of this ruling, the past Service of the applicants can not be taken into account in counting the five years service in the Clerk Grade. II to decide their eligibility for promotion to Clerk Gr. I.

7. Thus, both the applications must fail and accordingly both the applicants are dismissed. No costs.

Sd/- Somnath S^m
Vice-Chairman

Sd/- G. Narasimhan
Member (JUD)

KNM/CM.