

4

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 488 OF 1993  
Cuttack this the ~~28th~~ day of ~~July~~, 1999  
June,

P. V. Rao

Applicant(s)

-Versus-

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 28.6.99

*G. Narasimham*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

51

5

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 488 OF 1993  
Cuttack this the <sup>28th</sup> day of July, 1999  
*Done,*

CORAM:

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

...

Sri P.V.Rao,  
S/o. Sri P.Neelakantham,  
Aged about 39 years,  
presently serving as Clerk Grade-I  
All India Radio,  
At/PO/PS: Jeypore  
District : Koraput(764-005)

...

Applicant

By the Advocates : M/s.R.B.Mohapatra  
D.R.Rath,  
J.K.Nayak

-Versus-

1. The Union of India represented through  
its Secretary  
Ministry of Information & Broadcasting  
Government of India,  
Shastri Bhavan,  
New Delhi-110001
2. The Director General,  
All India Radio, Akashvani Bhavan,  
Parliament Street,  
New Delhi-110001
3. The Station Director,  
All India Radio,  
At/PO/PS: Jeypore,  
District: Koraput - 764005

...

Respondents

By the Advocates : Mr.U.B.Mohapatra,  
Addl.Standing Counsel  
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application seeking direction <sup>on</sup> to the respondents to consider the adhoc service of the applicant rendered earlier in the post of Clerk Gr.I from 8.5.1984 to 30.6.1986 for fixing of pay on his promotion on regular basis, and a direction for restoration of his pay as fixed by order dated 10.10.1988(Annexure-4) and refund of the amounts already recovered with interest, facts are not in dispute.

2. While serving as Clerk Gr.II, the applicant was promoted to Clerk Gr.I on adhoc basis with effect from 8.5.1984. In that adhoc service as Clerk Gr.I he was granted annual increments in May, 1985 and May, 1986. Thereafter he was reverted to the original post, Clerk Gr.II on 30.6.1986. Subsequently he was promoted to Clerk Grade I on 17.5.1988 on regular basis. Consequent upon his promotion on regular basis his pay was fixed at Rs.1290/- per month in the scale of Rs.1200 - Rs.2040/-. While fixing his pay, the adhoc service rendered by him from 8.5.1984 to 30.6.1986 was taken into consideration (Annexure-4) dated 10.10.1988. However, in letter dated 6.4.1990 he was intimated that the pay fixation under Annexure-4 was wrongly done by considering his previous adhoc service, earlier which ought not to have been considered and that his pay has been refixed at Rs.1230/- and that the over payment made would be recovered vide Annexures- 5 and 6. The applicant then represented on 16.4.1990 against this decision. Through letter dated 24.5.1990 he was informed that his representation has been rejected. Again he sent representations on 25.9.1992 and 12.8.1993 requesting the authorities for



reexamination, but were turned down by letter dated 17.8.1993.

3. The main ground urged <sup>is</sup> that the reduction in pay or recovery could not have been made without giving him an opportunity of being heard, i.e., without observing the principles of natural justice. Another ground urged is that as per the decision of Hon'ble Apex Court in **Narendra Chhada** case reported in AIR 1986 SC 638 continuous officiation for a long period in a post cannot be treated as adhoc or stop gap arrangement. ~~In the~~

4. In the counter the respondents take the stand that question of issuing notice to show cause to the applicant in the facts and circumstances of the case would not arise before refixation of pay and recovery of overpayment, as the period of adhoc service ought not to have been considered under F.R. 22 towards increment. Yet it was ensured that the applicant would not draw lesser pay than that which he was drawing while serving on adhoc basis.

5. We have heard Shri R.B.Mohapatra, learned counsel for the applicant and Shri U.B.Mohapatra, learned Addl.Standing Counsel appearing for the respondents and also perused the records.

6. We are not inclined to agree with the contentions raised in the pleading by the applicant basing on the decision of Hon'ble Apex Court in **Narendra Chhada** case, as to continuous officiation in a post for a number of years. The principle laid down in that case is not applicable to the case of the applicant, who hardly functioned on adhoc basis for about two years. In **Narendra Chhada** case the applicant, worked for <sup>20</sup> long period of 15 - 20 years in a post without any reversion.

Taking this factor into consideration it was observed that such continuous officiation for a period of 15 - 20 years cannot be termed as temporary/adhoc/stop gap arrangement, even though the order of appointment may state so and in such circumstances, the entire period of officiation has to be counted for seniority. At the same time, the Hon'ble Apex Court were careful enough to observe specifically in para-14 of the judgment that they would make it clear that it is not their view that whenever a person is appointed without following the rules fixed for that <sup>post</sup> ~~period~~, he should be treated as a person regularly appointed to that post and such person may be reverted from that post.

No doubt the applicant before us joined as Clerk Gr.II in All India Radio on 18.2.1977. As per the departmental rules, one has to serve at least five years as Gr.II to be eligible for promotion to the cadre of Clerk Gr.I. It is also true that he was promoted on adhoc basis on 8.5.1984 by which time he had completed more than five years of service as Clerk Gr.II. This would not necessarily mean that he was promoted at that time on regular basis to claim the benefit of past service. On the other hand his specific case in the pleading is that after his reversion on 30.6.1986, he was promoted to Clerk Gr.I on regular basis with effect from 17.5.1988. He has also not challenged the order of his reversion on 30.6.1986. Hence, we do not see any relevancy on his reliance on the principle laid down in Narendra Chhada case.

We have carefully gone through F.R. 22, xerox copy of which has also been enclosed by the department to

their counter (Annexure-R/1). We agree that the two increments allowed to the applicant during his adhoc period should <sup>not</sup> have been taken into consideration while fixing his pay on his regular promotion in Clerk Gr.I. It has however, been contended that principles of natural justice have been violated inasmuch as after giving benefit of fixation of more pay, even though by mistake, the same should not have been reduced without giving him an opportunity to have his say in the matter. We are not impressed <sup>with</sup> ~~in~~ this <sup>sort</sup> of contention. The decisions referred in the application in this connection (T.V.Pabitrán vs. State of A.P.) A.T.R. - 1988 Vol.I C.A.T., 26, and (H.L.Trehan vs. Union of India reported in (1989) 9 A.T.Cases 650 do not deal with cases of reduction of pay in the matter of re-fixation or otherwise. When fixation pay has been made by mistake or oversight, which fact is also not seriously disputed by the applicant, question of violation of principles of natural justice, in our view, would not at all arise.

7. Last but not the least is that this application filed on 27.8.1992, according to us, is barred by limitation. Annexure-5 dated 6.4.1990 and Annexure-6 dated 16.7.1990 are under challenge in this application. Applicant sent representations in the year 1990 itself under Annexure-7 and it was turned down within a month thereafter under Annexure-8, addressed to the applicant. Yet the applicant has not approached this Tribunal within one year after such rejection. It is true that he sent another representation on 25.9.1992 (Annexure-9) and a reminder on 12.8.1993 (Annexure-10) and



10

these were rejected on 17.8.1993 vide Annexure-11. Law is  
that  
well settled ~~that~~ repeated representations would not save  
limitation, specially when such representations are made  
much after the expiry of period of limitation.

6. In the result, we do not see any merit in this  
application, which is accordingly rejected, but without  
any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *28.6.99*

B.K.SAHOO

*28.6.99*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)