

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 601 OF 1993.

Cuttack, this the 4th day of January, 2000.

Balakrishna Satpathy. 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)

S. NARASIMHAM
VICE-CHAIRMAN

7.1.2000



8
12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 601 OF 1993.

Cuttack, this the 4th day of January, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

...

Sri Balakrishna Satpathy,
Aged about 53 years,
Son of late Gopal Satpathy,
at present working as Asst.
Welfare Administrator in the
Office of the Welfare Commissioner,
33-Ashoknagar, Bhubaneswar,
Dist. Khurda.

... Applicant.

By legal practitioner : Mr. S. Dash, Advocate.

-VERSUS-

1. Union of India represented by the Secretary,
Ministry of Labour, Jaisalmer House,
Mansingh Road, New Delhi.
2. Director General of Labour Welfare,
Jaisalmer House, Mansingh Road,
New Delhi. Respondents.

By legal practitioner : Mr. U. B. Mohapatra, Additional Standing
Counsel (Central).

...

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

S. Som
In this Original Application u/s.19 of the
Administrative Tribunals Act, 1985, the applicant has
prayed for modifying the date given at Annexure- 4
from 24.4.1992 to 16.1.1985 and to quash the order
at Annexure-A/6 and to refix his seniority taking him
as Assistant Welfare Administrator w.e.f. 16.1.1985.

2. Facts of this case fall within a small compass and can be briefly stated. Applicant was appointed as a Junior Clerk on 25-6-1964, in the office of the Welfare Commissioner, Orissa, Bhubaneswar. He was promoted to the rank of Senior Clerk on 19.12.1970 and Accountant on 26.8.1976. He was promoted as Head Clerk Cum Accountant on 5.1.1985. According to applicant, he was promoted and appointed as Assistant Welfare Administrator in order dated 31.12.1984 at Annexure-1. This promotion was made on the recommendation of the Departmental Promotion Committee and accordingly he joined his post on 16.1.85. Originally, the deputation period was for one year but this was extended in order dated 5.1.1989, 21.1.1992 and 1.5.1992 which are at Annexures-2, 3 and 4 respectively. Applicant has further stated that in order at Annexure-4, he was appointed on officiating basis to the post of Assistant Welfare Administrator, w.e.f. 24.4.1992. As the period of service as Assistant Welfare Administrator from 16.1.1985 was not taken into consideration, he made a representation at Annexure-5, which was rejected in order at Annexure-6. Applicant has stated that his initial appointment as Assistant Welfare Administrator was a regular promotion even though for one year. Though Respondents issued the order of termination on completion of one year, also they had simultaneously issued orders appointing him to the post for further extended periods. Thus, he has continuously functioned as Assistant Welfare Administrator from 16.1.1985 and his past service should not have been ignored. In view of this, he wants the benefit



9
SJM.

-3-

of his past service from 16.1.1985 upto 24.4.1992 as Assistant Welfare Administrator for fixation of his seniority in that grade.

3. Respondents, in their counter, have pointed out that the applicant was appointed as Assistant Welfare Administrator, on deputation basis in order dated 31.12.1984 and he joined on 16.1.1985. Again he was appointed on adhoc basis on 5.1.1989 and he was regularised in that post on 24.4.1992. The Ad-hoc appointment did not confer any right for regular appointment in the post or towards his seniority in the grade of Assistant Welfare Administrator. Therefore, his period of deputation has not been taken into account. He was also reverted back to his original post on completion of deputation period. It is stated that as he was holding the post of Assistant Welfare Administrator from 16.1.1985 on deputation basis, that period could not have been counted towards seniority. On the above grounds, the Respondents have opposed the prayer of applicant.

4. Applicant in his rejoinder, has stated that even though in his original order of appointment as Assistant Welfare Administrator, the 'word' deputation has been mentioned, he has not received any deputation allowance and has also not been asked to exercise any option to go for such deputation. The appointment was within the same department and establishment. It is further stated that the applicant has been receiving regular increment against the post of Assistant Welfare



S. Jam

15-

Administrator and there was no break in his functioning as such till he was appointed on regular basis by the order at Annexure-4. Applicant has stated that accordingly by terming his order of appointment as on deputation or adhoc basis, his rights can not be taken away and on that ground, he has re-iterated his prayer in his rejoinder.

5. We have heard Mr. S. Dash, learned counsel for the applicant and Mr. U. B. Mohapatra, learned Additional Standing Counsel appearing for the Respondents and have also perused the records. Learned Additional Standing Counsel has filed the notification dated 3.11.1987 laying down the recruitment rule for the post of Asst. Welfare Administrator. Learned counsel for the petitioner has also filed xerox copy of the decision in the case of MAHESH TAILOR AND OTHERS VRS. UNION OF INDIA AND OTHERS decided by the Jaipur Bench of the Central Administrative Tribunal and the decision of the Hon'ble Supreme Court in the case of CHIEF OF NAVAL STAFF AND ANOTHER VRS. G. GOPALAKRISHNA PILLAI AND OTHERS reported in (1996)1 SCC 521, which have also been taken note of.

6. It has been submitted by the learned counsel for the petitioner that he joined as Assistant Welfare Administrator on 16.1.1985 on being selected by the Departmental Promotion Committee. It is also stated that at that time he was working in the same establishment as Head clerk cum Accountant which post he joined on 5.1.85 and therefore, his appointment as Assistant Welfare Administrator

S. Jom

-5-

Administrator from 16.1.1985 can not be treated to be on deputation. It is further stated that he was subsequently given officiating appointment to the post w.e.f. 24.4.1992 in order dated 1.5.1992 at Annexure-4.

But as he was earlier wrongly shown on deputation and as he had continuously worked as Assistant Welfare Administrator from 16.1.1985, he should be taken to have been regularly appointed as Assistant Welfare Administrator from 16.1.1985 and his seniority should be re-fixed accordingly.

7. We have considered the above submission carefully. The Recruitment Rules for Assistant Welfare Administrator provide that 50% will be filled up by promotion failing which by transfer on deputation and 50% by direct recruitment. In case of promotion, Headclerk-Cum Accountants/Welfare Inspectors/Headclerks/Accountants/stenographers, with two years of regular service in the grade are eligible. For transfer on deputation officers under the Central Government holding analogous post on regular basis and with five years of regular service in the posts in the scale of Rs.1200-2040/- or equivalent are eligible. They must possess the educational and other qualifications laid down for direct recruits.

It is also directed that a Departmental officer in the feeder category who are in the direct line for promotion will not be eligible for consideration for appointment

S. S. M.



on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion. From the above provisions in the recruitment rule, it is clear that a person who is in the direct feeder cadre for promotion to the post of Assistant Welfare Administrator can not come on deputation. In this case, applicant became Headclerk Cum Accountant on 5.1.1985 and had become Accountant on 26.8.1976. Both the posts of Accountant and Headclerk Cum Accountant are feeder cadre for promotion to the post of Assistant Welfare Administrator. Notwithstanding this, the applicant was brought on deputation to the post of Assistant Welfare Administrator in order dated 31.12.1984, at Annexure-1. Therefore, applicant's appointment to the Post of Assistant Welfare Administrator on deputation basis was not in accordance with the Recruitment Rule.

8. There is also another reason for holding that the appointment of applicant as Assistant Welfare Administrator on deputation basis was in violation of the Recruitment Rule. It appears from Annexure-6, which is an order rejecting the representation of applicant that he was given appointment as Assistant Welfare Administrator against the direct recruitment quota vacancy. We have earlier noted that vacancies in the post of Assistant Welfare Administrator could be filled up by transfer on deputation only in respect of 50% promotion quota when the posts could not be filled in by promotion. *13*



Against the direct recruitment quota, the Recruitment Rule does not provide for transfer on deputation.

9. As the initial appointment of applicant as Assistant Welfare Administrator is not in accordance with the Recruitment Rule, he is not entitled to claim that the period from 16.1.1985 will count towards his seniority as Assistant Welfare Administrator by treating him as a regular Assistant Welfare Administrator from that date. Moreover, the applicant having accepted the post of Assistant Welfare Administrator on 16.1.1985 on deputation basis can not be allowed to question the same after a lapse of more than eight years. In the case of Mahesh Tailor and others (supra) relied on by the learned counsel for the petitioner, it has been laid down that adhoc service will count for seniority if the appointment is made after holding the DPC and against the substantive vacancy. As we have noted here that the appointment of the applicant from 16.1.1985 was de hors the recruitment rule and was also against the direct recruitment quota and therefore, this decision has no application to the facts of this case.

10. In the case of Chief of Naval Staff and another (Supra) decided by the Hon'ble Supreme Court it has been held that the adhoc appointment without selection by a regularly constituted selection body, will not count towards seniority even though such appointment is held uninterruptedly followed by regularisation in the same post. Learned counsel for the applicant has stated that

SJm.

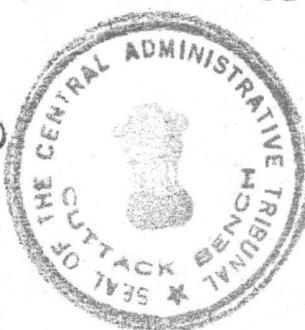


as in this case, in the order at Annexure-1, it has been clearly mentioned that applicant's appointment as Asst. Welfare Administrator from 16.1.1985 has been recommended by the DPC, following the decision of the Hon'ble Supreme Court in the above case, this period from 16.1.1985 should count towards his seniority to treat the applicant who has been regularly appointed as Assistant Welfare Administrator from 16.1.1985 would mean that his appointment should be treated to be as on promotion. Applicant had become Head Clerk Cum Accountant only on 5.1.1985 and he joined as Assistant Welfare Administrator on 16.1.1985 barely ten days after. He, thus, did not have the two years required service as Head Clerk Cum Accountant. Moreover, his appointment as Assistant Welfare Administrator from 16.1.1985 was as already noted by us dehors the Recruitment Rule and as such, the above decision of the Hon'ble Supreme Court does not support his case in any way.

11. In the result, we hold that the application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.



Somnath Soni,
VICE-CHAIRMAN
8/12/2008