

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 616 of 1993

Date of Decision: 27. 4. 1994

Padmanav Nayak

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

Padmanav Nayak

MEMBER (ADMINISTRATIVE)
27 APR 94

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VICE-CHAIRMAN

27. 4. 94

CENTRAL ADMINISTRATIVE TRIBUNAL
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Padmanav Nayak Applicant

Versus

For the applicant M/s. Ashok Mohanty
Gopabandhu Dash,
Advocates

For the respondents Mr. Ashok Mishra,
Sr. Standing Counsel
(Central)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR .K.P ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner, Shri Padmanav Nayak prays to direct the opposite parties to regularise his service with effect from 11.11.1975 and to pay the regular scale of pay and all other benefits from that date.

2. The petitioner was initially appointed as Contingent worker by order dated 30th October, 1975 under the Deputy Director General, Geological Survey of India, Bhubaneswar and he continued as such from 11.11.1975 to 31.12.1978. Thereafter he was converted to semi-skilled worker from 1.1.1979 to 31.12.1981, and thereafter the

petitioner is continuing in the said organisation as a contingent Lower Division Clerk. Two employees, similarly circumstanced had applied to the Hon'ble Supreme Court for a direction for regularisation of their services and for equal pay for equal work. Their Lordships vide judgment dated 17.1.1986 directed the Central Government to take appropriate action to regularise the services of those who have been in continuous employment for more than six months. This case is reported in AIR 1986 SC 584. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the petitioner has crossed the prescribed period of age qualification by the time he acquired qualification for appointment to the post of Lower Division Clerk and it is further more maintained by the opposite parties that the selection should be made through Staff Selection Commission. Hence it is maintained by the opposite parties that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Gopabandhu Dash, learned counsel for the petitioner and Mr. Ashok Mishra, learned Senior Standing Counsel. The fact that the petitioner was working as a Contingent Worker from 11.11.1975 was not disputed before us. The fact that the petitioner has gained the requisite educational qualification for being considered for appointment to the post of L.D. Clerk was also not disputed before us. Now the only question that needs determination as to whether the Bench should order

relaxation of age bar and direct the opposite parties for regularisation of services of the petitioner. Mr. Dash relied upon the judgment of Hon'ble Supreme Court reported in AIR 1990 SC 371 (Bhagwati Prasad v. Delhi State Mineral Development Corp.) In that judgment Their Lordships have been pleased to observe as follows :

" The main controversy centres round the question whether some petitioners are possessed of the requisite qualifications to hold the posts so as to entitle them to be confirmed in the respective posts held by them. The indisputable facts are that the petitioners were appointed between the period 1983 and 1986 and ever since they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience ignoring artificial break in service for short period/periods created by the respondents in the circumstances, would be sufficient for confirmation." If there is a gap of more than three months between the

Applying the principles laid down by Their Lordships of the Supreme Court to the facts and circumstances of the present case, we find that the petitioner has been

continuously working as contingent worker since 1975 and he has gained a requisite educational qualification since 1986. Therefore, in our opinion the principles laid down by Their Lordships in the above mentioned case apply in full force to the facts of the present case. That apart,

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long service rendered by the petitioner as contingent worker militates against the concept of Stop-gap-arrangement or adhoc arrangement. Therefore, while relaxing the age bar, we would direct that the petitioner Shri Padmanav Nayak be regularised in the post of Lower Division Clerk which he is holding and such regularisation will take effect from the date of order of appointment.

5. As regards payment of emoluments to the petitioner on prorata basis viz. the basic pay scale with additional D.A. etc. as drawn by the other L.D. clerk(s) should be paid to the petitioner in accordance with the judgment of the Hon'ble Supreme Court reported in AIR 1986 SC 584 (Surinder Singh vs. Union of India & Others) AIR 1987 SC 2342 (Bharatiya Dak Tar Mazdoor Manch vs. Union of India & Others) etc. Arrear emoluments w.e.f. 1975 be calculated and paid to the petitioner within 90 days from the date of receipt of a copy of the judgment. Thus the application is accordingly disposed of. No costs.


MEMBER (ADMINISTRATIVE)

27 APR 94

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 27.4.1994/ B.K.Sahoo


27.4.94
VICE-CHAIRMAN