

6
2

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.236 OF 1994

Cuttack, this the 23rd day of July, 1998

Radhashyam Giri Applicant

Vrs.

Union of India and another 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)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 23.7.98

7

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.236 OF 1994

Cuttack, this the 23rd day of July, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Radhashyam Giri, aged 28 years,
son of Bhagaban Giri,
At/PO-Tupurihazira, Via-Fulabani,
Dist.Balasore, at present serving as Choukidar in the
office of Assistant Commissioner of Income Tax,
Bhuaneswar Circle, Bhubaneswar Applicant

By the Advocates - M/s S.K.Das
S.B.Jena
A.K.Guru
B.B.Acharya
J.P.Rath &
J.Sengupta.

Vrs.

1. Union of India, represented through
its Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
New Delhi.
2. Commissioner of Income Tax,
Orissa, 15, Forest Park, Bhubaneswar ...Respondents

By the Advocate - Mr.A.K.Misra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Som

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to consider

the case of the petitioner for regularisation as L.D.Clerk taking into consideration his educational qualification and the services rendered by him as contingent paid staff from 1.8.1984. He has also asked for consequential arrear financial benefits.

2. The petitioner is now working as Choukidar in the office of Assistant Commissioner of Income Tax, Bhubaneswar Circle. He started as a daily rated worker with effect from 1.8.1984. According to the petitioner, there is provision for filling up of the post of L.D.Clerk from departmental candidates and he applied for the post of L.D.Clerk on 23.10.1984. On 28.3.1985 the petitioner was offered appointment as L.D.Clerk in the scale of Rs.260-400/-. This order is at Annexure-1. He joined on 1.4.1985 vide Annexure-2 and in the order dated 5.4.1985 (Annexure-3) he was given an appointment as L.D.Clerk on a purely temporary basis in the scale referred to earlier. He was attached to the Despatch Section in another order issued on 6.4.1985 (Annexure-4). While he was working as such, on 28.6.1985 the order at Annexure-5 was issued in which it was mentioned that services of the applicant as Adhoc L.D. Clerk were no longer required and as such his appointment was terminated with effect from 30.6.1985. In the same order, it was mentioned that upon termination of services of the applicant, he was reverted to the post of contingent paid staff at the rate of Rs.8.25 per day. In an order dated 24.12.1990 at Annexure-6 the applicant was selected for appointment as Choukidar in the scale of Rs.750-940/-. The petitioner's case is that he has been continuing as

9

Choukidar till date. The petitioner has submitted that Hon'ble Supreme Court in the case of U.P.Income-tax Department Contingent Paid Staff Welfare Association v. Union of India and others, AIR 1988 SC 517, had ordered that persons who have been working on daily wages for long years doing the same work as Class IV employees would be paid at rates equivalent to the pay scale of the regularly employed workers in the corresponding cadre without any increment with effect from 1.12.1986. In view of this, the petitioner states that he is entitled to get the regular scale of Class IV worker from 1.8.1984 and is also entitled to regularisation. It is further stated that respondent no.2 has issued an order on 3.6.1991 (copy not enclosed) counting the period of service of contingent paid staff for the purpose of pension. It is submitted that from this it is clear that his past service as contingent paid worker has been taken into account for the purpose of pension. The petitioner claims that his past service as a contingent paid worker should also be taken into account for the purpose of regularisation in the post of L.D.Clerk. The petitioner further states that even though he was employed as a contingent paid worker, he was actually made to discharge the duties of a ministerial staff and because of this also, his case should be considered for regularisation as L.D.Clerk.

J. Som.

3. Respondents in their counter have admitted the averments of the petitioner with regard to his engagement as daily rated contingent worker from 1.8.1984, his appointment as temporary L.D.Clerk from 1.4.1985, his attachment in the Despatch Section,

10

termination of his services on 30.6.1985 and thereupon his engagement as contingent paid staff. The respondents have also admitted that the petitioner was regularised as Choukidar with effect from 24.12.1990. The respondents' case is that the applicant's appointment as L.D.Clerk was purely on temporary basis and was ad hoc. His appointment was made against the vacancy to be filled up by the candidate sponsored by the Staff Selection Commission. He worked as temporary and ad hoc L.D.Clerk from 1.4.1985 to 30.6.1986 and this service for a period of two months does not give him a right to be regularised as L.D.Clerk. The respondents have stated that the Hon'ble Supreme Court in the case of U.P.Income-tax Department Contingent Paid Staff Welfare Association (supra) directed that persons who are working as contingent paid staff for long years on daily wage basis and discharging duties of regular Class IV staff should be paid at the rate equivalent to the minimum of the scale of pay of regularly employed workers in the corresponding cadres without any increment with effect from 1.12.1986. Further the Hon'ble Supreme Court directed that a scheme should be prepared to absorb the daily rated workers in the Income Tax Department who have continuously worked for more than one year to be absorbed as Class IV employees in accordance with their length of engagement as contingent paid staff/daily rated workers. The respondents have stated that accordingly, the case of the petitioner was considered. His period of engagement as contingent paid worker was taken into account and he was absorbed as Choukidar from 24.12.1990. The respondents have submitted that recruitment to the post of L.D.Clerk is done in accordance with the recruitment rules and selection is

11

S. Som.

made through Staff Selection Commission. Only the candidate recommended by the Staff Selection Commission can be appointed regularly to the post of L.D.Clerk. When suitable candidate was not available, the applicant was given temporary and ad hoc appointment as L.D.Clerk and consequent upon nomination of candidate by the Staff Selection Commission, services of the petitioner as temporary and ad hoc L.D.Clerk were terminated. The respondents have also stated that the applicant was not sponsored by Employment Exchange nor was he engaged through any process of selection and as such the respondents have opposed the prayer of the petitioner.

4. The applicant has filed a rejoinder and a verification bringing ^{certain} facts on record. In the rejoinder, the applicant has stated that he had continued as L.D.Clerk for three months from 1.4.1985 to 30.6.1985 and not for two months. It is also stated that he has acquired the minimum educational qualification and has passed Intermediate in Science in 1984 and B.A. in 1986. He has also stated that at the time his service as L.D.Clerk was terminated, no candidate was sponsored by the Staff Selection Commission and therefore, his case should have been considered for regularisation. In the verification the petitioner has brought to the notice of the Tribunal one case of L.D.Ghatuary who was appointed as L.D.C. on ad hoc basis on 19.5.1986 and his services were regularised as regular L.D.Clerk in order dated 9.12.1994. The applicant has annexed copy of these two orders and has stated that there are other instances

where persons, who were working in Group-D posts, have been regularised as L.D.Clerks like Sri L.D.Ghatuary, but the case of the petitioner has not been taken into consideration.

5. We have heard Shri S.B.Jena, the learned counsel for the petitioner and Shri Aswini Kumar Mishra, the learned counsel appearing on behalf of the respondents.

6. It is submitted by the learned lawyer for the petitioner that in the order dated 5.4.1985 at Annexure-3 the applicant was appointed as L.D.Clerk on a temporary basis. There is no mention that this appointment is ad hoc. According to the learned counsel for the petitioner, this is a temporary appointment and in Government service, the initial appointment is always temporary till the official is confirmed against the post. As such, it must be held that by this order dated 5.4.1985 the applicant was regularly appointed though on temporary basis to the post of L.D.Clerk and therefore, his services should not have been terminated in order dated 28.6.1985 at Annexure-5. Though the respondents have regularised the applicant as Choukidar, even now he is discharging the responsibilities of an L.D.Clerk. It is submitted by the learned counsel for the petitioner that the applicant has been subjected to hostile discrimination as services of L.D.Ghatuari were regularised as L.D.Clerk, but the petitioner's case was ignored.

7. Learned counsel for the Respondents has submitted that according to recruitment rules 90% of posts of L.D.Clerk are to be filled up by direct

recruitment by candidates sponsored by Staff Selection Commission and 10% of the posts are to be filled up by promotion from Group-D staff, Notice Servers, Record Keepers and Drivers. Because there was delay in getting name from the Staff Selection Commission, the petitioner was appointed on a temporary basis and on nomination having been received, his services were terminated. As regards the case of L.D.Ghatuary, it has been submitted that L.D.Ghatuary was working as a regular Watchman from 19.5.1986 while the petitioner was working as a contingent paid worker. He worked as temporary L.D.Clerk from 1.4.1985 to 30.6.1985 and thereafter as contingent paid staff. In other words, while L.D.Ghatuary was working as a regular Choukidar, the petitioner was a contingent paid worker at that time. As such it is argued by the learned counsel for the respondents that in appointing L.D.Ghatuary as regular L.D.Clerk on the recommendation of the D.P.C., no discrimination has been shown to the petitioner.

J. S. M.

8. We find that the order dated 5.4.1985 at Annexure-3 is in pursuance of the offer of appointment dated 28.3.1985, which is at Annexure-1. In pursuance of this offer of appointment, the petitioner was asked to report on or after 1.4.1985. The petitioner joined as L.D.Clerk on 1.4.1985 vide Annexure-2 and thereafter a formal order of appointment was issued at Annexure-3. Thus, for properly interpreting Annexure-3 it has to be read along with the offer of appointment at Annexure-1. From the offer of appointment it is clear that this offer of appointment was on a temporary and ad hoc basis. It was also mentioned in the second condition of appointment

in the order at Annexure-1 that his appointment is against the vacancy to be filled up by the candidate sponsored by the Staff Selection Commission and as and when suitable candidate is sponsored against this vacancy, his services will be terminated. It was also mentioned that his services are liable to be terminated at any time without assigning any reason. The petitioner joined vide Annexure-2 after accepting these conditions of service at Annexure-1. The order at Annexure-3 is, therefore, an order of his appointment on ad hoc and temporary basis subject to his services being terminated at any time without assigning any reason and on the nomination of regular candidate being made by the Staff Selection Commission. In view of this, it cannot be held that the appointment order issued at Annexure-3 is for a regular appointment as L.D.Clerk.

J Sm.
9. The services of the applicant as ad hoc L.D.Clerk were terminated in order dated 28.6.1985 with effect from 30.6.1985. In this order there is no mention that such termination has taken place on regular candidate being nominated by the Staff Selection Commission. The respondents have stated in their counter that the services of the petitioner as ad hoc L.D.Clerk were terminated on candidate being nominated by the Staff Selection Commission. The petitioner has controverted this in his rejoinder and has stated that even though no candidate was nominated, his services were terminated. Whatever it may be, the appointment order itself says that his services could be terminated at any time without assigning any reason and also on candidate being nominated by the Staff

Selection Commission. Thus, the order of termination of his services vide Annexure-5 is strictly in accordance with the condition of appointment and therefore, no fault can be found with that. After termination of his services as ad hoc L.D.Clerk, the petitioner worked as a contingent paid staff and in pursuance of the direction of the Hon'ble Supreme Court, in respect of such contingent paid staff, his services were regularised as Group-D staff. The applicant has stated that even though he was appointed as contingent paid staff, he actually discharged the responsibilities of an L.D.Clerk. He has also stated that even now while he has been appointed as a regular Choukidar in the office, he is discharging the duties of an L.D.Clerk. This assertion has not been specifically controverted by the respondents. But even granting for argument's sake that the applicant is discharging the functions of an L.D.Clerk, his appointment is as a regular Choukidar and he cannot claim to be regularised as an L.D.Clerk except in accordance with the recruitment rules. As has been submitted by the learned counsel for the petitioner, 10% of the posts of L.D.Clerk are to be filled up by promotion from Group-D staff like Notice Servers, Record Keepers, Drivers. The case of L.D.Ghatuary is one such case where he has been appointed as L.D.Clerk on ad hoc basis and later on regular basis from the post of regular Choukidar. In view of this, the petitioner must await his turn for consideration for appointment against the post of L.D.Clerk in case he is to be considered in accordance with the recruitment rules. A copy of the recruitment rules with regard to the filling up of the 10% of the

J. Som

16

posts of L.D.Clerk has not been produced by either side and therefore, it is not possible to check up if 10% quota is open to all categories of Group-D staff or only to Notice Servers, Record Keepers and Drivers. But from the fact that L.D.Ghatuary, who was working as regular Choukidar, has been appointed initially as ad hoc L.D.C. and later on recommendation of the D.P.C., as regular L.D.C., it does appear that other categories of Group-D staff are also entitled to be considered for appointment as L.D.Clerk against 10% quota. In view of this, the applicant has to await his turn for consideration for appointment to the post of L.D.Clerk against this 10% quota. His prayer for regularisation of his services as L.D.C., that too from the date of his initial appointment as contingent paid worker from 1.8.1984, is held to be without any merit and is rejected.

10. In the result, therefore, the Original Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

12

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.7.98

AN/PS