

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.ORIGINAL APPLICATION NO.639 OF 1994
Cuttack, this the 2nd day of August, 2001

Sri Bhagiratha Giri Applicant

Vrs.

Union of India and 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.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath S. S.
(SOMNATH S. S.)
VICE-CHAIRMAN
2.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 639 OF 1994

Cuttack, this the 2nd day of August, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

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

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Sri Bhagiratha Giri, son of (late) Bimbadhara Giri,
aged about 40 years, at present posted as UDC in the
office of the Dy.Director of Income Tax
(Investigation), Orissa, Bhubaneswar, A-322 Sahid
Nagar, Bhubaneswar-751 007, District-Khurda

..... Applicant

Advocates for applicant - M/s C.A.Rao

S.Patnaik

K.Rath

S.S.Nanda

Vrs.

1. Union of India, represented through the Secretary, Ministry of Finance, At/PO-Central Secretariat, New Delhi.
2. Central Board of Direct Taxes, represented through its Chairman, North Block, New Delhi-110 001.
3. Commissioner of Income-tax, Orissa, Bhubaneswar, At/PO-15 Forest Park, Bhubaneswar.
4. Dy.Director of Income Tax (Investigation),Orissa, Bhubaneswar, At/PO-A-322, Sahidnagar, Bhubaneswar, District-Khurda.
5. R.K.Patnaik, UDC, office of Asst. Commissioner of Income Tax, Circle-I, Central Revenue Building, Bhubaneswar.
6. Ch.Krishna Rao, UDC, office of Income Tax Officer, Jeypore Ward, Jeypore, Dist.Koraput.
7. B.C.Satpathy, UDC, office of the Income Tax Officer, Bolangir Ward, Bolangir, Dist.Bolangir.

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8. Sarada Prasanna Das, UDC, office of Assistant Commissioner of Income Tax, Arunodaya Market, Cuttack-12.
9. V.Shiv. Kumar, UDC, office of Assistant Commissioner of Income Tax, Berhampur, Hill Patna, Berhampur, Dist.Ganjam.
10. Sankar Bose, UDC, office of Assistant Commissioner of Income TAX, Circle-I, Central Revenue Building, Bhubaneswar.
11. N.K.Sahu, UDC, office of Income Tax Officer, Jeypore Ward, Jeypore, Dist. Koraput.
12. Kamalendu Das, UDC, office of Assistant Commissioner of Income Tax, Circle-I, Central Revenue Building, Bhubaneswar.
13. Smt.G.S.Samal, UDC office of Income Tax Officer, Phulbani Ward, Phulbani, Dist.Phulbani.
14. Hemanta Kumar Sethi, UDC, office of Commissioner of Income Tax, 15, Forest Park, Bhubaneswar-9, Dist.Khurda.
15. Basanta Kumar Behera, UDC office of Income Tax Officer, Bhubaneswar Ward, Central Revenue Building, Bhubaneswar.
16. Smt.A.Nirmala Kumari, UDC, office of Assistant Commissioner of Income Tax, Arunodaya Market, Cuttack-12.
17. Bharat Sethi, UDC, office of theCommissioner of Income-tax, 15 Forest park, Bhubaneswar-9.
18. Rajendra Behera, UDC, office of the Commissioner of Income-tax, 15 Forest Park, Bhubaneswar-9.
19. Sachipati Behera, UDC, office of Income Tax Officer, Keonjhar Ward, College Road, Keonjhar.
20. Dinabandhu Swain, UDC, office of the Commissioner of Income Tax, Orissa, 15 Forest Park, Bhubaneswar-9.
21. Chandi Prasat Patnaik, UDC, office of Dy.Commissioner of Income Tax, Bhubaneswar Range, C.R.Building, Bhubaneswar.
22. M.V.Raman, UDC, office of the Commissioner of Income-Tax, Orissa, 15 Forest Park, Bhubaneswar.
23. Ashok Kumar Das, UDC, office of the Income Tax Officer, Puri, Dist.Puri.
24. H.K.Swar, UDC, office of the Commissioner of Income Tax, 15 Forest Park, Rhubaneswar.
25. Bijaya Kumar Behera, UDC, office of the Income Tax Officer, Dhenkanal Ward, Dhenkanal.
26. Miss. Kabitanjali Mohapatra, UDC, office of AssistantCommissioner of Income Tax, Bhubaneswar Circle, Central Revenue Building, Bhubaneswar-7.

27. B.C.Nandy, UDC, office of the Income Tax Officer, balasore Ward, Balasore, Dist.Balasore.

28. Fagu Charan Hansdah, UDC, office of Commissioner of Income Tax, Orissa, 15 Forest park, Bhubaneswar-9.

29. Madhusudan Nayak, UDC, office of Commissioner of Income Tax, Orissa, 15 forest Park, Bhubaneswar-9.

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Respondents

Advocates for respondents - Mr.A.K.Bose
SR.CGSC
&
M/s R.B.Mohapatra
J.K.Nayak
N.J.Singh

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order dated 18.2.1994 at Annexure-6 rejecting his representation for refixing his seniority. His other prayer is that his seniority in the cadre of LDC should be counted from 31.7.1981 and he should be declared senior to respondent nos. 5 to 29. Departmental respondents have filed counter opposing the prayers of the applicant. Private respondents 5 to 29 were issued with notices and 15 of them had filed "A No. 754 of 1994 seeking time to file counter, but no counter has been filed by them. The applicant has not filed any rejoinder. We have heard Shri C.A.Rao, the learned counsel for the petitioner, Shri S.Behera, the learned counsel for private respondent nos. 5 to 29, and Shri A.K.Bose, the learned Senior Standing Counsel for the departmental respondents and have perused the records. The learned Senior Standing Counsel has filed the Recruitment Rules for promotion of Group-D staff to the rank of LDC and these have been taken note of. The learned counsel for the petitioner, after the

hearing was closed, has referred to one decision reported in 89(2000) CLT 261. This and other decisions relied on by the learned counsel for the petitioner will be referred to later in this order.

2. The applicant's case is that he worked as contingent paid staff from 8.8.1972 to 29.4.1981 under respondent no.3. On 29.4.1981 he joined in Group-D post as Peon and on 16.7.1981 he was appointed as LDC on ad hoc basis. The applicant joined the post of LDC on 31.7.1981. The applicant was absorbed in the post of LDC on regular basis with effect from 1.7.1988 in the order dated 7.9.1989 at Annexure-2. His seniority in the cadre of LDC was fixed on the basis of his date of regularisation on 1.7.1988. The applicant's grievance is that as his ad hoc period of service has been followed by regularisation he wants his seniority in the rank of LDC to be counted from 31.7.1981. His representation having been rejected in the impugned order dated 18.2.1994 he has come up in this petition with the prayers referred to earlier. It is not necessary to refer to all the averments made in the counter filed by the departmental respondents. These will be taken note of while considering the submissions made by the learned counsels of both sides. From the gradation list of LDCs enclosed by the applicant at Annexure-3 it appears that vide memo dated 25.6.1991 this gradation list has been prepared after considering all the representations received by the office of respondent no.3. The departmental respondents have

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pointed out that this gradation list showing the seniority position of LDCs as on 1.1.1990 was published on 25.1.1990. The applicant did not make any representation within the stipulated period. It is only after long lapse of three years he filed the first representation dated 8.11.1993 (Annexure-4). On this ground, it has been submitted by the departmental respondents that the OA is not maintainable on the ground of limitation. The respondents have also taken the stand that the appointment of the applicant as LDC from 31.7.1981 was on ad hoc basis and this cannot be counted towards his seniority.

3. We have considered the above submissions carefully. The second submission is taken up first. The order of ad hoc appointment in pursuance of which the applicant was appointed as LDC from 31.7.1981 is at Annexure-1. In paragraph 4 of this order it has been clearly mentioned that the period of service on ad hoc basis would not be counted for the purpose of seniority in that grade. It is necessary to mention that in Annexure-1 originally filed by the applicant, which was presumably attested as a true copy, this paragraph was not there. The applicant filed MA No.32 of 1995 on 31.1.1995 stating that this paragraph has been inadvertently omitted and with the permission of the Tribunal the true copy of Annexure-1 has been substituted. The applicant has stated that in his OA that there is no basis for regularising him from

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1.7.1988. From the Recruitment Rules, dated 20.12.1969, it appears that 10% vacancies in the rank of LDC to be filled up by direct recruitment are reserved for being filled up by Class IV employees borne on regular establishment, subject to the condition that the selection shall be made through a departmental examination confined to such Class IV employees who fulfil the requirement of minimum educational qualification, namely, Matriculation and equivalent and subject to their being within the maximum age limit of 40 years, relaxable by 5 years for SC & ST candidates. It is also provided that for such promotion of Class IV employees to LDC cadre, at least five years of service in Class IV is essential. The applicant by his own admission was appointed as Peon on 29.4.1981 and he was given ad hoc appointment to the post of LDC within a period of three months in the order dated 16.7.1981 in pursuance of which he joined on 31.7.1981. Thus, obviously, he did not have five years of essential service in Group-D for being regularly appointed as LDC from 31.7.1981. In this order of ad hoc appointment it was also mentioned that the applicant is required to pass the typewriting test. The Recruitment Rules provide that to be eligible for promotion the Group-D employees have to be selected through a departmental examination and the applicant had not cleared the departmental examination at the time of such ad hoc appointment. From his representation at Annexure-4 it appears that he had cleared the examination

subsequently and accordingly his service was regularised from 1988. In the instant case, the ad hoc appointment of the applicant was dehors the Recruitment Rules because he had not put in minimum five years of service nor had he cleared the departmental examination. Therefore, it is clear that this period of ad hoc service, even though it had continued till his regularisation from 1988, cannot be counted towards his seniority.

4. In support of his contention, the learned counsel for the petitioner has relied on the following decisions:

- i) Narender Chadha and others v. Union of India and others, AIR 1986 SC 638;
- ii) Rajbir Singh and others v. Union of India, AIR 1991 SC 518; and
- iii) Rashmi Ranjan Srichandan and others v. Principal-cum-Secretary, Sri Jayadev College of Education & Technology and others, 89(2000) CLT 261.

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We have perused these decisions. Rashmi Ranjan Srichandan's case (supra), decided by the Hon'ble High Court of Orissa, deals with termination of service without enquiry. This decision has no application to the case of the petitioner. In Narender Chadha's case (supra) and Rajbir Singh's case (supra) it has been held that when an employee appointed on officiating/ad hoc basis, is subsequently regularised, his period of ad hoc service can be taken into account for determining his seniority. In the instant case, the applicant did not

have the minimum service qualification of five years in Group-D to be appointed to the post of LDC in July 1981. By that time he had not cleared the departmental examination which is a precondition for promotion of Group-D staff to the LDC cadre. In view of this, his ad hoc appointment in July 1981 is completely dehors the Recruitment Rules. His ad hoc period of service till 1988 cannot be counted towards his seniority and these two decisions of the Hon'ble Supreme Court do not provide any support to the case of the applicant. In view of the above, we hold that the applicant is not entitled to count his ad hoc period of service for fixing his seniority. This prayer is accordingly rejected. It is also to be noted that the applicant has not denied the averment of the departmental respondents that he never represented against the draft seniority list and filed representation only three years after the final seniority list was circulated. On this ground also his claim is liable to be rejected.

5. In the result, therefore, we hold that the O.A. is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

VICE-CHAIRMAN

28/2/01