

7

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.23 OF 1995
Cuttack this the 31st day of July, 1998

B.K.Mohapatra

Applicant(s)

-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
21.7.98

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

8

(W)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.23 OF 1995
Cuttack this the 21st day of July, 1998

CORAM:

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

Brajakishore Mohapatra,
Son of Late Pandit Biswanath Mohapatra
At:Sakhigopal Lions Gate,
Qr.No.STO/4, At/Po:Sakhigopal,
Dist:Puri - at present working as
Head Clerk, in the Office of the
Dy.Superintending Horticulturist
Archaeological Survey of India
,Horticulture Branch Division
No.4, Luis Road,
BHUBANESWAR-2

...

Applicant

By the Advocates:

M/s.D.S.Mishra
S.Mohanty
S.Behera
K.M.Mishra

-Versus-

1. Union of India represented through
the Secretary, Human Resource Development
Department of Art and Culture,
Janpath, New Delhi-110011
2. Director General(Appellate Authority)
Archaeological Survey of India
Janpath, New Delhi-110011
3. Director Administration(Appointing Authority)
Archaeological Survey of India,
Janpath, New Delhi-110011

...

By the Advocates:

Respondents
Mr.Akhaya Mishra
Addl.Standing
Counsel(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant Shri Brajakishore Mohapatra, ~~sur~~ving under Archaeological Survey of India was promoted to the post of Upper Division Clerk along with six others by department order No.22 dated 26.2.1982(Annexure-1). At the time of promotion he was ~~sur~~ving in the Eastern Circle, Calcutta and was retained there as U.D.C.. On 21.3.1986 he was promoted to officiate as Head Clerk on adhoc basis in the Office of Superintending Archaeologist, Guwahati Circle at Guwahati vide Annexure-2. In that order it was mentioned that formal order of appointment as Head Clerk would be issued by the Superintending Archaeologist of Guwahati Circle. On his joining at Guwahati, Superintending Archaeologist by order dated 19.5.1986 appointed him as Head Clerk in that Circle with effect from 16.4.1986 (Annexure-3). On 33.1993, he was transferred from Guwahati to Bhubaneswar (Annexure-5) in the same capacity. He joined at Office of Deputy Superintending, Horticulturist, Survey of India, Bhubaneswar on 28.9.1993 after being relieved at Guwahati on 24.9.1993.

2. The applicant's assertion is that vide Annexure-4 dated 17.7.1992 he represented to Respondent No.2 to ascertain his position in the gradation list in the cadre of Head Clerks maintained throughout the country in that department, but without any response. The gradation list of Head Clerks issued on 15.4.1994 as corrected upto 1.4.1994(Annexure-6) received by him does not contain his name. He then represented to Respondent

No.2 (Annexure-7) to place his name at the top of that gradation list. Thereafter order dated 20.5.1994(Annexure-A/8) showing promotions of U.D.Clerks to the post of Head Clerks was issued. In that gradation list his name finds place under Sl.No.11 and place of posting at Bhubaneswar Horticulture Branch where he was previously transferred from Guwahati. Since he has been working as Head Clerk from 16.4.1986, it is averred by the applicant that his seniority in the post of Head Clerk is to be counted from that date, moreso when such promotion under Annexure-2 was issued again on the recommendation of D.P.C. Hence this application for fixing inter se seniority in the post of Head Clerk with effect from 16.4.1986; and for his placement in the gradation list published in the year 1994(Annexure-A/6); and for consideration of his promotion to the next higher grade, i.e. Junior Accounts Officer from the date his juniors were promoted.

3. The respondents in their counter pleaded that as some of the posts of Head Clerks at Stations like Srinagar, Guwahati, etc. were lying vacant, interested U.D.Cs were asked to volunteer for promotion on adhoc basis for their posting at these stations. In response to this proposal the applicant volunteered himself to be posted at Guwahati vide his representation dated 9.9.1985 (Annexure-R/1). This adhoc promotion does not confer any right regarding seniority etc. for the post of Head Clerk. The applicant accepted the promotion after understanding the proposals given by the department.

Hence he cannot claim seniority in the grade of Head Clerk on the basis of such adhoc promotion. Such adhoc promotion cannot be counted for regular promotion and seniority in the grade. All the monetary benefits admissible under the rules were given to the applicant during his stay at Guwahati. The ^{formal} promotion order issued by the Superintending Archaeologist at Guwahati was on the basis of the order dated 21.3.1986 issued by the Directorate(Annexure-R/2) and as such commission of word "Adhoc" in that order dated 19.5.1986 issued by the Superintending Archaeologist, Guwahati(Annexure-R/3) does not confer regular promotion status on the applicant. In fact his regular promotion was made strictly on the basis of seniority-cum-fitness by order dated 20.5.1994(Annexure-R/4) and his seniority as Head Clerk is counted from that date. His transfer to Bhubaneswar from Guwahati was in the same capacity, i.e., Head Clerk on adhoc basis and not as regular Head Clerk. Further objection of the respondents is that since he claims seniority over the U.D.Cs who are senior to him on the basis of his adhoc promotion as Head Clerk with effect from 16.4.1986 those employees should have been impleaded as respondents and in their absence claim of seniority by the applicant over them cannot be decided. Since he has been promoted as Head Clerk on regular basis on 20.5.1994, question of further promotion to Junior Accounts Officer from the date the employees, who according to him are the juniors does not arise.

4. In the rejoinder the applicant took the plea that under the adhoc promotions rules after expiry of one year, Respondent No.3 should have reviewed the adhoc promotion. This having been not done it is presumed that his promotion as Head Clerk with effect from 16.4.1986 is on regular basis. Atleast the adhoc promotion having expired after one year his continuance as Head Clerk would imply that he continued so on regular promotion basis. Further ^{the} inclusion of the employees over whom he claims seniority as Head Clerk in this application is not necessary because they have been promoted under a wrong policy of the department.

5. After conclusion of the arguments, the applicant on his request was permitted to file written submissions, but instead of filing of written submissions as such, he filed certain submissions with prayer adding some new facts supported by documents filed along with this submission. Since on these documents and new submissions no arguments were advanced, we cannot take note of the same, moreso, when the respondents have no opportunity to counter the same.

6. The main contention of the applicant as already indicated is that since he has been promoted though on adhoc basis as Head Clerk with effect from 16.4.1986, his seniority as Head Clerk must ^{be} counted ^{from} from that date. The case of the respondents-department is that such adhoc promotion was not a regular promotion and his regular promotion was made in May, 1994, according to rules. Such adhoc promotion was given as an incentive to some of the

UDCs to go to stations like Guwahati to serve there as Head Clerks. It is for this reason they issued circular dated 23.8.1985(Annexure-R/1) to all offices proposing to fill up one post of Head Clerk and two posts of UDCs in Guwahati Circle on adhoc basis from amongst the volunteers from various units of Archaeological Survey of India; and that interested UDCs/LDCs should send their willingness. It is only in response to this the applicant offered his willingness volunteering to serve as Head Clerk at Guwahati Circle on adhoc basis under Annexure-A.IV(counter to rejoinder). It is clear from the appointment order dated 12.3.1986 that the applicant was promoted to officiate as Head Clerk on adhoc basis(not promoted as Head Clerk) and in that order it was made clear that Superintending Archaeologist, Guwahati Circle would issue formal order of appointment on the applicant's joining at Guwahati. Viewed from this background it is clear that the order was issued by the Superintending Archaeologist, Guwahati Circle, appointing the applicant to officiate as Head Clerk pursuant to the order dated 21.3.1986.

7. It is not the case of the applicant that his juniors in the cadre of U.D.C. have been promoted earlier than him as Head Clerk. In the promotion list dated 06.2.1982 to the post of U.D.C. filed by the applicant under Annexure-1, his name finds place at the top amongst the seven UDCs mentioned therein. None of these UDC finds place in the gradation list of Head Clerk dated 1.4.1994 as on 31.10.1993(Annexure-A/6) filed by him. In fact this

graduation list will clearly reveal all the 27 employees mentioned therein entered service much prior to the applicant. Similarly none of the UDCs mentioned in the promotion list at Annexure-1 finds place under Annexure-X, i.e. list of employees promoted as Head Clerk after 16.4.986, as submitted by the applicant under Annexure-X of his rejoinder.

8. As earlier stated the applicant contended that since no review as made on his adhoc promotion it would be taken for granted that promotion was regular one. In this connection he filed Annexure-XII, 3 xerox pages of some printed portion containing "adhoc appointment/promotions". These pages do not at all indicate the relevant rules and year in which the so called rules were framed. The nomenclature of those rules and the year in which such rules were framed have not been clearly spelt out either in the applicant's rejoinder. Hence ^{these} on the basis of three pages xerox copies without beginning or the end of any chapter of any text or books should not be relied upon. Even otherwise these three pages do not clearly indicate ^{what} types of adhoc promotions ^{are} involved. At a glance contents of these three papers do not indicate that adhoc promotions of voluntary ^{being as} parties, involved in this case are dealt therein.

Therefore we do not agree with the contentions of learned counsel that the seniority of the applicant shall have to be counted from 16.4.1986.

9. As the employees in the gradation list dated

1.4.1992 in respect of Head Clerks under Annexure-6 and the list of employees under Annexure-X submitted by the applicant are seniors to him and since he claims seniority over them, in their absence his seniority as Head Clerk cannot be effectively determined. In their absence, if eventually the applicant is declared as senior to them as Head Clerk, principles of natural justice will be violated inasmuch under such event most of these employees would approach the Tribunals claiming seniority over the applicant mainly on the ground that no opportunity has been extended to them before hearing in the matter. On this ground also this application cannot be maintained.

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 31.7.98

B.K.Sahoo, C.M.

31.7.98
(G.NARASIMHAM)
MEMBER(JUDICIAL)