

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.25 of 1995.
Cuttack, this the 9th day of January, 2001.

James Eric.

... ...

Applicant.

-Versus-

Union of India & Ors. ...

...

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

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR.G.NARASIMHAM, MEMBER(JUDICIAL) .

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James Eric, Son of Eric Antony,
Aged about 50 years, C/o Bhoi Sahi,
(In front of Central School, Balasore)
now working as Work Sharkar Grade-3,
Subarnarekha Sub Division Central Water
Commission Irrigation Colony, Balasore. Applicant.

By legal practitioner : Mr.J.R.Dash, Mrs.K.L.Dash, Advocates.

- V e r s u s -

1. Union of India represented through the Secretary, Ministry of Water Resources, Shama Sakti Bhaban, New Delhi.
2. Chairman, Central Water Commission, Establishment Section-12, Seva Bhaban, R.K.Puram, New Delhi-66.
3. Under Secretary, Central Water Commission, Seva Bhaban, R.K.Puram, New Delhi-66.
4. Superintending Engineer, E.R.Circle, (Behind Maharshi College,) Sahid Nagar, Bhubaneswar.
5. Executive Engineer, Lower Lacyap E & M Division, Ranipool, Sikkim.
6. Executive Engineer, Mahanadi Division, Central Water Commission, Burla, District-Sambalpur.

... Respondents.

By legal Practitioner: - Mr.A.Routray, Additional Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, the applicant has prayed for a direction to the Respondents to allow him the scale of pay of Rs.380-560/- meant for Crane Operator instead of the scale of Rs.260-400/- from the date of joining i.e. 1.10.1978 to 20.3.1984 and thereafter, till the date instead of the scale of Rs.210-290/-. He has also prayed for being given a post equivalent to the post of Crane Operator with usual scale of pay and arrears. The case of the applicant is that in 1977 he applied for the post of Crane Operator in the office of the Executive Engineer, Lower Lagyap E&M Division under the Central Water Commission and he was called for an interview held on 30.12.1977. The letter dated 1.12.1977 calling him for the interview is at Annexure-1. In letter dated 7-1-1978 at Annexure-2, he was directed to produce certificates in support of educational qualification and date of birth. Thereafter, in order dated 3-3-1978 at Annexure-3, he was offered the post of Workcharged Assistant Crane Operator in the scale of Rs.210-290/- plus other allowances. It was mentioned in this order that the appointment is in workcharged Estt. and is purely temporary in nature and is terminable with 14 days notice on either side. Applicant has stated that even though he applied and appeared at the interview for the post of Crane Operator, he was appointed as Asst. Crane Operator even though no such post was there. Subsequently, the applicant was promoted to the post of Crane Operator, w.e.f. 1.10.1978 and continued in Lagyap electrical maintenance Division, Sikkim and got the scale of Rs.260-400/- which according to the applicant was also not meant for Crane Operator. The order promoting him to the post of Crane Operator from the post of Asst. Crane Operator w.e.f. 1.10.78 is at Annexure-4. Applicant

has stated that he subsequently came to know that the actual prescribed pay scale of Crane Operator is Rs.380-560/- and this is clear from the Ministry of Finance letter dated 23rd September, 1974 at Annexure-5. He gave a notice under section 80 CPC for granting him the scale of pay of Rs.380-560/- from 1.10.78. Applicant has stated that there was some correspondence between the Ministry of Irrigation and Chairman Central Water Commission and Supdt. Engineer, E.R.Circle wrote to Chairman, Central Water Commission in his letter dated 27-2-1984 at Annexure-6 stating that the scale of pay of Rs.260-460/- given to the applicant on his promotion to the post of Crane Operator is not a notified scale of pay. It is further stated that the project in which the applicant was working was due to be handed over to the Government of Sikkim and the workers engaged in the project were apprehensive about their continuance in service and in meeting held on 13th and 14th of Nov., 1983, an agreement was effected to absorb them with all benefits including pay protection. On 20.3.1984, the project was closed and handed over to the Sikkim Government, and thereafter, the applicant was absorbed as Grade-III Work Charged work Shankar under Mahanadi Division at Burla. Applicant has stated that on his absorption in Mahanadi Division in Burla, he was given the scale of Rs.210-290/-, as per the order dated 5.6.1990 of the Executive Engineer, Mahanadi Division, Burla, at Annexure-7. He filed a large number of representations but without any result. In the context of the above facts, the applicant has come up in this original Application with the prayer referred to earlier.

S. J. Om

2. Respondents, in their counter have opposed the prayer of the applicant on the ground of limitation as also lack of jurisdiction of this Tribunal the cause of action having been arisen on a date prior to 3 years from the date of establishment of

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this Tribunal. They have stated that Lower Lagyap Hydro Project Sikkim is defunct from 1984 and no record is available for comments by the Respondents. It is stated that as per the instructions submitted by the applicant himself it is clear that although the interview was held for the post of Crane Operator, he was put under probation in order to ascertain his suitability for the said post and offered the post of Assistant Crane Operator. It is stated that the applicant has joined as Assistant Crane Operator without questioning and challenging the same. On the closure of the LLHP, applicant was declared surplus and the Respondents were not obliged to give any appointment to the surplus hands but on humanitarian ground, the applicant was given a fresh appointment in Mahanandi Division in the post of Work Sankar, Grade-III in the scale of pay of Rs.210-290/- where vacancy exists. There was no post of Crane Operator in the Mahanadi Division and as such giving the post of Crane Operator ~~as such~~ is not possible. Accordingly, while fixing his pay, pay protection was given to him and his pay was fixed at the maximum of the scale of Rs.210-290/- at the level of Rs.290/- which is the same basic pay which he was getting at the time of retrenchment from LLHP. Applicant joined the post without any objection in 1984. Respondents have stated that all the representations filed by the applicant to President of India, Prime Minister and other higher authorities, have not been enclosed to the petition and therefore, the Respondents are not in a position to comment on the same. On the above grounds, the Respondents have opposed the prayer of the applicant.

S. Som.

3. From the above recital of pleadings of the parties it appears that the applicant's case is that in 1977 he was interviewed for the post of Crane Operator but he was given the actual appointment as Assistant Crane Operator on probation for

a period of three months. It is also necessary to note that this appointment as Asst. Crane Operator was also under the Workcharged Establishment as it appears from Annexure-3. The offer of appointment as Assistant Crane Operator is dated 3-3-1978 ^{and} w.e.f. 1.10.1978 he was promoted to the post of Crane Operator again in the workcharged establishment and given the scale of Rs.260-900/- w.e.f. 1.10.1978. Applicant's first grievance is that even though he was interviewed for the post of Crane Operator he was initially given appointment only in the post of Assistant Crane Operator. This happened in 1978 in LLHP which was taken over by the Govt. of Sikkim. The project was closed in the year 1984 and Respondents have reasonably stated that no records of the Project is available. In any case, if the applicant has any grievance for being offered the appointment as Assistant Crane Operator, he can not be permitted to raise the grievance after the passage of morethan 17 years by filing this Original Application in the year 1995.

4. The second grievance of the applicant is that when he was promoted to the post of Crane Operator w.e.f. 1.10.78, he was given the scale of Rs.260-900/- though according to the Ministry of Finance, Department of expenditure OM dated 11.9.74 (Annexure-5) the Crane Operator Scale after 3rd Pay Commission was Rs.380-560/-. In the enclosure to Annexure-5 the Crane Operators have been shown against Sl.No.6 and have been taken together along with the Assistant Foreman, Senior Drill Operator, Drill Operator, and Chargeman. Earlier scale to these posts were 205-280/- and on the basis of 3rd pay Commission's recommendation this was apparently changed to Rs.380-560/-. Thus, it is clear that when the applicant was promoted to the post of Crane Operator w.e.f. 1.10.78 the scale of pay of Crane Operator was actually Rs.380-560/-. But here again this happened in 1978 and the applicant has come up only in

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1995. Under the provisions of section 21(2)(a) of the A.T.

Act, 1985, the Tribunal has no jurisdiction to consider a grievance which has arisen at any time prior to the period of three years preceding the date of establishment of the Tribunal. As the Tribunal was established on 1.11.1985, and as the cause of action arisen w.e.f. 1978, we are unable to provide the relief to the applicant.

5. The next grievance of the applicant is with regard to fixation of his pay on his absorption as Surplus staff in Mahanandi Division after the LLHP was closed in 1984 and handed over to Govt. of Sikkim. Respondents have stated that there was no post of Crane Operator in Mahanadi Division and the vacant post available was that of workcharged Worksakar, Gr.III and therefore, the applicant was absorbed in the post and given the scale of Rs.210-290/- . We find no illegality in such action more so when from Annexure-7 it is found that the basic pay which the applicant was getting at the time of his retrenchment from LLHP i.e. Rs.290/- per month was protected while fixing his pay in Mahanandi Division.

6. In view of this, we hold that the Tribunal can not allow the relief of getting the scale of Rs.380-560/- w.e.f. 1.10.1978. The application is therefore, held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN