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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 526 OF 1995
CUTTACK THIS THE 08th DAY OF Aug. / 2002


M.B. Khan Applicant

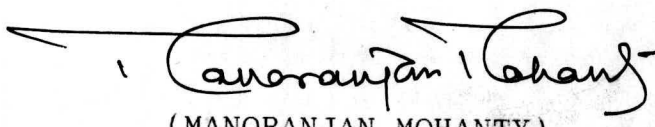
-Vers-

Union of India & others Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? No.
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not ? No.


(S.K. HAJRA)
MEMBER (ADMINISTRATIVE)


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

7

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.526 OF 1995
CUTTACK THIS THE ~~08th~~ DAY OF *August*, 2002

CORAM:

THE HON'BLE SHRI S.K. HAJRA, MEMBER (A)
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

.....

M.B. Khan, 52 years,
son of late Panchu Khan, Manikagada,
Khurda, at present serving as Head Clerk,
Mancheswar Workshop Electrical Engineer,
S.E. Rly, Mancheswar

.....Applicant

By the Advocate(s)

M/s A.K. Mishra,
J.Sengupta,
A. Guru,
B.B. Acharya

-VERSUS-

1. Union of India represented through
its Secretary,
Ministry of Rly.,
Rail Bhavan,
New Delhi.
2. S.E. Rly., through its General Manager,
Garden Reach,
Calcutta.
3. Chief Workshop Engineer,
Carriage Repair Workshop,
Mancheswar,
At/Po-Mancheswar, Dist. Khurda

.....Respondents

By the Advocate(s)

..... Mr. B. Pal

O R D E R

MR. MANORANJAN MOHANTY , MEMBER (JUDICIAL) : Facts of
this case, as revealed from the pleading of the Parties,
are as follows:-

A new carriage repair workshop was established by
Indian Railways at Mancheswar (near Bhubaneswar) in the year
1980 and on 22.12.1980 a Memorandum was drawn (said to be a

7

"Joint Procedure Order"); wherein it was decided that in future, a cut-off date shall be fixed to treat the carriage repair workshop in question to be an independent unit for the purpose of determining the seniority and promotion of its staff. In the said premises, the Applicant, who was working as a Junior Clerk at Adra Railway Division (of South Eastern Railway Zone) of Indian Railways, was transferred to the Carriage repair workshop in question (at Mancheswar, near Bhubaneswar, under the same Railway Zone) under the order No.E(EL.) S/618/82/76 dated 16.10.1982 of the Sr. D.P.O/ Adra and he joined at the new place of posting (as a Junior Clerk) at Mancheswar (near Bhubaneswar) on 18.10.1982; where he was given ad-hoc promotion, on 04.10.1989, as Senior Clerk. At that time a Head-clerk post (in the scale of Rs.1400-2300/-) in construction cadre was lying vacant at Mancheswar Workshop; as against which, on 21.02.1986, the Applicant was given ad-hoc promotion. While the Applicant was on the ad-hoc promotion as a Head-clerk at Mancheswar Workshop, he was granted regular promotion as a Senior Clerk in his parent place vide DPO/Adra Office Order No.E (ELD/4/87 dated 04.02.1987 w.e.f. 04.02.1987. While the things were at this stage, a decision was taken (vide CPO/S.E. Rly/GRC Memo No.P/L/13/Elect/MCS/Cadre dated 18.01.1989) treating 01.01.1988 as the cut-off date. This was done under the "Joint Procedure Order" dated 22.12.1980 (supra) and,

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accordingly, seniority of all the staff working in Electrical Department of MCSW/S was prepared by taking their substantive status as on 01.01.1988 from their parent units. Accordingly, a notice (No.WPO/MCS/P.Elect/Sr.List/Mins.) dated 22.02.1989 was issued inviting willingness of the staff (who wanted to return to their parent units) to submit their options' within two months of the publication of the notice. The Applicant, who did not opt to go back to his parent place of posting, stayed in MCS (W/S). Due to abolition of Construction post (as against which the Applicant was continuing, on ad-hoc basis, as Head-clerk) his ad-hoc continuance as Head-clerk came to an end and, subsequently, he was given another ad-hoc promotion, as Head-clerk (as against a vacant post of Mechanical Department Cadre) vide Office Order No. CRW/MCS/P/Elect./Cadre/Spl. dated 16.11.1990. While the Applicant, a personnel of Electrical Department, was continuing as Head-clerk (on ad-hoc basis) as against the Head-clerk post of Mechanical Department Cadre; a Joint Representation dated 17.07.1995 from the Ministerial Staff of Mechanical Department (raising grievances; because the Mechanical department Cadre Head-clerk post was being held by a personnel of Elect. Dept.) received consideration of the competent authority and it was decided that the post of Head-clerk of Mechanical Department; which was given to Electrical Department for temporary operation (vide Office

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Order No.CRW/MCS/P-19/1087 dated 15/16.03.1988) to be restored back to Mechanical Department vide O.O. No.CRW/MCS/P-8/Pt.II/4277 dated 21.09.1995. As a consequence of this, the Applicant had to face reversion from the post of Head-clerk (which he was holding an ad-hoc basis) to his substantive post of Senior Clerk vide Office Order No.CRW/MCS/P-Elect./6/pt.II/Min/4278 dated 21.09.1995.

2. Before any action ^{was} taken on the Joint representation (dated 17.07.1995) of the Staff of Mechanical Department Cadre (Supra) the Applicant (who was continuing as a Head-clerk, on ad-hoc basis, since 21.02.1986/16.01.1990) filed this Original Application, on 08.09.1995, under section 19 of the Administrative Tribunal Act, 1985 seeking a direction (to the Respondents) to treat him as regular Head-clerk from 21.02.1986 and to grant him all consequential service benefits.

3. In the Original Application, the Applicant, has made the following averments;

"It is submitted which the petitioner believes to be true that in Adra Division of the SE Rly. a requisition was made by the Adra Division to regularise the services of the petitioner in the post of Head Clerk. The petitioner reliably believes that it was intimated by the OP No. 3 that the petitioner has already been regularised and he has a lien and as such it is not required that the petitioner should be disturbed from his present place of posting to join Adra Division. If the petitioner would have been relieved at the relevant time the petitioner would have been regularised in the post of Head

7

Clerk. The petitioner was not relieved since it was felt by the OP No.3 that the petitioner is one of the competent official to discharge the duties and as such they did not like to spare the services of the petitioner. At one hand when there was regular post and when the petitioner was to be regularised he was not spared and in other hand, the petitioner has been allowed to continue on adhoc basis till to day."

In reply to the above stand of the Applicant, the the Respondents have explained the situation as follows, in their counter:-

"DRM(P)/Adra vide his letter No.E(Elect) S/714/Sr. Clerk/HC dated 30.06.1995 (R-7) wanted to know whether Sri Khan has been absorbed in Mancheswar Workshop in permanent cadre or not. Accordingly, a suitable reply has been sent to DRM(P), Adra vide No.CRW/MCS/P-Elect/6/Pt.II/Min/2923 dated 03.07.1995 (R.8) stating that since M.B. Khan has not opted to return back to his parent place of posting in terms of CPO, GRC Memo No.P/L/13/Elect/ MCS/Cadre dt. 18.01.1989 circulated through vide this office No.WPO/MCS/ Elect/49/Cadre dated 23.01.1989 (R-9) he has been included in the cadre of Electrical Department of Mancheswar Workshop and his lien from his parent unit has thus been terminated with effect from 01.01.1988.)"

In support of their stand, the Respondents have placed on record two documents as Annexure R.7 dated 30.06.1995 and Annexure R.8 dated 03.07.1995.

Annexure R.7 dated 30.06.1995 goes to show that Adra Division wanted to know only as to whether the Applicant has been absorbed or not in Mancheswar Workshop. They did not disclose therein that Applicant was due to become Head-clerk in Adra Division. Applicant has placed no materials on record to show that a regular post of Head-clerk was available at

12

Adra Division for him. Under Annexure R.8 the Respondents intimated the Adra Division that since the Applicant did not opt to go back to his parent cadre, he is deemed to have opted to remain in Elect. Dept. Cadre of Mancheswar Workshop. They even did not whisper in the said communication that Applicant is in the post of Headclerk; which shows that the Respondents were conscious that the Applicant is/was just an ad-hoc Headclerk having no subsisting right in the said post. It has also been explained in detail (by the Respondents in their counter) that no vacant post of Head-clerk is available in Elect. Dept. of Mancheswar Workshop to accommodate the Applicant as such; for which he had to face reversion from the post of Head-clerk to that of the post of Senior Clerk.

4. Having heard the Advocate for both the sides and having perused the pleading of the parties it is clear to us that the claim of the Applicant to be regularised as against the post of the Head-clerk is not sustainable; neither on facts (as discussed above) nor on law; especially when Law is well settled in a plethora of Judicial pronouncements of the Hon'ble Supreme Court of India and as also of various Hon'ble High Courts/Tribunals. It is not necessary to quote all those well settled decisions of various Hon'ble Courts and it would suffice to name the decision of the Hon'ble Apex Court reported in AIR 1995 SC 974 rendered in the case of State of Orissa & other Vrs. Dr. Pyari Mohan Misra reported in AIR

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1995 S.C. 974; wherein it has been held that long continuation in Ad-hoc employment doesnot confer any permanency in the services.

5. In the result, this Original Application, being devoid of any merit, is dismissed. No Costs.


(S.K. HAJRA)
MEMBER (ADMINISTRATIVE)


(M. R. MOHANTY)
MEMBER (JUDICIAL)
08/08/2012

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