



CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.312 OF 1996
Cuttack this the 25th day of August/2000

Miss.M.Asantamu Acharya ... 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.*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

9

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 312 OF 1996
Cuttack this the 25th day of August/2000

CORAM:

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

Miss.M.Asantamu Acharya,
30 years
D/o. M.Paparao Acharya at present
working as Tailor in the office of
Regional Leprosy Training Research
Institute,
Babampur, via - Aska
Ganjam

...

Applicant

By the Advocates

M/s.A.K.Mishra
J.Sengupta
B.B.Acharya
S.S.Sahoo
C.Mohanty

-Versus-

1. Union of India through it's
Director General of Health
Services (Leprosy Division)
Nirmanbhaban,
New Delhi-110011

2. Director,
Regional Leprosy Training
Research Institute,
Aska,
At/PO: Aska,
District - Ganjam

...

Respondents

By the Advocates

Mr. A. Routray
Addl.Standing Counsel

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to Opposite Parties to regularise the services of the applicant in a Group - C post and to allow her consequential service benefits with retrospective effects.

2. The case of the applicant is that she was initially appointed as a Tailor in the Regional Leprosy Training Institute, Aska in a Group D post in Februar/86. She has stated that even though she was appointed in a Group D post, right /from the date of her initial appointment she has been discharging the duties as L.D. Clerk. Applicant has enclosed certain orders showing entrustment of duties of Group C post. She has further stated that even though she has been discharging the duties of Group C post and has represented several times for regularisation in that post, her case has not been taken into consideration whereas Group C posts have been filled up by giving promotions to Group D category staff. In the context of the above facts, applicant has approached this Tribunal with the prayers referred to earlier.

3. Respondents in their counter have denied the averment of the applicant that right from the date of her initial appointment she has been working against Group C post. They have pointed out that one Smt. E. Lakra, a Group C post holder went on maternity leave and ~~her~~ ^{her} part of work relating to diary and despatch was given to the applicant. Respondents have stated that applicant was directed to perform the duties of diary and despatch for some time. They have also stated

that responsibility of an L.D.Clerk involves other works apart from diary and despatch and only this part of work had been given to the applicant. It is further stated by the respondents that ^{due} to proceeding on leave by the Group C employee duties were distributed amongst the Group D officials including the 2nd Tailor, J.Mandalin. Later on in order dated 20.6.1990 Shri Panda, Computer of the Institute was assigned the job of diary and despatch. Respondents have stated that after promotion of an L.D.Clerk to the post of U.D.Clerk, a vacancy arose in the post of L.D.Clerk in October/95. Three Group - D officials including the applicant submitted applications claiming the vacant post of L.D.Clerk. Their cases were examined and it was found, as per Civil Service Rules, copy of which has been enclosed at Annexure-B that 10% of vacancies in the L.D.C. grade would be filled up from amongst the Group D employees, who possess the necessary qualification for the post. But in this case as there was a single post, the post could not be filled up. Therefore, the matter was referred to the higher authority and pending decision, the post was not filled up as the same is required to be filled up by way of direct recruit from Staff Selection Commission. But so far no direction from OP 1 has been received and therefore, the post has not been filled up. Respondents have also stated that even if the said post is filled up by way of promotion applicant cannot straightaway be given appointment to that post. She is one of the candidates who are to be considered and the post is to be filled up in accordance with procedure as mentioned in the Rules at Annexure-B, which provide for holding of departmental examination confining to

J Sam.

such of the Group D employees, who fulfill the requirement of minimum educational qualification, i.e. Matriculation as also the other qualification, i.e. age and minimum period of service in Group D post. Respondents have stated that as no clarification has been received from Respondent No.1, no action in this case has been taken.

4. We have heard Shri A.K.Mishra, learned counsel for the petitioner and Shri A.Routray, learned Addl.Standing Counsel appearing for the Respondents and also perused the records.

5. Learned counsel for the petitioner has made the following submissions :-

- i) State being a model employer must act in an equitable fashion and as the applicant has been discharging the duties of Group C post for long periods over a number of years, she is entitled to be regularised in that post; and
- ii) In the past Group C posts have been filled up by giving promotions to Group D employees (this has also been referred to in the O.A.) and there should not be any discrimination so far as applicant is concerned

SJM.
We have considered the above submissions made by the learned counsel for the petitioner very carefully. We note from the counter and this is also supported by letter dated 16.11.1995, at Annexure-6, issued by Respondent No.2 to Respondent No.1 that for filling up of the vacant post of Group C amongst three Group D employees clarification on promotion has been sought for. In the counter it has been mentioned that no such clarification/promotion has been received and because of this the post has not been filled up. The post could not be filled up also for the reason ^{that the} stay order continued for a number of years. ^{SJM.} This is apparently a small office where vacancy in the post of L.D.Clerk would arise in a particular year only in small number

13

5

13

and if 10% vacancies in a particular year is filled up then no promotional prospect is there for Group D employees. In view of this it is necessary that the case of promotion of Group D employees to Group C should be considered in accordance with rules, even if there exceeds 10% of vacancies in a particular year. In the instant case there is only one vacancy and strictly speaking 10% of that will not come to a post. In consideration of this, we direct Respondent No.1 to take a view on the proposal of Respondent No.2 with regard to filling up of the vacant post of Group C by giving promotion to Group D employees of the Institute in accordance with rules vide Annexure-5, i.e. through holding of examination. Respondent No.1 should take a view on this within a period of 30 (Thirty) days from the date of receipt of this order. The above direction is subject to the condition that post of L.D.C. is still vacant in that Institute and has not been filled up in the meantime. In case it is decided within 30 days as mentioned above to fill up the post of L.D.C. by giving promotion to Group D employees, then a selection test as required under the rules should be held and the applicant along with other eligible Group D employees will be entitled to appear in such examination subject to conditions as laid down therein.

With the above direction and observation, Original Application is disposed of, but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

Somnath Sen
(SOMNATH SEN)
VICE CHAIRMAN
25/10/20