

5

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.69 OF 1996

Cuttack, this the 15th day of July,1996

Sri Purna Chandra Modi

....

Applicant

Vrs.

Union of India & another

....

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 No. Central Administrative Tribunal or not?

Narasimhaswami.
(N.SAHU)
MEMBER (ADMINISTRATIVE)

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.69 OF 1996

Cuttack, this the 15th day of July, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

...

Sri Purna Chandra Modi,
S/o (L) Laxman Modi
aged about 40 years,
at present posted as a L.D.C. in the
office of the Assistant Welfare Commissioner,
Labour Welfare Organisation,
Barbil, PIN 758 035 in the district
of Keonjhar

...

Applicant

By the Advocates

-

M/s L.Dash,
P.Venkataswarlu &
B.P.Rath.

-versus-

1. Union of India,
represented through the
Secretary, Ministry of Labour
Shram Shakti Bhawan,
At/P.O-Rafi Marg,
New Delhi 110 001.

2. Welfare Commissioner,
Labour Welfare Organisation,
Government of India,
Ministry of Labour,
33 Ashok Nagar, Bhubaneswar-751 009
District-Khurda

....

Respondents

By the Advocate

-

Shri Ashok Mohanty,
Senior Central Govern-
ment Standing Counsel.

....

O R D E R

N.SAHU, MEMBER (ADMN.) In this application the applicant prays for quashing the order dated 26.12.1995 passed by the Welfare Commissioner, Labour Welfare Organisation (Respondent No.2). The brief facts leading to the dispute are that some vacancies had arisen in the L.D.C. cadre in the office of the Welfare Commissioner on account of retrenchment/termination of some of the L.D.Cs. who were appointed on ad hoc basis. A list of qualified Group 'D' personnel eligible for promotion were interviewed and tested. Meanwhile, the retrenched/dismissed L.D.Cs. contested the orders in several cases before the C.A.T. and the Hon'ble Supreme Court. The Respondents wanted to fill up those vacancies on provisional/ad hoc basis and therefore, appointed the applicant vide Annexure-2 to the application. The order is dated 8.7.1994. The order is prefaced by saying that the postings are "ad hoc appointments/ promotions made purely on provisional and as a stop-gap arrangement pending final judgments of the Hon'ble Supreme Court/C.A.T., Cuttack vide O.A.No.399/91, No.371/91, O.A.No.72/93 and O.A.No.682/93". The applicant was appointed as L.D.C. It is made very clear in the body of the order that these appointments are purely provisional and ad hoc pending decisions and judgments in the Court cases. It is next mentioned that these promotions do not confer any right on the concerned Government servants for regular promotion. It is finally stated that the persons promoted may be reverted to their respective cadres at any time without assigning any reason. There is also another condition in the appointment order, namely, that

parasimh,

if the applicant along with others accepted the appointments on the terms and conditions as stipulated therein, each of them would be free to report to duty. This is a conditional order and the applicant was every much aware of the stipulated conditions before he accepted the appointment by order dated 8.7.1994. He worked in this post for one year and five months and remained in charge of Stores Section. He was transferred as Welfare Worker by the impugned order dated 26.12.1995 to the office of the Assistant Welfare Commissioner, Barbil, in the same pay scale of Rs.950-1500/- in which he was appointed earlier on 8.7.1994. This order was challenged in O.A.No.20 of 1996. The O.A. was disposed of by a direction that he should file a representation before Respondent No.2, the Welfare Commissioner, Bhubaneswar. The representation was rejected on 16.1.1996;

"He was appointed as LDC purely on ad-hoc basis and as a stop-gap arrangement pending final judgement of the Court order, vide this office order No.2/69/94 dated the 8th July '94. Meanwhile as per the judgment passed by the Hon'ble CAT, Cuttack Bench, appointment to the post of LDC has already been made (against which vacancy he was appointed).

After carefully considering his case, he was adjusted being re-designated as Welfare Worker in the identical pay scale of Rs.950-1500/- attached to the post of LDC.

From the above representation it seems that Shri Modi is not accepting the post of Welfare Worker. However, he has already been relieved from the post of LDC by the office of the Asst. Welfare Commissioner, Barbil, with effect from 8th Jan '96 (forenoon).

If he will not join the post of Welfare Worker by the 22nd January '96 it will be construed that he is not interested for above post and accordingly action will be taken to revert him back to his original post."

Handwritten signature: *Handwritten signature*

A

The case of the Respondents is that as a compassionate measure they adjusted the applicant as a Welfare Worker in the same scale of pay. This was not a case of transferring the applicant from L.D.C. to Welfare Worker. In paragraph 11 of the counter it is stated that the applicant cannot be adjusted against the post of L.D.C. which has since been filled up because of the disposal of the Court cases directing reinstatement of the retrenched L.D.Cs. In short, as the applicant was never appointed in substantive capacity, the present adjustment of the applicant in an equivalent post has been held to be justified. If the applicant is not willing to join the said post of Welfare Worker, the Department wants to revert him back to the post of Group 'D' which was prior to the issue of the order under Annexure-2. It is averred in paragraph 16 of the counter that the total strength of L.D.C. cadre has been filled up and there is no vacancy to accommodate the applicant. The Hon'ble Supreme Court's orders in the cases of Sunil Kumar Panigrahi and Bibhu Pd. Mohapatra and the C.A.T.'s orders in O.A.No. 371 of 1991 and M.A.Nos. 517, 662 and 744 of 1993 ^{and in O.A.No. 399 of 1991} were annexed to the counter.

2. The contention of the applicant is that he was selected to the post of L.D.C. after proper procedure of selection by interview and the job of a Welfare Worker to which he has been transferred has a different job content of imparting training to ladies. His transfer has been stated to be premature as he has not completed three years of service

and no public interest is involved in this transfer. In the rejoinder, the applicant states that some of the retrenched L.D.Cs. were appointed long back prior to the date of his appointment as L.D.C. in July, 1994. He says:

"Thus there were six posts of L.D.C. during 1993 when only 2 are to be reappointed as per Court orders."

His claim is that he is a S.T. candidate and he should be appointed against that roster point.

The learned counsel for the applicant, Shri P. Venkataswarlu cited the decision of the C.A.T., Jabalpur Bench, T.A.No.83 of 1987 (Ghan Shyam v. Union of India) reported in 1987(3) S.L.J. (CAT) 673. The Tribunal found that the applicant was duly selected and the post was vacant. Merely using of the word 'ad hoc' or 'on purely temporary basis' was held to be immaterial in such cases. He next cited the General Financial Rules, 1963 which mandate that in case of transfer of charge involving responsibility for cash, stores, etc., the cash book or imprest account should be closed and proper handing over should be there. The applicant's counsel also cited the celebrated decision of the Hon'ble Supreme Court in the case of R.K.Sabharwal and others v. State of Punjab and others (1995 (3) S.L.J. 227). That was a decision to the effect that the reservation percentage of S.C./S.T. is in addition to such candidates working in general posts. The percentage refers to a post in a cadre and not vacancies. Finally it is laid down that roster shall operate till the prescribed percentage is reached in a cadre. Thereafter, the vacancy will be filled by the same community on a particular roster point.

With regard to transfer, the applicant cited the case of Ramadhar Pandey v. State of U.P. (1993(4) SLR 349) wherein the applicant's transfer to an ex-cadre post was under challenge. The impugned transfer was not supported because there was no equation of pay as well as status.

3. I have carefully considered the submissions of the rival counsels. I am of the considered view that there is no merit in this application. There are three assertions made in the counter affidavit as well as at the time of arguments by the learned Senior Standing Counsel. The first one is that four persons working as L.D.C. were retrenched. The retrenchment orders were quashed and they were later on reinstated. The rejoinder speaks of vacancies relevant is in 1993. What is the state of affairs when the applicant was shifted from the post of L.D.C. to that of Welfare Worker. His pay has been protected. There is a categorical statement that all the vacancies were filled up by the reinstatement of the retrenched L.D.Cs. and that no vacancy is available either for accommodating or adjusting the applicant. It is finally made clear that the posting of the applicant as a Welfare Worker was only to confer benefit on the applicant as perceived by the Respondents. The learned Senior Standing Counsel stated that there is no compulsion on the part of the Government to force this posting on the applicant. If he does not want to join, he can go back to his substantive post of Group 'D'. It is conceded that if the applicant

does not want to comply with the order dated 26.12.1995, the Respondents have no objection and they do not compel him to join that post. Virtually, therefore, this O.A. has become academic.

4. Let us now examine the contentions of the applicant on other aspects. He cannot invoke the Hon'ble Supreme Court's decision in R.K.Sabharwal's case (supra) because the percentage of reservation of SC/ST is referable to posts in a cadre. There is no question of reservation when the appointment is expressly ad hoc and stop-gap and is likely to be reverted at any time. The principle is that reservation percentage operates to posts in a cadre, but not to purely ad hoc and stop-gap arrangements. The applicant's counsel rested his case on the case of Ramadhar Pandey (supra) where Sri Pandey was transferred to an ex-cadre post. There is no comparison of those facts with the facts of this case as the initial appointment as L.D.C. being ad hoc does not confer the rights of cadre protection. There is no bar for the Respondents to conduct an interview and a test even for an ad hoc appointment. That only shows a certain objectivity in making appointment even on ad hoc basis. An ad hoc appointee on a stop-gap arrangement has no vested rights in a post. The appointment order itself stipulated conditions which were accepted by the applicant. He could have refused the appointment order under those conditions.

13

-8-

It is not mandatory in an ad hoc appointment to continue the appointment. The competent authority is at liberty to revert a person even if he has been officiating for more than a year. It is now settled that it is for the administrative authority to decide whether there is need to fill up a post or operate a post or not. No other person was appointed ad hoc to the post after the applicant's reversion. He cannot make a claim for conferment of permanent status as L.D.C. simply because the Respondents interviewed him amongst the eligible Group 'D' staff. As the option to avail the post of Welfare Worker is not compulsory, the applicant can either accept the post or go back to his substantive post.

The application is dismissed. No costs.

Narasimhaswami
(N.SAHU) 15/7/96.
MEMBER (ADMINISTRATIVE)

A.Nayak, P.S.