

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 127 OF 1998
Cuttack, this the 3rd day of January, 2000

Rashmikanta Satpathy Applicant

Vrs

Union of India and others 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
3.1.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 127 OF 1998
Cuttack, this the 3rd day of January, 2000

CORAM:

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

Rashmikanta Satpathy, aged about 26 years, son of
Dinabandhu Satpathy, resident of 10 VSS Nagar, PO-Utkal
University, Bhubaneswar. Applicant

Advocates for applicant - M/s D.N.Mishra
S.K.Panda

Vrs.

1. Union of India, represented through the Secretary,
Ministry of Textile, Government of India, New Delhi.
2. The Director, Weavers Service Centre, Gauhati-731
003.
3. The Deputy Director, Weavers Service Centre,
Bhubaneswar Respondents

Advocate for respondents - Mr.S.B.Jena
A.C.G.S.C.

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to consider
regularisation of the applicant in the post of Lower
Division Clerk (LDC) lying vacant in the office of
respondent no.3 in which post the applicant is working
till date.

2. The applicant's case is that he is a
Graduate and has a certificate in Typing and Shorthand
and has also registered his name in the Employment
Exchange. The respondents called for an interview for the

post of LDC on ad hoc basis and the applicant's name along with others was sponsored by the Employment Exchange. The applicant attended the interview on 11.8.1995 and was selected for the post of LDC. The offer of appointment dated 17.8.1995 is at Annexure-3. In order dated 26.9.1995 the applicant was appointed as LDC for a period of 90 days or till such time the vacancy is filled up on regular basis. The appointment was purely temporary and ad hoc with effect from 4.9.1995 at a fixed pay of Rs.950/- per month plus allowances. Thereafter by a series of letters, copies of which are at Annexures A/5 series the applicant's temporary appointment was extended from time to time for a period of ninety days. Again in order dated 31.12.1997 (Annexure-A/6) he was given appointment for ninety days from 9.12.1997 on the same terms and conditions. The applicant has stated that right from the beginning he has continued uninterruptedly and worked to the best satisfaction of the authorities. But the respondents while issuing different orders giving him appointment for ninety days have shown artificial breaks for two/three days between two appointments. It is stated that the name of the applicant has been sponsored by the Employment Exchange and he has been selected through proper process. But instead of regularising his services, the respondents are issuing appointment orders on 90 days basis. In this way he has completed 240 days in two consecutive years and therefore his services should be regularised. By way of interim relief the applicant has prayed for a direction to the respondents to allow the applicant to continue in the post of LDC on ad hoc basis till a regular incumbent is posted. The prayer for interim relief was disposed of in order dated 10.3.1998

S. Jam.

directing that the applicant should not be replaced by another ad hoc appointee.

3. The respondents in their counter have stated that for the post of LDC in the office of respondent no.3, Director, Weavers Service Centre, Guwahati is the appointing authority. Under his direction an interview was held to fill up the post of LDC purely on temporary and ad hoc basis for 90 days and on the basis of interview held on 11.8.1995, respondent no.2 issued the appointment order to the applicant as LDC purely on ad hoc basis for a period of 90 days from 4.9.1995. The respondents have stated that subsequent appointment order has been issued by the appointing authority from time to time, each time for a period of 90 days after termination of the previous period of service. All these appointments are purely on temporary and ad hoc basis. The respondents have stated that because of the breaks the applicant has not completed 240 days of continuous service at a stretch from the date of his initial appointment. It is further stated that the post of LDC can be regularly filled up only by a person who has passed the examination held by the Staff Selection Commission and has been nominated by the Commission and therefore the applicant cannot be regularised. It is further stated that the applicant had accepted the terms and conditions of his appointment and therefore cannot now claim regularisation. On the above grounds the respondents have opposed the prayer of the applicant.

JJM.

4. The applicant in his rejoinder has given a tabular statement showing different office orders under which his services were extended from time to time

and the days of break. He has pointed out that mostly after break of one day he has been given further appointment of 90 days. In one case the break is for two days and in two cases the break is for three days. He has also stated that there has been nothing adverse against him and on the contrary his services are to the full satisfaction of the authorities. He has also stated that the post of LDC is lying vacant till today and in the meantime he has become overaged for getting any appointment under Central Government. He has also referred to a decision of the Tribunal in which such artificial breaks as in the case of the petitioner have been ordered to be ignored by the Tribunal. He has further stated that respondent no.2 has issued order dated 31.12.1997 (Annexure-A/6) giving appointment to the applicant for a period of 90 days from 9.12.1997. At the same time respondent no.2 has ordered respondent no.3 not to allow the applicant to continue in service beyond this period. It is stated that respondent no.3 in his letter dated 12.2.1998 addressed to respondent no.2 had moved for further continuation of the applicant till regular arrangement is made. The applicant has stated that even though he was engaged on a fixed salary of Rs.950/- he drew his salary like a regular employee through Establishment Pay Bill and was also sent on tour to Calcutta like a regular employee. Lastly it has been stated by the applicant that respondent no.1 had issued letter dated 12.12.1996 regarding holding of a Special Qualifying Examination by the Staff Selection Commission for regularisation of ad hoc daily rated casual LDC and Stenographer Grade-III. Respondent no.3 had recommended the name of the applicant twice in letters dated 7.1.1997

and 9.7.1997 but without any result. On the above grounds the applicant has reiterated his prayer in the OA.

5. We have heard the applicant in person and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused therecords. The petitioner has relied on a decision of Mumbai Bench of the Tribunal in the case of Employees' State Insurance Corporation (MHR)Region) and another v. Union of India and others, 2/98 Swamynews 49. A copy of the decision has been filed by the applicant and this has also been perused.

6. From the rejoinder filed by the applicant it is seen that the applicant has continued by virtue of orders issued from time to time which are at Annexures A/5 series with break of mostly one day and sometimes for two or three days. The petitioner has referred to the case of Employees' State Insurance Corporation (supra) where the question involved was fixation of pay of employees of Employees' State Insurance who were appointed on temporary and ad hoc basis. They contended that the breaks are artificial and therefore ignoring the breaks their services should be taken as continuous and they should be entitled to drawal of increments. The Tribunal relying on the decision of the Hon'ble Supreme Court in the case of Karnataka State Private College Stopgap Lecturers' Association v. State of Karnataka an others, AIR 1992 SC 677, held that their service should be regarded as continuous ignoring the artificial breaks and accordingly the respondents before them were directed to refix the pay of the applicants. In the instant case also going by the above

S. Jom

decision the breaks are to be ignored. But that does not help the applicant in his prayer for regularisation of service because the law is well settled that regularisation has to be done in terms of the recruitment rules. In the instant case, according to the applicant himself, the Ministry had called for applications for a Special Qualifying Examination. On a reference to this letter dated 12.12.1996 of the Ministry it is seen that the applications of ad hoc daily rated casual LDC and Stenographers Grade-III who fulfilled the eligibility criteria were called upon to sit for the Special Qualifying Examination. It was also laid down that those who qualify in the Special Qualifying Examination would be regularised from the date of announcement of the result of the Special Qualifying Examination by the Staff Selection Commission in the same post and in the same office in which they are working. The applicant has stated that his name was recommended twice for this examination. He has made no averment that he was not allowed to sit in the Examination. In case he has sat in the Special Qualifying Examination and has not come out successful, obviously his services cannot be regularised. In the absence of any averment by the applicant that he was not allowed to sit in the Special Qualifying Examination, it cannot be said that his rights in this regard have been infringed in any way. The applicant has also not denied the averment of the respondents that according to the recruitment rules the post of LDC has to be filled up by persons who qualify in the Recruitment Examination conducted by the Staff Selection and whose names are recommended by the Staff Selection Commission.

SJm.

As regularisation cannot be done dehors the Recruitment Rules and as the applicant has not come through the Staff Selection Commission either originally or through the Special Qualifying Examination, his prayer for regularisation must be held to be without any merit. It is also to be noted that the applicant in this case had joined on ad hoc basis knowing fully well that such ad hoc appointment is for a period of 90 days. The fact that he has been continued in service will not render him eligible for regularisation because that way such ad hoc appointment will be a second channel of filling up of the posts in violation of the Recruitment Rules.

7. In the result, therefore, we hold that the Application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)
3.1.2010
VICE-CHAIRMAN

AN/PS