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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 96 of 1999

DATE OF ORDER : 03rd August 2001
.07.2001.

Akshya Kumar Jena, aged about 33 years, S/o Sri Baitari Jena, Qr. No. IV -N-3, Unit -4, Bhubaneswar.

..... APPLICANT.

By Advocate Shri Purna Kumar Padhi.

Versus

1. Union of India, represented by its Secretary, Ministry of Personnel & Training, New Delhi - 1.
2. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 1.
3. The Registrar, Central Administrative Tribunal, Cuttack Bench, Cuttack.

..... RESPONDENTS.

By Advocate Shri A.K. Bose, Sr. Standing Counsel.

C O R A M

Hon'ble Mr. G. Narasimham, Member (Judicial)

Hon'ble Mr. L. Hmingliana, Member (Administrative)

O R D E R

By L. Hmingliana, M(A):-

The applicant is a Lower Division Clerk (in short LDC) of the Cuttack Bench of the Tribunal on reversion from the post of Upper Division Clerk (in short UDC) vide office order dated 28.2.1997. He filed an OA No. 145/97 along with another LDC who had also been reverted from the post of UDC. The joint

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application , namely, OA 145/97 was for quashing the order of their reversion dated 28.2.1997. The present applicant had been confirmed in the post of UDC with the approval of the Vice-Chairman vide office order dated 6.5.1994, but the order of his confirmation was superseded vide subsequent order dated 18.7.1996, and his period of service as UDC was ordered as ad-hoc, as per the decision of the Chairman of the Tribunal. His prayer in the present OA is mainly for quashing the office order dated 18.7.1996, superseding the earlier office order of his confirmation in the post of UDC, and it is also for quashing the office memorandum dated 20.4.1998, by which his representation for protection of his pay as UDC was rejected.



2. We heard the instant OA along with ^{the} other OA 145/97, and we delivered our order on 29.6.2001, dismissing ^{the} other OA. Now we are passing a separate order on the present OA.

3. The applicant initially joined Cuttack Bench of the Tribunal on 4.7.1986. He was appointed on ad hoc basis in the post of Receptionist vide office order dated 30.9.1986 with effect from 1.10.1986. His services came to be regularised vide office order dated 27.11.1990. Then, vide office order dated 23.11.1993 (not produced but undisputed), the designation

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of the post of Receptionist was changed to UDC, and as we have said, he was confirmed in the post of UDC vide office order dated 6.5.94, but the order of his confirmation was subsequently superseded by office order dated 18.7.1996, as per the decision taken by the Chairman of the Tribunal, communicated vide Principal Bench's letter dated 31.1.1995 and 13.7.1995. Thereafter, he was reverted to his original post of LDC vide office order dated 28.2.1997.

4. In our order dated 29.6.2001, dismissing the ^{of the validity} OA 145/97, we did not deal with the question [^] of the office order dated 18.7.1996, superseding the order of confirmation of the applicant in the post of UDC, and we left it to be dealt with in the present OA.

5. In the reply in [^] counter filed on behalf of the respondents, it is stated that the initial appointment of the applicant as LDC was purely on ad hoc basis for a period of 89 days with effect from 4.7.1986, and without his being sponsored by the Employment Exchange, and without the post being advertised. It is denied that the applicant was appointed after his selection. Any way, it is further stated that even before he completed the period of 89 days, he was appointed as Receptionist on ad hoc basis with effect from 1.10.1986, when he was not even ^a graduate, which [^]



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qualification he acquired later in 1988, and that his appointment as Receptionist was also in violation of the instructions contained in Principal Bench's letter dated 17.12.1985, according to which Group 'C' posts can be filled up only by deputation from the Government Offices, and that his appointment as Receptionist for 89 days on ad hoc basis was in excess of the authority delegated to the Cuttack Bench.

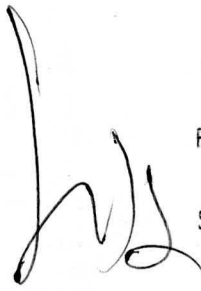
6. We now deal with the challenge to the office order dated 18.7.1996, superseding the earlier office order of his confirmation in the post of UDC. The applicant's learned counsel, Shri P.K. Padhi attacked the order dated 18.7.1996 as invalid, because, first, the order of confirmation of the applicant in the post of UDC could not be recalled just like that, and secondly, because it was on the basis of the decision taken by the Chairman of the Tribunal, which amounted to interference with the order of the Vice-Chairman in exercise of the powers delegated to him by the Chairman, which cannot be allowed to stand. As against this, Shri A.K. Bose, the learned Sr. Standing Counsel for the respondents argued that the impugned order dated 18.7.1996 was entirely irregular and against the Rules, and the order was passed by the Vice-Chairman by exceeding the powers delegated to him.



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7. The order of the Chairman delegating his powers of making appointments to Group 'C' and Group 'D' posts has not been produced, but the letter of the Principal Bench of the Tribunal to the Vice-Chairman of the other Benches dated 17.12.1985 has been produced as Annexure R-2 to the reply in counter. The letter was in the nature of clarification of the delegation of powers of the Chairman to the Vice-Chairman. The restrictions contained in the letter was to appointments to Group 'C' and 'D' posts only. The powers of making appointments to Group 'B' posts were reserved with the Chairman himself, which means that the powers of making appointments to Group 'C' and 'D' but not to Group 'B' posts were delegated to the Vice-Chairman. Then the Vice-Chairman of the Cuttack Bench did not exceed his delegated powers in passing the order dated 6.5.1994, confirming the applicant in the post of UDC.

8. However, the respondents have clearly demonstrated in their reply in counter that the applicant was not eligible for regularisation in the post of Receptionist vide order dated 27.11.1990 or for confirmation in the post of UDC vide order dated 6.5.1994. As stated in the reply in counter, the post of Receptionist was no longer in existence, after the Service Rules came into force with effect from 28.9.1989,



and the applicant had not put in the required 8 years of service as LDC by the time the order of his confirmation in the post of UDC was issued on 6.5.1994, and he was not entitled even to his promotion as UDC his not to speak of his confirmation in the post. Then, the challenge to the validity of the impugned order dated 18.7.1996, superseding the order of his confirmation in the post of UDC has to fail.

9. Now we come to the question of his case for protection of his UDC's pay in the post of LDC to which he was reverted. There is no direct prayer in the prayer clause at paragraph 8 of the OA for protection of his pay, but there is a prayer for quashing office memorandum dated 20.4.1998 of the Cuttack Bench, informing him that his prayer for protection of his pay cannot be acceded to. Then, the prayer is, in substance, for protection of his pay. The applicant should have annexed copy of the representation made by him, which was rejected by the impugned memo dated 20.4.1998. The prayer is liable for dismissal because of that omission. However, we consider it necessary to examine whether he would be entitled to protection of the pay he was drawing on the verge of his reversion to the post of LDC.

10. The respondents have not dealt with that



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aspect of the application in their reply in counter. And the learned counsel for the applicant did not dwell on that issue. We do not find any provision in the FR & SR, dealing with the question of pay protection of this type. on reversion/ The applicant has to be treated as on ad hoc basis in the post of UDC before his reversion in view of the validity of the impugned order dated 18.7.1996, superseding his order of confirmation in the post of UDC and treating his service as ad hoc. Thus, we are dealing with a case of a LDC on reversion from the post of UDC where he was working on ad hoc basis for protection of the pay he was drawing as UDC. The applicant must have earned increments in the post of Receptionist and UDC, even though his service therein has come to be treated as ad hoc. We are of the considered opinion that, nevertheless, the pay he was drawing as UDC on the verge of his reversion has to be protected, when he took charge of the post of LDC to which he was reverted. There might not be a stage in the pay-scale of LDC corresponding to the pay he was drawing as UDC, in which case his pay would have to be fixed at the stage immediately below the pay he was drawing as UDC, and the amount by which his pay as LDC was lower than his pay as UDC would have to be given to him as his personal pay, which would have to be worked



of, when he earns the future increment or increments.

11. The application is partly allowed. The respondents shall fix the pay of the applicant in the post of LDC at the time of his reversion to the post at the stage equivalent to or immediately lower than the pay he was drawing as UDC on the verge of his reversion, and in case his pay as LDC comes to be fixed at a stage lower than the pay he was drawing as UDC, the difference shall be paid to him as his personal pay to be worked off against the future increment or increments he would be drawing as LDC. The respondents shall fix his pay and pay him the amount of arrears within three months from the date of communication of this order. The challenge to the order dated 18.7.1996 fails and is dismissed. There shall be no order as to costs



(Signature)
(G. NAR ASIMHAM)
MEMBER (J)

(Signature)
(L. HMINGLIANA)
MEMBER (A)
20/7/01

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