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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 298 OF 2000
CUTTACK THIS THE 21st DAY OF June 2001

Surya Narayan Rath

.....

Applicant(s)

- V e r s u s -

Union of India and Others

.....

Respondents.

For Instructions

1. Whether it be referred to the Reporters or not? 44.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 44.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 21/6/01

G. Narasimham
(G.NARASIMHAM)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

1. Surya Narayan Rath, aged 53 years,
son of late Jagannath Rath,
resident of Vill: Samasinghsasan,
P.O.Vramarapur,
Via: Khargude,
P.S.Nuagaon, District-
working at present as FARASH,
in the Office of Directorate of Census
Operations, Orissa, Janpath,
Unit-IX, Bhubaneswar, Dist: Khurda.

By the Advocates

..... Applicant
Mr.S.K.Rath
R.B.Acharya
S.Das
K.Samal

- V e r s u s -

1. Union of India, through the Registrar
General of India Ministry of Home Affairs
21-A, Mansingha Road, New Delhi-110011.
2. Director, Staff Inspection Unit,
Ministry of Finance, Lok Nayak Bhawan,
Khan Market, New Delhi.
3. Deputy Director, Census Operations
Orissa, Bhubaneswar, Dist.Khurda
4. Madan Mohan Das, Loader,
in the Office of Directorate of
Census Operations Orissa, Janpath,
Unit-IX, Bhubaneswar, Dist-Khurda.

..... Respondents

By the Advocates

Mr.A.K.Bose
S.C

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, Suryanarayan Rath who was admittedly the seniormost and confirmed Gr.'D' employee under Deputy Director (Census Operation), Orissa Circle, Bhubaneswar (Respondent No.3) and now serving as Farash challenges the order dtd.8.6.2000(Annexure-7) adjusting Respondent No.4 Madan Mohan Dash against the vacant post of Loader, and for issue of direction to Departmental Respondents to consider his case to that post of Loader.

2. Admittedly, applicant got the posting in the post of Farash in the substantive capacity as a permanent incumbent w.e.f 30.6.1979 (Annexure-3). Since then he has been continuing so. In June 1998 Respondent No.1 i.e. U.I.O directed abolition of 42 posts of Farash in different Directorate of the Census Operation all over India to be given effect from 30.6.98. There are two posts of Farash in the State of Orissa. Earlier challenging the order agreed to the strength suggested by Staff Inspection Unit (SIU) resulting in apprehended retrenchment of some Gr.'D' employees, 12 of them approached this Bench in O.A.709/96 which was disposed of on 12.11.96 by holding that the report of the SIU is merely a recommendation and that in case the Respondents are forced to declare any of the applicants (including the present Respondent No.4) as surplus and they are required to retrench any of them, they shall do so only after obtaining the permission of the Bench. Thereafter, the Department filed M.A.407/98 stating that the Union of India directs implementation of the report of SIU deciding the number of posts and no in keep additional posts in excess of sanctioned

strength, and as such the Department has no other way except to retrench applicants no.6 to 12 in the Original Application as they had become surplus and are also juniormost in the cadre. This M.A was disposed by this Bench by order dtd.20.7.99. This specific direction of this Bench is as follows: (Annex-6).

"There is no material before us to take a view on this. But considering the fact that these persons have worked for long years, we also direct the respondents that in case there are vacancies in Group-D posts in the Office of respondent no.3, then amongst the surplus Peons and Choukidars, the seniormost persons should be absorbed against such posts. It is also to be noted that a new census will be conducted within less than two years from now and at that time there would be considerable expansion of the strength of the staff in the Census Organisation. In view of this, we also direct that in case after adjusting the retrenched persons, if possible, against any vacant Group-D posts, the retrenched persons, who cannot be so adjusted, must be given priority for the purpose of re-employment, besides sending their names to the Surplus Cell".

Pursuant to this direction of the Tribunal the impugned order under Annexure-7 has been ^{passed} based. Admittedly, the present applicant was not an applicant in the previous Original Application

3- The grievance of the applicant is that the direction under Annexure-6 is ^{substantially} applicable in his favour and he being the seniormost in Group 'D' should have been adjusted as against ^{the} vacant post of

Loader in place of Respondent No.4.

3. Respondent No.4 though noticed neither entered nor context the case.

4. The Department in their counter though did not dispute that the applicant is the seniormost Gr.'D' employee i.e. senior than Respondent no.4 who is just below the applicant, maintain that this Tribunal's direction is that the seniormost among the Peons and Chowakidar shall have to be adjusted against vacant Gr.'D' posts. Hence this impugned order does not suffer from any legal infirmity.

5. In the rejoinder the applicant reiterates his stand.

6. We have heard Shri S.K.Rath learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel for the Respondents. On our direction to intimate as to whether a regular post of Group 'D' is vacant, the Senior Standing Counsel files letter dtd.1.6.2001 of the Department addressed to him wherein it has been indicated there is no regular post of Gr.'D' under Respondent No.3.

7. Facts are not in dispute. It is also not in dispute that the post of Farash, Chowkidar and Loader carry identical pay scale. It is true that applicant was not a Party in the earlier Original Application. It is also true that our order dtd.20.7.99 (Annexure-6) gives direction to the Department that seniormost among the surplus Peons and Chowkidars should be adjusted against vacant group 'D' posts. Our order read as a whole, would indicate that it was not confined to the applicants of that

O.A only, but to surplus Gr.'D' employees like Peons and Chowkidars. Hence the point for determination is whether the applicant who is serving as Farash and which post has since been abolished will come under of the description of the Peon or Chowkidar. If ^{he} comes under this category he ^{is} being senior than Respondent No.4 has a better consideration for the vacant post of Loader. It is true that applicant files tabular chart under Annexure-5 of Farash/Chowkidar/Peon where in the applicant S.N.Rath has been described as Peon under the heading of the column no.6 "the date of appointment to a post in graded scale of pay". It is however not his case that this chart is a chart prepared by the Department. Even the chart does not contain signature of any authority of the Department. Evidently, this is a chart prepared by the Applicant himself to apprise this Bench that he is senior than Respondent no.4 and other Gr.'D' employees. In column no.2, he has been described as a confirmed Farash which description also finds place in column no.7 of this chart. Hence through this chart it cannot be said that the applicant though a Gr.'D' employee is a Peon or Chowkidar as such, like employees under serial no.2 to 6 and 8 of the chart. On the contrary the specific averment in the counter at para 7 is that though the post of Farash, Chowkidar and Peon carry identical scales of pay, there is no common cadre of all Gr.'D' posts. The recruitment of each post is different from the other and separate seniority list is also maintained for each such post. Thus it is clear though the applicant is the seniormost group 'D' employee he being a Farash cannot come under description of Peon and Chowkidar. Thus our direction in order dtd.20.7.99 (Annexure-6) does not extend to the post of Farash.

8. In the result, we do not find any infirmity in the impugned order under Annexure-7. The Original Application is dismissed but without costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

21.6.01
(G.NARASIMHAM)
MEMBER (J)

CRB