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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION No. 4 of 2000
CUTTACK THIS THE 3rd DAY of JULY, 2001

Bhagirathi Mohapatra Applicant.

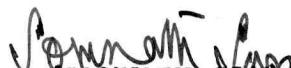
-Versus-

Union of India & others Respondents.

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 .

3-7-01
(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO. 4 of 2000
CUTTACK THIS THE 3rd DAY OF, JULY, 2001

CORAM:

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

.....

Bhagirathi Mohapatra,
S/o. Ganeswar Mohapatra,
At-SECO Survey of India, Po. R.R.Lab,
PS. Saheed Nagar, Dist. Khurda.

.....Applicant.

By the Advocates

M/s S. Mishra
S.N. Misra
B.N. Misra
B. Dash

- Versus -

1. Union of India through Secretary
Department of Science & Technology,
Technology Bhavan, New Mehrali Road,
New Delhi.
2. Surveyor General of India,
At. Hati Barkala Estate, Dehradun,
3. Additional Surveyor General, Eastern Zone,
At/PO/PS/Dist. Calcutta.
4. Superintending Surveyor O.C. No.11 DO, (SEC),
PO. R.R. Lab, Bhubaneswar-13, Dist. Khurda.
5. Mihiresh Bhattacharjee, S/o. Late Hemanta Kumar
Bhattacharjee, Officer Surveyor, No.II,
Office of (SEC), Survey of India, Nayapalli,
Bhubaneswar, Dist. Khurda.

.....Respondents

J. Jom.
By the Advocate (s)

Mr. B.K. Nayak

SOMNATH SOM, VICE-CHAIRMAN: In this original application the petitioner has prayed for quashing Annexures 5, 6 and 7 and for a direction to the Respondents to modify the order at Annexure-7 and to post the applicant as Superintending Surveyor at 10 Drawing Office (SEC), Bhubaneswar from 27.09.99. Departmental respondents have filed counter opposing the prayer of the applicant. The private respondents No.5 was issued with notice but he did not appear or file counter. No rejoinder has been filed.

2. We have heard Shri S.N. Mishra Learned Counsel for the petitioner and Shri B.K. Nayak, Learned Additional Standing Counsel for the Respondents and have perused the record. Learned Counsel for the petitioner has filed written note of argument after serving copy on the other side and this has also been perused.

3. For the purpose of considering the petition it is not necessary to go into too many facts of the case. Facts necessary for determination of this dispute are in any case admitted by both sides.

4. Admittedly applicant is an Officer Surveyor. According to rules, 75% of vacancies in the post of Officer Surveyors are to be filled up by selection through DPC and balance 25% through Limited Departmental Competitive Examination (LDCE). Applicant belongs to the 25% category who has become Officer Surveyor through LDCE whereas Respondents No.5 has become Officer Surveyor against 75% quota through selection by DPC. As the departmental authorities gave promotion to some Officers Surveyor belonging to the 75% group to the next higher grade of Superintending

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Surveyor, the applicant along with some others approached the Tribunal in O.A. 221 of 1996 which was allowed with certain directions in order dated 4.5.98. Department of Science and Technology in their order dated 7.7.98 (Annexure-3) directed that the order of the Tribunal should be implemented. Some other Officers Surveyors filed O.A. 438 of 1998 before the Tribunal challenging the judgement dated 4.5.98 in O.A. 221 of 1996 on the ground that they were not parties in that O.A. By order dated 23.4.99 in O.A. 438 of 1998 the matter was referred to Full Bench. Respondent No.5 was an applicant in O.A.438 of 98. Applicant has stated that in order dated 27.9.99 at Annexure-1, he was promoted from the post of Officer Surveyor to Superintending Surveyor on adhoc basis for a maximum period of six months and posted to 10 DO (SEC), Bhubaneswar where he was working as Officer Surveyor. Applicant has stated that respondent ND.5 and another person filed MA.603 of 1999 in O.A.438 of 1998 for staying operation of the seniority list but this prayer was rejected by the Tribunal. Against that order, Respondent No.5 and another person filed OJC 12203 of 1999 before the Hon'ble High Court and their Loardships in their order dated 30.9.99 in Misc. case No.11595 of 99 directed as an interim measure that ~~the~~ petitioner before them of which Respondent No.5 was one should not be reverted for the post held by them till 19.11.99. This order of the Hon'ble High Court is at Annexure-4. After this order dated 30.09.99 Additional Surveyor General in his letter dated 1.10.99 (Annexure-5) sought for instruction of Surveyor General regarding action to be taken with regard to the posting of the applicant as Superintending Surveyor as adhoc basis in 10, DO (SEC), Bhubaneswar where Respondent No.5 was working. At this

stage it is to be noted that in this letter the Additional Surveyor General merely sought for instructions of Surveyor General and this is an inter departmental communication. Therefore applicants prayer to quash Annexure-5 is obviously without any merit because in this letter the order dated 30.9.99 the Hon'ble High Court was brought to the notice of Surveyor General of India and his instructions sought regarding posting of the applicant. The prayer of the petitioner for quashing Annexure-5 is therefore held to be without any merit and is rejected. It further appears that the applicant who was Opposite Party No. 1 in writ application No.12203 of 1999 moved the Hon'ble High Court in the same writ application through Misc. case No.11823 of 99 and Hon'ble High Court passed the following orders on 12.10.99.

"On September 30, 1999 we passed an interim order directing the opp. parties 7 and 8 not to revert the petitioners from the posts held by them on that day till November 19, 1999. We clarify that by the posts referred to in the order we mean the posts held by them either on substantive or on officiating basis".

5. Applicant's grievance is that in letter dated 5.10.1999 at Annexure-6 he was informed that the post of Superintending Surveyor in 10 DO (SEC), Bhubaneswar was not being vacated now and therefore his transfer on promotion to that office is kept in abeyance. On the same date 5.9.99 the impugned order at Annexure-7 was passed posting the applicant as Superintending Surveyor to No.29 party (NEC) shilong. It is this order that the applicant challenges alongwith the other order dated 5.10.99 at Annexure-6.

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6. It has been submitted by Shri S.N. Mishra, Learned Counsel for the petitioner that respondent No.5 was not working on a regular or officiating basis as Superintending Surveyor in No.10 DO (SEC), Bhubaneswar. He was only in concurrent charge of some of the duties of the post of Superintending Surveyor. Therefore according to Hon'ble High Court's order respondent No.5 could have been easily shifted from that post in that office and applicant allowed to join there. We have considered the above submission carefully. We note that the applicant was given adhoc promotion in order dated 27.9.99 to the post of Superintending Surveyor for a maximum period of 6 months and posted to 10 DO (SEC), Bhubaneswar. Applicant has stated in page 6 of the original application that he was on election duty from 29.9.99 to 4.10.99. The first order of the Hon'ble High Court came on 30.9.99 and the respondents understood this as meaning that respondent No.5 cannot be distrubed from the post held by him in 10 DO (SEC), Bhubaneswar. Accordingly, the applicant was informed that in order dated 5.10.99 at Annexure-6 that his transfer to that office was kept under abeyance and in another order on the same date he was transferred to Shilong. The Hon'ble High Court clarified their earlier order dated 30.9.99 in their order dated 12.10.99. Therefore, respondents were perfectly justified in not allowing the petitioner to join as Superintending Surveyor in 10, DO (SEC), Bhubaneswar on 5.10.99. In any case the applicant was not available for joining from 29.9.99 till 4.10.99 as he was on election duty. On 5.10.99 when he came back from election duty he was given posting order at Shilong in the higher post; by that time the order dated 12.10.99 of the Hon'ble High Court had not came. Therefore, there is no illegality in the action of the departmental authorities

in issuing the order dated 5.10.99 posting the applicant to Shilong. Apparently, the promotional post of Superintending Surveyor has All India transfer liability. Applicant has also joined the promotional post of Superintending Surveyor at Shilong on 17.12.99. The Tribunal has no power to direct the departmental authorities to post a particular officer to a particular Station.

7. In view of the above we hold that the applicant is not entitled to relief claimed by in this original application which is accordingly rejected. No costs.

3.7.01
(G. NARASIMHAM)

MEMBER (JUDICIAL)

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SOMNATH SOM
VICE-CHAIRMAN

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