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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 329 of 2003
Cuttack, this the 24th day of March 2005

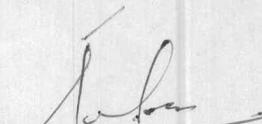
Bhaskar Chandra Nayak Applicant

- VERSUS -

Union of India & others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? *M*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or Not ? *M*


(B.N.SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO. 329 of 2003
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Bhaskar Chandra Nayak, aged about 54 years, son of Late Kusha Nayak, resident of Vill-Panapadi, PO-Adalapanka, P.S-Banth, Dist-Bhadrak, at present working as Messenger in office of Deputy Director General, Geological Survey of India, Operations, Orissa, Unit-8, Bhubaneswar-12, Dist-Khurda.

.... Applicant

Advocates for the applicant

.... M/s K.C.Kanungo,
S.Behera &
B.D.Das

Versus-

1. Union of India represented through Secretary, Ministry of Mines, Department of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Kolkatta-16.
3. Deputy Director General, Geological Survey of India, Operations, Orissa, Unit-8, Bhubaneswar-12, Dist-Khurda.

.... Respondents

Advocates for the Respondents

.... Mr.B.Dash
(Res.No.1 to 3)

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O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN: Shri Bhaskar Chandra Nayak presently working as Messenger in the office of Deputy Director General, Geological Survey of India has filed this O.A. praying for a direction to be issued to the Respondents to pay him 1/30 th of the scale of pay of Technical Operator from 14.4.1977 to 10.11.92, the differential salary between

the scale of Technical Operator and the Messenger and to regularise his service in the post of Technical Assistant. The applicant had come earlier before this Tribunal in O.A.No.601/95 with identical prayer. The said O.A. was disposed of by our order dtd.12.8.02 (Annexure-1) with a direction to the Respondents to consider his claim within a specified time by causing an enquiry and grant him necessary relief. However, by their letter dtd. 28.3.2003 (Annexure-5) the claim of the applicant has been rejected. It is against this order, the applicant has filed this O.A.

2. Shorn of details the case of the applicant is that he had been working as contingent worker under the Respondents from the year 1977 and was taken as regular Gr.D staff (Messenger) with effect from 11.12.92. His grievance is that although he had no requisite educational qualification he had discharged the duties of technical operator from the year 1977 to 1992 and was entitled to the higher wages of that post. He further stated that although the Respondents set up a Committee to look into the genuineness of his claim but no benefit of higher pay has been allowed to him so far. On the other hand, the Respondents by order dtd.28.3.03 has informed him as follows:

"On thorough examination of the documents and report of the Fact Finding Committee, Director-in-Charge, GSI,ER has informed this office that your representation regarding differential wages/salary in the post of Technical Operator, redesignated as Laboratory Assistant Grade-III cannot be considered."

The applicant has assailed it on the ground that it is a non-speaking order and it has not referred to the findings of the

the Committee before announcing the order. It is also his case that the principle of equal pay for equal work cannot be denied to him. He has expressed the apprehension that the recommendation of the Committee has not been taken into account by the Authority in issuing the order at Annexure-5.

3. The Respondents by filing a detailed counter have opposed the application. They have stated that the applicant rendered duties as a casual worker and eventually in his turn he got regularised in Group-D post and he having never been appointed as a technical operator for which he does not have qualification prescribed for the post, his claim is non-est in the eyes of law. It is their persistant stand that the applicant was never required to do the work of Technical Attendant or Technical Operator. He was simply rendering the duties of a labourer whenever his services were referred. In the circumstances, they have called that the claim of the applicant to have acquired specialisation in any particular work is baseless. They have also submitted that with due regard to the direction of this Tribunal they had caused an enquiry into the allegation made by the applicant and thereafter the Enquiry Committee arrived at the conclusion that his claim for differential wages in the post of Technical Operator, redesignated as Laboratory Assistant Grade-III cannot be granted. The applicant not being a Matriculate, he could not have any claim for promotion to the post of Technical Operator or Laboratory Assistant Grade-III.

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4. I have heard both the parties and have perused the records placed before me. The applicant was allowed to submit the documents if he wanted to submit in support of his claim that he had actually worked as Technical Operator. He has also filed a rejoinder.

5. The Ld.Counsel for both the parties have presented various documents in support of the respective stand points. The remarkable aspect of the whole case is that the applicant has been knocking at the door of this Tribunal since 1993 when he filed the O.A.616/93 claiming service benefits for the period of his casual service. Thereafter he came before the Tribunal in the year 1995 in O.A.No.601/95 and now in this O.A. For the sake of fair adjudication of the matter, I have referred to the decision of this Tribunal dtd.12.8.02 where it ordered that the Respondents should cause an enquiry to consider the claim of the applicant with relation to the service benefits and that if they were satisfied, they should grant the necessary relief to the applicant. I directed the Respondents to place before me the enquiry report of the Committee. Accordingly, the Ld.Addl.Standing Counsel for the Respondents placed before me the Fact Finding Committee report dtd. 26.9.2002. The Committee consisting of Director of the Institution as well as one Senior Geologist arrived at the following conclusion:

1. During the period of 14.4.1977 to 12.8.87, the applicant had attended to work as general duty contingent worker. It is further stated that "his continuous involvement in this nature of work could not be ascertained for the period 1984-1987

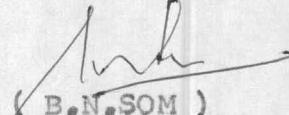
1984-1987 in Chemical Laboratory, and from August, 1987 to December 1993 in Petrological Laboratory, as there is no mention of his name in office record pertaining to this period."

2. From 1992, the office record of Petrological Laboratory indicated his continuous participation in the preparation of thin and polished sections from August 1994 to the year 1999.
3. They have also found that the applicant had got sufficient expertise in the sampling related work assigned to him.

From the above it is clear that the record did not show that the applicant had been assigned technical work other than the work of casual labour between the period of 1977 to 87. However, the Committee was of the clear view that he had been entrusted with the 'job of sampling related work' between the year of 1992 and 1999. From the report of the Committee, it is clear that the applicant had worked and his services were utilised as Technical Operator during the period from 10.12.1992 to 03.1999. That being the finding of the Committee, I see no reason why the Director-in-Charge, GSI, Eastern Region did not agree to allow the applicant the differential salary between the scale of Technical Operator and that of Messenger. Rightly or wrongly the Director of Geological Survey of India, Bhubaneswar had utilised the services of the applicant for technical job and therefore he has to be paid the minimum pay scale of that post. Otherwise it will result in exploitation of labour which a Court cannot countenance. Accordingly I order that the Fact Finding Committee having found ~~that~~ the applicant's services were utilised as Technical Operator between the period from 10.12.1992 to 03.1999, he is entitled

to the differential salary between the scale of Technical Operator and Messenger for that period. However, his claim for similar benefit for the period from 14.4.1977 to 10.12.92 is without any basis and hence rejected. With regard to his prayer for regularisation/promotion to the post of Technical Assistant, I pass no order because every promotion to a post has to be made strictly according to the recruitment rules framed in that regard. If the applicant is lacking in educational qualification, nothing prohibits or stands in the way of the applicant to acquire the requisite educational qualification to be able to go further up in service career.

7. Accordingly this O.A. succeeds to the extent discussed above. No costs.


(B.N.SOM)
VICE-CHAIRMAN

SAN/