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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 222 of 2004
Cuttack, this the *22nd* day of *June*, 2005

Gangadhar Murmu

.....

Applicant

Vs

Union of India & Others

.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? *78*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *78*

22/06/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN

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Original Application No. 222 of 2004
Cuttack, this the 22nd day of June, 2005

CORAM :

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

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(J)

.....

Shri Gangadhar Murmu, aged about 44 years, S/o. Dibakar Murmu, working as Lower Division Clerk, Doordarshan Kendra, Bhubaneswar, At/PO/PS. Bhubaneswar, Dist. Khurda.

..... Applicant

By the Advocates

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M/s. S.N.Misra-I,
B.Dash,
B.N.Mishra,
N.K.Das.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi-110001.
2. Director General, Doordarshan, Doordarshan Bhawan, Copernicus Marg, New Delhi-110001.
3. The Director, Doordarshan Kendra, Bhubaneswar, P.O. Sainik School, Bhubaneswar, Dist. Khurda-751005.
4. The Station Director, All India Radio, Cuttack, At/PO/PS/Dist. Cuttack.

..... Respondents

By the Advocates

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Mr. B.Dash (ASC)
Mr. U.B.Mohapatra(Sr.SC).

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN :

Shri Gangadhar Murmu has filed this O.A. challenging the inaction of the Respondents in the matter of absorption of the applicant as General Assistant with effect from 18.3.87 when he was appointed as Clerk Grade-II. He has approached this Tribunal praying for a direction to be issued to the Respondents to absorb him as General Assistant with effect from 18.3.87 and then to consider him for promotion to the grade of Sr. General Assistant with effect from when the vacancy in that grade arose after three years from the deemed date of applicant's absorption as General Assistant, i.e., after 18.3.90.

2. The factual matrix of the case of the applicant is that on 5/7.12.84, Deordarshan Kendra, Cuttack had sent a requisition to the Staff Selection Commission (SSC, in short), Kolkata for sponsoring candidates for three posts of General Assistant and one post for Clerk Grade-II. The SSC, Kolkata forwarded the names of five candidates for appointment as LDC in C.G., Gr. II with effect from 18.3.87 in the pay scale of Rs. 950-1500/-. The grievance of the applicant is that the DG, Deordarshan by his order dated 19.3.89 directed the Deordarshan Kendra, Cuttack that General Assistant/Copyist post be filled up by C.G., II. However, on 18.3.94 and again on 21.12.95, two individuals were given appointments in the post of General Assistant.

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The applicant vide his representation dated 29.4.94 had claimed preference to others in appointment as General Assistant. He had also represented in the matter to the National Commission for SC/ST on 3.1.03 but so far his grievances have not been redressed by any of the authorities.

3. The Respondents have opposed the application as not being maintainable and being devoid of merit. They have disclosed that the SSC in response to their requisition sponsored one Unreserved and four ST candidates in the cadre of LDC and did not recommend any candidate for the post of General Assistant against the requisition sent by Doordarshan Kendra, Cuttack. They have further disclosed that the name of the applicant was sponsored as an additional, sixth, candidate in the list of candidates for appointment. However, the Department kept the list open so as to absorb the applicant and offered appointment when the vacancy arose in the grade of LDC in the year 1987. They have disputed that in between 4.10.85 and 2.3.87 six other persons were appointed in the grade of CG-II. It is their plea that had any other person been appointed during the aforesaid period and thus had become senior to the applicant, the applicant should have disclosed their names. They have also pointed out that the applicant had raised the aforesaid question after a period of 18 years and on that ground of limitation this petition is liable to be rejected. They have further stated that the representation of the applicant at Annexure-9 was disposed of by a reasoned order on 16.4.03. They have also submitted that

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the vacant post, of General Assistant, could not be filled up as the Respondent Kendra had not received the approval of the Director General for filling up these posts at the relevant point of time. But the fact of the matter is that the applicant was offered a post of Clerk Gr.II (LDC) which he accepted and his seniority is being maintained as Clerk Grade-II in that cadre.

4. We have heard the Ld. Counsel for the rival parties and have perused the records placed before us.

5. The applicant, admittedly, was offered appointment by the Respondents vide their letter dated 2.3.87 (Annexure-A/3) wherein it was clearly disclosed that "on the recommendation of the SSC, Shri Gangadhar Murmu is offered a temporary post of Clerk Gr.II at Upgrah Doordarshan Kendra, Cuttack on the following terms and conditions". It was further stated at para-13 of the said letter that "if he accepts the offer on the terms and conditions as laid down in that letter he should report for duty immediately but in any case not later than 19.3.87." Accordingly, the applicant joined as Clerk Gr.II accepting the offer of appointment as contained in the letter dated 3.2.87 as mentioned above. The moot question is whether the applicant has any vested right to contest his appointment as Clerk Gr.II several years after that appointment became permanent. According to his own submission, it was by his letter dated 29.4.94, he submitted a representation to the Director General, Doordarshan Bhawan, New Delhi, stating that, although, he was offered appointment against the vacant

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post of Clerk Gr.II on 2.3.87, he was entitled to be appointed as regular General Assistant. But, there can not be any two opinion that after having submitted himself to the conditions as laid down at para-13 of the letter of offer dated 2.3.87, the applicant was without any legal right to challenge that appointment after seven long years or to ask for any variation. Secondly, his contention is also devoid of any reason because the SSC in their letter dated 17.7.85 (Annexure-A/2) had recommended five names to Doordarshan Kendra, Cuttack for recruitment to the post of LDC on the basis of Clerk Grade Examination, 1984. We would like to quote from the letter itself :

"Sir,

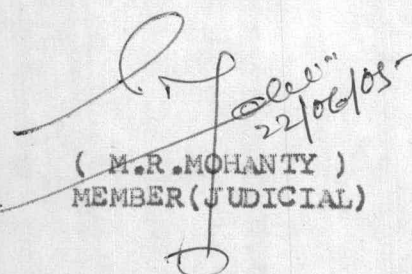
With reference to your letter No.1(3)/85-S/TV dated 6.2.85 on the above subject, I am directed to forward herewith the following name(s) and address(es) of the candidate(s) who has/have been selected for the post of LDC together with the original application(s) and other documents submitted by Roll No. Name(s) and Address(es) Category Rank.
List enclosed.

From the above letter it is clear that by their letter dated 6.2.85, the Respondents had requested SSC, Kolkata to sponsor names of the candidates to fill up certain posts of LDC on the basis of Clerk Grade Examination, 1984. And thus Respondents could not have offered appointment to any other post than that of the LDCs. It has also been explained by the Respondents in their counter that they had decided that as the Director General did not accord his approval for filling up the post of General Assistant, to

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fill up the posts in the grade of LDC by converting the posts of General Assistants to Clerk Gr.II(Annexure-A/1). Whatever may be the reason for not filling up the posts of General Assistants, the fact of the matter is, the Respondent employer had decided that they would fill up five posts in the cadre of LDC and as the name of the applicant had been recommended by the SSC for appointment as LDC, he was also offered appointment to the grade of LDC which he had accepted without any demur. After that appointment the applicant had also been confirmed in the said cadre of LDC. In the circumstances, it is too late in the day to make an issue of his appointment. He is bereft of any right to do so. The applicant has not been able to produce before us any material to show that he had acquired any vested right after his appointment as LDC, to demand his migration to another cadre of General Assistant under any rule or scheme of the Respondent organization, and, therefore, we see no merit in this O.A. Over and above that the application is hopelessly barred by limitation also.

6. Because of the reasons stated above, this O.A. is disposed of being devoid of merit. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

KUMAR
