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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.648 of 2005
Cuttack, this the 03rd day of May, 2007.

Pratap Chandra Das ... Applicant
Versus
Union of India and Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *✓*
2. Whether it be circulated to all the Benches of the CAT or not? *✓*

✓
(N.D.RAGHAVAN)
VICE-CHAIRMAN

✓
(B.B.MISHRA)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A.No. 648 of 2005
Cuttack, this the 03rd day of May, 2007

CORAM:

THE HON'BLE MR.N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Pratap Chandra Das, Aged about 50 years, son of late Sri Govinda Ch. Das, at present working as D.F.O (Stores), Central Logistics, Aviation Research Centre, Air Wing, Charbatia, At/Po: Charbatia, PS: Choudwar, Dist. Cuttack.

..... Applicant.

By legal practitioner: M/s.P.K.Mohapatra, S.K.Mohanty,
A.K.Das, S.K.Swain, Advocates.

-Versus-

1. Union of India represented through Cabinet Secretary, Cabinet Secretariat, Beekaneer House, Shahajahan Road, New Delhi-100001.
2. Director, Aviation Research Centre Directorate General of Security, Cabinet Secretariat, East-Block, V.R.K.Puram, New Delhi-110 066.
3. Deputy Director, Aviation Research Centre, At/Po. Charbatia, Dist. Cuttack.

... Respondents.

By legal practitioner: Mr.S.B.Jena, ASC

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ORDER

MR.B.B.MISHRA, MEMBER(A):

Succinctly stated the case of the Applicant is that after being retired from defence service, pursuant to the offer of appointment issued by the ARC, Charibatia, dated 28.09.1987 (Annexure-1), he reported as DFO (Store) in ARC Workshop. It was intimated in the offer of appointment that his appointment was purely ad-hoc basis till 29.02.1988. But right was reserved that the appointment is terminable at any time by giving one month's notice on either side without any reason. Though the applicant was appointed for a specific period, his services were extended from time to time till he was served one month's notice under Annexure-2 dated 30.06.1994. But as evident from the record, before completion of the notice period of one month, another offer of appointment was issued to the Applicant on 29th July, 1994 selecting him to the post of JSO II in the ARC (Air Wing) service. On receipt of the offer of appointment, the Applicant submitted his joining report on 01.08.1994 with request to accept the same, by ignoring the formalities required to be undertaken as it had already been done at the time of his initial appointment. According to the Applicant, ultimately, he was allowed to resume his duty w.e.f 10.08.1994. He had not drawn the amount of Contributory Provident Fund and terminal gratuity for the period of his work. In the meantime,

the Store cadre of Air wing and technical wing merged into one cadre. After merger, the combined strength has been amalgamated to one cadre called ARC (Logistic) staff service as a result of which the posts of Junior Store Officer-I and Junior Store Officer -II have been re-designated as field officer (Stores) and Deputy Field Officers (Stores) respectively. Therefore, by submitting repeated representations, applicant has prayed for counting the artificial break of ten days for the purpose of counting the entire period of service of ARC for all purposes. But the Respondents rejected the same stating that his earlier appointment as DFO(S) was on ad-hoc basis in ARC, CBT, Workshop (Car Project). On the closure of the car project, the services of the applicant were terminated with effect from 30.07.1994. Again he was re-employed as JSO-II in ARC Air Wing w.e.f. 11.08.1994 and, as such there was break between two spells of service by 11 days. Hence, this Original Application seeking direction to the respondents to regularize the said gap period of 10 days between two spells of appointment and grant of consequential benefits by quashing the impugned order dated 17.7.2003 (Annexure-8).

2. It is the case of the Respondents in the counter filed on 10th January, 2006 that initially the applicant was appointed on ad-hoc basis in a project of the ARC. As per the terms and conditions of his appointment, on the closure of the project, his services were terminated

by giving one month's notice to him. Thereafter, on consideration of his case, he was given fresh appointment to the post of JSO II on 29th July, 1994 pursuant to which he reported to duty on 1.08.1994 without complying with the terms and conditions mentioned in the order of appointment. Hence, his joining report was not accepted. However, on submission of the necessary documents/completion of formalities he was allowed to resume his duty on 11.08.1994. According to them, there is no rule for counting the entire period of service, both the appointments being distinct. They have maintained that merger of two cadres has noting to do with regard to the prayer of the applicant in his OA. They have clarified that nonpayment of the terminal benefits is not at all attributable to the Respondents. If he applies, the same would be paid to him. Accordingly, the Respondents have opposed the prayer of the Applicant.

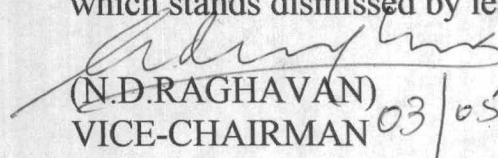
3. Learned Counsel for applicant has argued that since the second order of appointment was in furtherance of the first order of appointment and the first appointment was given to the applicant after verification of his antecedents and medical checkup, there was no reason to ask the applicant to do the something once again. It is his case that the Respondents, only to deprive the applicant the benefit of continuous service, have intentionally and deliberately asked him to go for further medical checkup etc. before joining the post. He has submitted that there

was no reason to issue fresh order of appointment. Instead of issuing fresh order of appointment, the Respondents could have adjusted the Applicant as JSO-II. He has submitted that by not doing so, the Respondents have allowed the applicant to face civil consequence, which is highly illegal, arbitrary and is in violation of Articles 14 and 16 of the Constitution of India. Per contra, Learned Additional Standing Counsel for the Respondents has argued that the very appointment of the applicant at the first instance was on ad-hoc basis. However, his services were extended from time to time till the project was in operation. After the closure of the project, his service was terminated following the terms and conditions stipulated in the order of appointment. Thereafter, on consideration of the representation of applicant, he was given fresh engagement. However, his request for exemption of medical examination and submission of character certificate afresh was forwarded to the Head Office which confirmed that as per the term and conditions of the appointment, he is required to produce the same before acceptance of his joining report. Since both the appointments are distinct, and in absence of Rule to condone the break in service, the prayer of the applicant was rejected. The Applicant can have no legal right to claim for condoning the break. He has also pointed out that in case the break is condoned, this will have serious impact on the service prospects of many employees, who are ✓

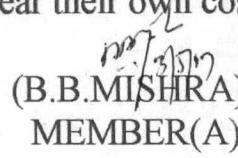
even senior to the applicant in the matter of promotion etc. He has therefore, vehemently opposed the prayer of the Applicant.

4. After considering the submissions advanced by the rival parties, we have perused the materials placed on record. On repeated insistence, Learned Counsel for the Applicant could not be able to satisfy us that his grievance is covered by any of the Rules or instructions of the Government of India. We also find that the first appointment of the applicant was made on ad-hoc basis in a project while the second one was in regular establishment of the ARC. Non-drawal of retirement dues cannot be a ground to condone the break in service. We also find that submission of medical report and character certificate was a pre-condition stipulated in the offer of appointment. Insistence of the same cannot be said to be in any way wrong. We also agree with the Respondents that in case the break in service is condoned, many employees who are senior to the applicant by virtue of their earlier joining in the regular establishment of the ARC in the cadre will become junior to him. But they have not been made as party in this OA.

5. In this view of the matter, we find no merit in this OA which stands dismissed by leaving the parties to bear their own costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

03/05/07


(B.B.MISHRA)
MEMBER(A)