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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.110 OF 2006

Cuttack this the 20th day of April, 2009

Abhay Pada Ray Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.110 OF 2006

Cuttack this the 20th day of April, 2009

CORAM:

**HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER**

...

Abhaya Pada Ray aged about 44 years, Son of Manas Kumar Ray, at present working as Private Secfretary, Debts Recovery Tribunal, Cuttack, Plot No.B/1412, Sec.6, C.D.A., Cuttack

...Applicant

By the Advocates: Mr.B.K.Dash

-VERSUS-

1. Union of India represented through the Secretary, Ministry of Finance, Govt. of India, Department of Economic Affairs (Banking Division) "Jeevan Deep", Parliament Street, New Delhi-110 001
2. Registrar, Debts Recovery Tribunal, Plot No.B/1412, Sec.6, C.D.A., Cuttack

...Respondents

By the Advocates: Mr.B.D.Sahu

...

ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

While continuing as Private Secretary on ad hoc basis in the Debts Recovery Tribunal, Cuttack, the applicant apprehending his reversion has filed this Original Application seeking the following relief:

"Admit the Original Application, issue notice to the Respondents, call for the relevant records from the Respondent Nos. 1 and 2, and after hearing the Respondents, an appropriate direction be issued to Respondents for regularization of the service of the applicant taking into account of Annexures-A/4, 5, 6, 7, 8, 9 and 10 and further be pleased to grant such other relief as may be deemed fit and necessary".

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2. The Original Application came up for admission on 3.2.2006. The learned Single Member Bench, while admitting the O.A. also passed an interim order as under:

“Notwithstanding pendency of this O.A., the Respondents shall remain free to regularize the services of the applicant as Private Secretary in DCT/Cuttack.

Pending disposal of this case, as an ad interim measure, the Respondents are hereby directed to allow the applicant to continue as ad hoc Private Secretary in DCT/Cuttack beyond 10.02.2006. This ad interim order shall remain in force until further orders. While granting this ad interim order, liberty is hereby granted to the Respondents to put up their objection, if any, to the interim prayer made in the Original Application/to this ad interim order”.

The above interim order, which was in the nature of an absolute interim order, had been passed without serving notice on the Respondents or even without hearing the counsel for the Respondents. However, it was directed to handover copies of the order to Shri B.D.Sahoo, Additional Standing Counsel, on whom a copy of the O.A. had been served. From the record, it appears that copies of the orders had been served on the counsel for both sides on the same day. It is to be noted that after the above interim order ~~was~~ passed by this Tribunal, the Respondent-Department, for the reasons best known, did not care to file any objection to the interim order nor did they file any petition seeking modification and/or vacation of the interim order. However, the matter saw the light of the day on 19.12.2007, i.e., after about one year and 10 months of the interim order dated 3.2. 2006 before the Registrar's Court, when neither of the parties had appeared. As per order dated 19.12.2007

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of the Registrar's Court, pleadings were deemed to have been completed under Rule 31 of C.A.T. (Practice) Rules, 1993 and it was ordered to put up the matter before the Bench after showing it in the Ready List. It reveals from the record that although the counter had been filed on 28.12.2006 by the Respondent-Department within ten months of the date of interim order, yet, for the reasons best known to the Registry, counter was not taken on record. Had it not been so, Registrar as per order dated 19.12.2007 would not have indicated that counter had not been filed. Even there was no mention in the "Notes of the Registry" to the effect that counter has been filed. However, the Registry, as it appears, just on the eve of one year, i.e., on 12.12.2008, put up the matter before the Bench in compliance of the order dated 19.12.2007 of the Registrar's Court and there being no appearance from either of the parties, from time to time the matter underwent some adjournments and finally the matter was heard and orders reserved on 5.3.2009 and in the above background, the interim order dated 3.2.2006 has been continuing for three years without being modified and/or vacated, as the case may be. However, we heard the matter at length on 2.3.2009. Prior to 2.3.2009, the case was posted several times for appearance of the counsel for the Respondents, but nobody appeared on the side of the Respondents. Hence, we heard Shri B.K.Dash, learned counsel appearing for the applicant and Shri U.B.Mohapatra, learned Sr.Standing Counsel for the Respondents.

3. The counsel for the applicant Shri Dash, reiterating the grounds urged in the O.A., contended that as the applicant, in pursuance of the recommendations made by the Departmental Promotion Committee and based on the orders passed by the 1st Respondent thereon having been appointed as Private Secretary with effect from 11.2.2005 on ad hoc basis, the said Respondent should be directed to allow the applicant to continue as Private Secretary, Debts Recovery Tribunal, Cuttack, by regularizing his services in terms of Rule 8 of D.R.T. Cuttack Recruitment Rules, 2001 as well as instructions contained in Office Memorandum dated 25.5.1998(Annexure-6) issued by the Government of India, Department of Personnel and Training, wherein amendment of the relevant recruitment/service rules in pursuance of the recommendations of the 5th Central Pay Commission had been sought. It is the case of the applicant that as per Office Memorandum issued by the Government of India, Ministry of Law & Justice, Department of Legal Affairs, the eligibility criteria for promotion from the feeder grade stipulated is three years regular service in the pay scale of Rs.5500-9000/- to the post of Private Secretaries in the Income Tax Appellate Tribunal. It is also the case of the applicant that the Department of Personnel & Training in the Ministry of Personnel, Public Grievances and Pensions as well as the Ministry of Finance have also issued similar Memorandum laying down the eligibility conditions of three years regular service in the scale as aforementioned for promotion to the post of Private Secretary. It is the

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case of the applicant that based on the above mentioned Office Memoranda (Annexures-A/8, A/9 and A/10) he is eligible to get regular promotion to the grade of Private Secretary with effect from 11.2.2005 and therefore, steps taken by the Respondents for appointment of Private Secretary, D.R.T., Cuttack in pursuance of the circular inviting applications, if any, for that purpose in the light of the Recruitment Rules, viz., Debts Recovery Tribunal, Cuttack Group A & B (Gazetted) and Grpi[B (non-Gazetted)_Posts Recruitment Rules-2001 (in short Rules, 2001) should be kept in abeyance as the present O.A. has become infructuous in the light of the regularization of the service of the applicant as Private Secretary. Finally, the applicant has contended that although similarly situated persons are enjoying the promotion, without any reason or rhyme he should not be reverted. With these submissions the applicant has sought for the relief as quoted above.

3. To the above contentions raised by the applicant, this Tribunal only relied on the short counter filed on behalf of the 1st Respondent dated 7.12.2006. In the above counter, the stand taken by the Respondents is that the appointment of officers of D.R.T and DRAT are made in accordance with the provisions of the Recruitment Rules and as per the Recruitment Rules-2001, the post of Private Secretary has to be filled up by promotion or on deputation from Central Government, State Government or persons holding analogous posts. Similarly, the persons holding the posts of Stenographers, Gr.C with eight years regular service

and having a Degree are also eligible for appointment on deputation. Departmental Stenographers, Grade C having the requisite qualifications of eight years regular service are also eligible to be considered along with the outsiders and in case the departmental candidates are selected to the post in question, the posts shall be treated to have been filled up by promotion. It has been stated that after issuance of the O.M. dated 25.5.1998 by the DoP&T, which has been relied on by the applicant, the Recruitment Rules-2001 came into being. The further stand taken in the counter is that the DPC cannot go beyond the Recruitment Rules in so far as eligibility for promotion to the post of Private Secretary is concerned. In this background, it is profitable to quote hereunder what has been stated in paragraph 7 of the counter.

“That as regards averment made in Paragraph – 4 (E) it is humbly submitted that the RRs were issued in 2001 after issue of the Office Memorandum dtd. 25th May, 1998 of the Department of Personnel & Training. The Office Memorandum prescribed the minimum service requirement of various posts and it is upto the administrative Ministry to prescribe a higher number of years of service for promotion taking into account the nature of the job. The post of Private Secretary is a very important post in the DRT and was expected to be filled by officers holding analogous posts or by Grade ‘C’ Stenographers with 8 years service. In this connection the specific provision in the RRs that the DPC will also consider Departmental candidates along with outsiders and in case the departmental candidate is selected the post will be treated to have been filled up by promotion make the position very clear”.

It is also to be noted that in paragraph-10 of the counter it has been stated that the power to relax the rules is exercisable by the Central Government



in public interest to deal with the unforeseen circumstances. It has also been stated that no public interest could be served by relaxing the rules in the case of the applicant and that the power to relax the rules being a discretionary power vested in the Central Government, the applicant cannot seek exercise of such power by the said authority as a matter of right.

4. On receipt of the counter, a rejoinder has been filed by the applicant. It is stated therein that the Ministry of Finance, Department of Economic Affairs (Banking Division) as per their letter No.F.No.A.12011/1/07-DRT dated 13.3.2007 has already prescribed the eligibility criterion as five years regular service for promotion to the post of Private Secretary from Stenographer, Gr. C. The said fact has already been elaborated in paragraph – 5 of the order dated 11.5.2007 of the C.A.T., Kolkata Bench in O.A.No.213 of 2006 (Arup Mitra vs. Union of India & Ors.), wherein the issue involved in the present O.A. had been raised before the C.A.T., Calcutta, which allowed the O.A. in favour of the applicant therein.

5. In the light of the above arguments, the question to be answered is whether the applicant has a right to regularization of his service as Private Secretary.

6. The fact that as per the appointment order dated 11.2.2005 (Annexure-A/3), the applicant had been appointed as Private Secretary purely on ad hoc basis and was liable to be reverted at any time without

giving any notice and assigning any reason and that he would not have any claim for regular promotion as Private Secretary has not been disputed by either of the parties. It is also not in dispute that the applicant had joined as Stenographer, Gr.C, initially on deputation basis and was absorbed in D.R.T. with effect from 01.01.2001 in the scale of Rs.5500-9000/- against the sanctioned post of Stenographer, Gr.C. In this context, before we proceed any further, it is advantageous to look into the provisions of Recruitment Rules-2001 regarding appointment and/or filling up of the post of Private Secretary (Group B) Gazetted in the scale of Rs.6500-10500/-. The method of recruitment, whether by direct recruitment or by promotion or deputation or absorption and percentage of the posts to be filled by various methods is stipulated under Column-11 of the Recruitment Rules, 2001. in so far as the post of Private Secretary is concerned, which reads as under:

“By Promotion/deputation:

Deputation:

- (i) Officers in Central Government/State Government or in Courts holding analogous posts on regular basis and having a degree from a recognized University;
- (ii) Stenographers Grade 'C' with eight years regular service in the scale of Rs.5500-175-9000 or equivalent and having a degree from a recognized University.

Desirable:

Preference will be given to persons having experience in legal or judicial work.

Note-1- Period of deputation including period of deputation in ex-cadre post held immediately preceding the appointment in the same or any other Organisation/Department of Central Government should ordinarily not exceed three years.

(The maximum age limit for deputation shall be 56 years on the last date of receipt of applications).



Note-2-Department Grade 'C' Stenographers with eight years' regular service shall also be considered along with outsiders and in case the Departmental candidate is selected, the post will be treated to have been filled up by promotion".

A reading of the above ruling clearly indicates that a Stenographer, Gr.C having the qualification of a Degree from a recognized University and having the experience of eight years regular service in the scale of Rs.5500-9000/-, is eligible for appointment by promotion to the post of Private Secretary. In view of the specific provisions contained in the Recruitment Rules prescribing the eligibility criteria, the contention raised by the counsel for the applicant that on the basis of the order issued by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) dated 13.3.2007, the qualification of experience of eight years regular service in the grade of Stenographer, Gr.C as prescribed in the Recruitment Rules has been reduced to five years regular service as one time measure holds no water. It is to be noted that the applicant was promoted as Private Secretary on ad hoc basis on 2.5.2002 when he was not at all eligible to be so promoted even within the scope and meaning of relaxed standard of consideration of five years regular service as Stenographer, Gr.C.

7. It is the service jurisprudence that if a person is not qualified to be appointed as per extant Recruitment Rules even on ad hoc basis or officiating basis, it is impermissible to order such appointment. Even if in exigency of service or in public interest an incumbent with less



qualification than the one prescribed in the Recruitment Rules is promoted, it can only be ordered that such incumbent will hold the post on ad hoc basis/officiating basis which would not confer on him any right to regularization. Apart from this, in Section 7 of the Recovery of Debts due to Bank and Financial Institution 1993 (hereinafter referred to as the Act, 1993) it is clearly stipulated that appointment of officers and staff shall be by the Central Government. To be more conspicuous, the said provision is quoted hereunder:

“7. Staff of Tribunal – (1) The Central Government shall provide the Tribunal [with one or more Recovery Officers] and such other officers and employees as that Government may think fit.

(2) [The Recovery Officers] and other officers and employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the [Recovery Officers] and other officers and employees of a Tribunal shall be such as may be prescribed.”

A reading of the above provision clearly indicates that the power of appointment to the post of Private Secretary is reserved with the Central Government. It is also to be noted that as per Annexure-A/2 absorption order though the applicant has been absorbed in D.R.T., Cuttack, as Stenographer, Gr.C, based on the recommendations made by the DPC chaired by the Presiding Officer, this absorption has not been ratified by the Government as per Rule 7 of the Recruitment Rules-2001, which reads as follows:

7. Regularisation or Absorption-(1) Notwithstanding anything contained in the provisions of these rules, the persons



holding the posts in the Debts Recovery Tribunal, Cuttack, on the date of commencement of these rules, either on transfer or on deputation basis and who fulfill the qualifications and experience laid down in these rules and who are considered suitable by the Departmental Promotion Committee shall be eligible for regularization or absorption in the respective grade subject to the condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal".

(2) The seniority of officers mentioned in sub-rule(1) shall be determined with reference to the dates of their regular appointment to the post concerned:

Provided that the seniority of officers recruited from the same source and in the post held by them in the parent Department shall not be disturbed.

(3) The suitability of persons for absorption may be considered by a Departmental Promotion Committee."

8. It is to be noted that there is no record before this Tribunal that the parent Department of the applicant had permitted the applicant to be absorbed in the post of Stenographer, Gr.C in D.R.T, Cuttack while passing Annexure-A/2 order dated 9.9.2002, by which the applicant has been absorbed. It is also seen that although the copy of the order signed by the Registrar had been forwarded to the P & A.O.(Banking), A.G.C.R. Building, New Delhi, there is nothing on record to show that even the absorption of the applicant has been ratified by the Government as contemplated under Section 7 of the Act, 1993. In this backdrop it is advantageous to quote hereunder Rule 3 of the Debts Recovery Tribunal (Financial & Administrative Power) Rules, 1997:

"3. Powers of the Presiding Officer of the Tribunal – The Presiding Officer shall have the same powers as are conferred on a Head of Department in respect of the General Financial Rules, 1963, the Delegation of the Financial

Powers Rules, 1978, the Fundamental Rules, the Supplementary Rules, the Central Civil Services (Leave) Rules, 1972, the Central Civil Services (Joining Time) Rules, 1979, the Civil Services (Pension) Rules, 1972, the Central Civil Services (Conduct) Rules, 1964, the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the Central Provident Fund (Central Services) Rules, 1960 as amended from time to time:

Provided that the exercise of powers by the Presiding Officer under these rules shall be subject to such instructions as may be issued from time to time by the Central Government. In this context, we are not ignoring O.M. No.AB dated 25.5.1998 wherein Clauses IV and V speak as under:

- (i) It will be necessary to make consequential change in the Recruitment Rules/Service Rules so as prescribe eligibility conditions with reference to the revised pay scales. It will also be necessary to review other columns of the Recruitment Rules/Service Rules where some minimum service in a particular pay scale is prescribed for consideration on deputation, etc.
- (ii) Department Promotion Committees (DPC)
It has also been decided that where the scales have been merged, the existing DPC for the higher grade will be the DPC for the integrated merged grade."

The terms of the above provisions are clear indicative of the fact that the O.M. under reference was only effective up till the Recruitment Rules framed by the Government came into being. Hence, whatever reliance placed by the applicant on the above O.M. even for relaxation is of no avail, the said O.M. having spent its force after the promulgation of the Recruitment Rules, 2001.

9. Apart from the above, it is seen from the record that the applicant by his representation dated 27.1.2006 (Annexure-A/11) ventilated his grievance before the authorities for his regularization as Private Secretary and just within a week therefrom, he moved this Tribunal in the present

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O.A., i.e., on 1.2.2006, apprehending his reversion though it was well within his knowledge that the term of his ad hoc appointment as Private Secretary was for a period of one year only. Thus, the applicant could not have been construed to be a person aggrieved within the scope and ambit of Section 19 nor the departmental remedies could be said to have been exhausted under Section 20 of the Administrative Tribunals, Act, 1985, giving a hall-mark to be a fit case for admission by the Tribunal. Therefore, at the time when the present O.A. was entertained by this Tribunal was not at all maintainable.

10. In the light of the discussions made above, we are of the view that this Tribunal ought not to have issued absolute interim order directing the Respondents to allow the applicant to continue as Private Secretary until further orders, without alerting the Department or the Respondents to proceed with the process of recruitment/appointment to the post in question either on deputation or on promotion, as the case may be, as per Recruitment Rules, 2001. So, we observe that the continuation of the applicant on the basis of the interim order passed by this Tribunal will not confer any right on the applicant for regularization of his service as Private Secretary on the forefront of the fact that the post of Private Secretary is to be filled by approved method as contemplated under the Recruitment Rules. However, in this context, the learned counsel for the applicant has brought to the notice of this Tribunal the order of the C.A.T., Calcutta Bench (supra) to buttress his contentions. We find that

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the Calcutta Bench, while disposing of the said Original Application has taken note of the present O.A. 110/2006 (Abhaya Pada Roy vs. Union of India and Ors) as under:

“...The applicant states that DRT, Cuttack in the case of Abhaya Pada Roy vs. Union of India and Ors. passed in O.A. 110/06 has considered the experience criteria of 8 years for promotion from the Grade of Stenographer ‘C’ to that of Private Secretary. The Cuttack Bench also directed the respondents to allow the applicant to continue as ad hoc Private Secretary in DRT, Cuttack beyond 10.2.2006 until further orders ...”

From the above, it is clear that the order in O.A. of the Calcutta Bench now being relied on by the applicant has the reference to and reliance on the interim order of this Tribunal in the present O.A. and therefore, both the O.As are intertwined. Be that as it may, a similar question coming up before the Calcutta Bench having been considered and the said Bench of the Tribunal having held that the applicant therein is similarly placed as that of the applicant herein, it would not be proper for this Tribunal to dismiss the O.A. on the ground of maintainability. Having regard to the ratio decidendi in the O.A. before the Calcutta Bench, we make the following order:

Respondents shall hold the recruitment/promotion process within a period of three months from the date of receipt of this order and consider the case of the applicant for promotion if he fulfils the eligibility criteria even as per the relaxation granted by the order dated 13.3.2007 of the Government of India along with the other applicants, if any, applied for

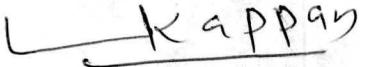
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the post as per the vacancy position notified by the Department. We further direct the Respondents to maintain a unified eligibility conditions or criterion for recruitment and/or promotion from the post of Stenographer, Gr.C to Private Secretary. The 1st Respondent is also directed to take immediate steps to complete the formalities of selection process of filling up of the post of Private Secretary within a period of four months hence. We also make it clear that in the meanwhile the applicant be allowed to continue to hold the post of Private Secretary on ad hoc basis without having any right to claim regularization.

11. Before parting with this case, the Registrar of this Bench is directed to cause an inquiry as to why and how and for what reason the process of the Tribunal was withheld for years together after of the counter was filed by the Respondents on 28.12.2006 and thereby the stay order granted continued indefinitely at the instigation of the Registry, even without giving a hint under the "Notes of the Registry" to the effect that the Counter has been filed. The inquiry report shall be submitted to the Bench within two weeks hence.

12. In the result, the Original Application is disposed of as above. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER