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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.610 OF 2006
Cuttack, this the 05th Day of February, 2008

Pramoda Patnaik Applicant

Vs.

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? *yes.*


(C.R. MOHAPATRA)
MEMBER(A)


(DR. K.B.S. RAJAN)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 610 OF 2006
Cuttack, this the ~~09~~ Day of February, 2008

CORAM:

HON'BLE DR. K.B.S. RAJAN, MEMBER(J)
HON'BLE SHRI C.R. MOHAPATRA, MEMBER(A)

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IN THE CASE OF:

Sri Pramoda Patnaik, aged about 45 years son of Late Dibakar Majumdar patnaik, presently working as Compiler, In the Directorate of Census Operations, Orissa, Janpath, Unit-IX, Bhubaneswar.

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Applicant

By the Advocate(s) M/s. R. Mohapatra,
R.C. Praharaj,
C. Nayak

Vs.

1. Union of India represented thorough the Registrar General of India, Ministry of Home Affairs, 2/A, Mansingh Road, New Delhi-110001.
2. The Director, Directorate of Census Operations, Orissa, Janaganana Bhawan, Unit-IX, Bhubaneswar, Dist. Khurda.
3. Deputy Director, Directorate of Census Operations, Orissa, Janaganana Bhawan, Unit-IX, Bhubaneswar, Dist. Khurda.

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Respondent(s)

By the Advocate(s) Mr. A. Kanungo

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O R D E R

DR. K.B.S. RAJAN, MEMBER(J)

The Applicant is a former employee of Orissa Bridge and Construction Corporation, (hereinafter, referred to as "OBCC") from 03.06.1986 to 08.02.2001. The Director of Census Operation issued notification inviting applications for filling up of certain posts of Computer and Printing Inspector vide Circular No.19/1/2000-Estt. Dated 14.04.2000. The applicant being an aspirant to that post submitted his application through proper channel and he was accordingly selected. Consequently the applicant was relieved from OBCC with effect from 08.02.2001 to enable him to join under the Directorate of Census Operation, Orissa vide Annexure-4. The applicant joined in the Directorate of Census Operation, Orissa on 09.02.2001.

2. Provision exists for counting of past service subject to certain conditions. Though according to the applicant, he fulfill all the conditions vide Annexure-15, he was asked to explain as to why his appointment/absorption be not terminated. According to the Recruitment Rules such an absorption is permissible only in respect of officials from Central/State Government. The applicant had given his explanation vide Annexure A/16.
3. As the applicant has challenged the impugned Annexure-A/15 order, by way of interim order it was ordered that his services shall not be terminated.
4. Respondents have filed their Counter. They have maintained that the Recruitment Rules do not provide for absorption rather than Central/State Govt. offices.

5. The applicant has filed his rejoinder contending that he having been duly appointed, his services cannot be terminated.

6. The Ld. Counsel for the applicant after narrating the chronological sequence of events has stated, by virtue of Annexure-14 of the order he has been confirmed in the Respondent's Organization and his lien is with reference to this Organization. Once his lien has been in the present Organization, his lien at OBCC get automatically terminated. The following are the legal provisions raised by the applicant to support his case:-

- (a) Para 2.1 of O.M. dated 05.01.94 provides for inclusion of PSUs also along with Central/State Govt.
- (b) Once the lien in the Respondent's Organization is established, the same would lead to automatic severance of lien in OBCC.
- (c) Element of promissory estoppel cannot be lost sight of.
- (d) Action of the Respondent is violative of Article 14, 16 and 21 of the Constitution.
- (e) Doctrine of Legitimate expectation is available to the applicant.
- (f) In any event there is a provision of power to relax and the same under the facts and circumstances can be invoked.

7. Ld. Counsel for the Respondent reiterated the contentions raised in the Counter.

8. Arguments were heard and documents were perused.

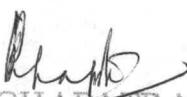
9. The applicant had submitted his application through proper channel, vide forwarding letter of OBCC dated 13.06.2000. It is as late as 01.04.2001 that the applicant had been given the offer. At that time the Department has never thought of the fact that OBCC does not fall directly under any Central/State Govt. Organization. On the basis of this order (Annexure-3) applicant has changed his career course, severed his link with OBCC and joined the Respondent's Organization. Annexure-A/7 order dated 05.02.2003 by which the applicant's tenure has been extended concretized the applicant's further hope for absorption. The absorption order dated 25.02.2003 vide Annexure-9 completes the action and simultaneously de-links the applicant's link with OBCC. After all these have taken place, if the authorities, at present are permitted to knock out the applicant on the ground that as per the Recruitment Rules Central/State Govt. official only are eligible to be appointed on deputation, that would amount to encouraging the Respondents "to hire and fire" its employees at their own whims and fancies. This Tribunal cannot be a contributory factor for such results. The applicant has been sincere in applying this post through proper channel and in case he is not eligible to be a candidate, Respondents ought to have ignored his application by allowing him to continue for years together and after absorption, the applicant has reached a point of no return. The only way to rectify the mistake committed by the Respondents is to invoke the power to relax for which there is full justification.

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10. In view of the above this O.A. is allowed. Order dated 07.08.06 is hereby quashed and set-aside. Respondents are directed to take appropriate action to have the approval of the competent authority for relaxation of the Rules and the applicant shall be retained in Respondent's Organization as a regular employee.

11. No order as to costs.


(C.R. MOHAPATRA)

MEMBER (A)


(DR. K.B.S. RAJAN)

MEMBER(J)

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