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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 17 of 2003
Cuttack, this the 21st day of December, 2004

Md. Jalal Baig.

....

Applicant.

-Vrs.-

Union of India & Others.

Respondents.

FOR INSTRUCTIONS

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


(B.N. SOMPALLI)
Vice-Chairman


(J.K. KAUSHIK)
Judicial Member

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 17 of 2003
Cuttack, this the 21st day of December, 2004

C O R A M:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.

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Md. Jalal Baig,
Aged about 38 years,
S/o. Late Mahaboo Baig,
of Tulasi Nagar,
PO/PS: Berhampur,
District-Ganjam-I,
at present working as Gardener,
in the Office of H.R.O.,
Ganjam Division,
At/Po/Ps: Berhampur,
Dist. Ganjam.

.....

Applicant.

By legal practitioner: M/s. Milan Kanungo,
Y. S. P. Babu,
N. P. Mishra,
Y. Mohanty,
P. K. Rath,
Advocates.

-Vrs.-

1. Union of India represented through
Director General of Posts, Dak Bhawan,
New Delhi-1.
2. Chief Postmaster General (O) Circle,
At/Po/Ps: Bhubaneswar, Dist. Khurda.
3. Postmaster General, Berhampur Region,
At/Po: Berhampur, Dist. Ganjam.
4. Superintendent, RMS B.G. Division,
At/Po: Berhampur, Dist. Ganjam.
5. H. R. O. Berhampur, PO/PS: Berhampur,
Dist. Ganjam.
6. Sri Hariram Padhi,
At present working as Gardener,
in the Office of H.R.O., B.G. Division,
At/Po/Ps: Berhampur, Dist. Ganjam.

.... Respondents.

By legal practitioners: Mr. U. B. Mohapatra,
Senior Standing Counsel (Central)
For Res. Nos. 1 to 5.
M/s. Manoj Mishra,
D. K. Patnaik,
P. K. Nanda
for Res. No. 6.

O R D E R

MR. J. K. KAUSHIK, JUDICIAL MEMBER:-

Md. Jalar Baig has undertaken third
journey to this Bench of Tribunal in almost same
matter and has prayed as under:-

"In view of the above facts the Applicant
humbly prays for the Annexure-11 to be
quashed and the applicant be given justice
in attaining his seniority with effect
from 10-2-1991 and seeks a mandate from
this Hon'ble Tribunal to Quash and set
aside the decision taken vide letter
dated 07-11-2002 (Annexure- 9)".

2. We have heard the learned counsel for
all the contesting parties and have bestowed our
earnest consideration to the pleadings and the records
of this case.

3. The factual score of the case, as borne out
from the pleadings of the parties, depicts that applicant
was engaged as a substitute EDMM (Now GDS Major man) in the
year 1989 and he worked during various spells against
in the same capacity. He was faced with the threat of
termination and therefore, filed an O.A. No. 94/94 which
came to be disposed of on dated 05-12-1994 as under:

"...We hereby direct the Respondents to maintain regular Attendance Registers to show the attendance of each of the workmen every day in the position they work. As far as the present applicants are concerned, we have no hesitation in finding that they have worked in two consecutive years for more than 240 days and hence their services are to be regularised. Accordingly, we allow this application and direct the respondents to regularise their services in the vacancies existing or if there are no such vacancies, that may occur keeping in view the seniority in the waiting list".

4. Thereafter, he came to be appointed Part-Time Gardner vide letter dated 09.02.1996 (Annexure-A/2). He filed another O.A.No. 280/1997 complaining noncompliance of the order passed in O.A.No. 94/94 above. The same also came to be disposed of vide ~~the~~ order dated 20.02.2002 with a direction to the Respondents to take appropriate action in respect of claim of applicant within a period of two months from the date of production of documents by him before the competent authorities. His further case is that he has supplied the documents but the pleas of official Respondents is that he has not supplied the requisite documents.

5. The learned counsel for the Applicant at the first instance abandoned the claim relating to challenge of Annexure-A/11. He stressed that the Applicant should be assigned seniority with effect

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effect from 10-02-1991 instead of 05-02-1992 and to that extent Annexure-A/9 should be modified under the inherent powers of this Tribunal. He was specifically asked as to whether the requisite documents are available with the case file. No definite reply was forthcoming. He was trying to side track the answer to the question relating to the appointment order through which ^{Applicant} was initially engaged.

6. Per contra, the learned counsel for the Respondents reiterated the grounds of defence as set out in their reply and stressed that the Applicant did not furnish the requisite documents.

7. We notice from the perusal of the relevant rules that a substitute is normally engaged by an E.D.A. to work ~~vide~~ him during his absence due to leave. In case the absence is likely to be for a long period one is required to be tested for suitability. In the instant case, it is no one's case that applicant was not a substitute. There is no provision under the rules as regards any benefits that may be admissible to such substitutes. However, in this case Applicant has been rushing up to this Tribunal and by projecting grave injustice, has been able to attract some sympathy. The official Respondents seems to

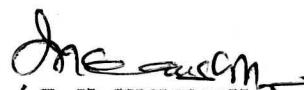
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be travelling in the same boat i.e. under overwhelming confusion. However, we find ourselves unable to travel in the boat in which travel has been undertaken so far and wish to sink alone by carrying out incisive analysis and put an end to the controversy.

8. As we have said above, that the substitute to the EDA does not acquire any right whatsoever. He is not even a Casual Labour. We fail to understand as to under which rule he is claiming seniority and on what post. One gets seniority on the post on which one is appointed and not in vacuum. The Applicant has been appointed only vide order dated 09.02.1996 as Pt. Gardner and therefore, he can get seniority or whatsoever only from that date. The claim of Applicant in this O.A. is frivolous and misconceived. Filing of such application is required to be curbed forthwith by imposing exorbitant costs on applicant. But this time we are leaving him with only a note of caution to be careful in future.

9. In the result, this O.A. is devoid of any merits and substance and the same stands dismissed, however, with no order as to costs.


(B.N. SOM)
Vice-Chairman


(J.K. KAUSHIK)
Member (Judl.)