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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

◆ **ORIGINAL APPLICATION NO.465 OF 2008**

Cuttack this the 15th day of April, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Rajat Kumar Mallick, aged about 52 years, Son of late Gobardhan Mallick, At-Odei,
PO-Dasarathpur, Dist-Jajpur, presently serving as Jr. Accountant, Office of the
Executive Engineer, Waer Development Agency, Ministry of Water Resources, Govt.
of India, F-24, B.J.B.Nagar, Bhubaneswar, Dist-Khurda

...Applicant

By the Advocates: Mr.B.B.Mohanty

-VERSUS-

1. Union of India represented through Secretary, Governing Body of National Water Development Agency, represented through it's Member Secretary-cum-Director General, N.W.D.A., Community Center, Saket, New Delhi-17
2. Director General, N.W.D.A. Community Centre Saket, New Delhi-17
3. Chief Engineer(North), N.W.D.A., F-24, B.J.B.Nagar, Bhubaneswar-14, Dist-Khurda

...Respondents

By the Advocates: Mr.P.R.J.Dash, A.S.C.

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. In this Original Application, the applicant presently working as Junior Accountant under the Respondent-Department has sought for the following relief.

“...the O.A. may be allowed and necessary direction may be issued to the Respondents to consider 6.9.83 as the date of entry into the cadre for the purpose of seniority by taking into account the adhoc service rendered by the applicant prior to his regularization in view of law laid down in AIR 1990(SC) 1607. And this Hon'ble Tribunal be further pleased to allow all consequential service and financial benefits in favour of the applicant;
And may further be pleased to quash the impugned order of rejection dt. 7.8.08 under Annexure-5.
And pass any other order/orders so as to give complete relief to the applicant”.

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2. The brief facts leading to filing this Original Application are that the applicant had earlier approached the Hon'ble High Court of Orissa in O.J.C.No.3909 of 1996 for fixation of his seniority w.e.f. 6.9.1983, i.e., the date on which he joined as L.D.C. in the National Water Development Agency (NWDA) and to suitably modify the seniority list by placing him above the Opposite Party Nos. 5 to 21 in the said Writ Application. The Hon'ble High Court, vide order and judgment dated 30.1.2006, while disposing of the said Writ Application, held as under:

"It is hard to believe the plea taken by the petitioner for the delay in filing the writ petition even from stage of argument. Even if we accept the submission of the learned counsel for the petitioner that the order of rejection of the representation of the petitioner, objecting to the seniority list was communicated to him in the year 1992, there is no explanation offered by the petitioner to file the writ application in the year 1996, i.e., four years after the communication of the order of rejection of his representation. In such circumstances, we are not inclined to entertain this writ application and accede to the prayer of the petitioner.

Learned counsel for the petitioner submits that the petitioner shall approach the opposite parties by filing a representation highlighting his grievances as made in this writ application and in the light of the decision rendered by the Apex Court in The Direct Recruit Class-II Engineering Officers' Association and others -v- State of Maharashtra and others: AIR 1990 SC 1607. It is open to the petitioner to do so and it is equally open to the authorities to take a decision on the same in accordance with law".

3. It appears that after the above order and judgment of the Hon'ble High Court of Orissa, the applicant had preferred certain representation (copy of which has not been annexed to the O.A.) which having not been acceded to vide Annexure-A/5 dated 7.8.2008, the applicant has moved this Tribunal with the prayer has referred to above. In the fitness of things, the reasons for not acceding to the request of the applicant as set out in Annexure-A/5 read as under:

"...the representation of Shri R.K.Mallick, Junior Accountant, ID, NWDA, Bhubaneswar has been re-examined thoroughly. As there was break of one day

due

between two spells of his appointment, his request for counting the period of first ad hoc appointment from 06.09.1983 to 3.12.1983 cannot be accepted for pay protection".

4. Respondents have filed their counter opposing the prayer of the applicant. The main thrust of the counter is that since there was no recruitment rules at the time of setting up of National Water Development Agency, in order to make some working arrangements, recruitment to various categories of posts was made purely on ad hoc basis for a fixed period of 89 days. According to Respondents, the applicant was appointed as LDC purely on ad hoc basis for a period of 89 days vide order dated 5.9.1983(Annexure-R/1) and he took over the charge on 6.9.1983 and on expiry of 89 days, he was offered with another appointment order dated 9.4.1984 (Annexure-R/II) to the post of LDC on temporary basis. According to Respondents, there is one day break between his tenure of appointment on ad hoc basis from 6.9.1983 to 3.12.1983 and the date of further appointment as LDC on temporary basis w.e.f. 5.12.1983. In the above background, the Respondents have submitted that the applicant is not entitled to count the period of ad hoc appointment from 6.9.1983 to 3.12.1983 for seniority purpose.

5. As regards application of ratio decided by the Hon'ble Supreme Court in Direct Recruit Class II Engg.Association vs. State of Maharashtra (AIR 1990 SC 160), the Respondents have submitted that in the said case the applicants had continued on ad hoc basis for 15-20 years whereas the applicant's ad hoc appointment herein was fixed only for 89 days, whereafter, he was issued with further appointment on temporary basis. Therefore, the service of the applicant being not continuous and uninterrupted, the ratio of the decision in AIR 1990 SC 160 is not applicable, the Respondents have added.

6. The applicant has filed rejoinder to the counter.

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7. We have heard Shri B.B.Mohanty, learned counsel for the applicant and Shri P.R.J.Dash, learned Addl.Standing Counsel appearing on behalf of the Respondents and perused the materials on record.

8. Having regard to the points urged, the sole point that arises for determination is whether the applicant is entitled to count seniority as LDC with effect 6.9.1983.

9. We have considered the rival submissions and given our anxious thoughts to the point in issue. For the purpose of determining the issue regarding entitlement of the applicant to seniority of ad hoc service as LDC from 6.9.1983, it is profitable to quote the relevant portion of letter dated 24.6.1992 (Annexure-III) addressed to the Director General, National Water Development Agency, New Delhi by Chief Engineer (North), N.W.D.A., Bhubaneswar, which reads thus:

“Further it is to state that as per available records, it is seen that there is no break in service between the two spells of ad hoc appointment or neither the adhoc service was terminated on being appointed to regular service as L.D.Clerk.

In view of the above facts and hqrs. Letter No.5/40/85-Admn./915 dt. 23.2.97, the case of Sri R.K.Mallick is recommended and Sri Mallick, U.D.Clerk may be allowed service continuity with effect from 6.9.1983 in National Water Development Agency, as admissible under the rules”.

10. Apart from the above, the Respondents have not refuted the averment made by the applicant in Para-4.8 of the O.A. that he has been granted increment with effect from 1st of September, 1983 uninterruptedly.

11. Having regard to the above, we are of the view that the counter runs contrary to what has been stated in Annexure-III as referred to above and in the circumstances, the Respondents are estopped to blow hot and cold from the same breath. In the circumstances, we quash the impugned order dated 7.8.2008 at Annexure-5 and accordingly, direct the Respondents to take a decision regarding assignment of seniority to the applicant with effect from 6.9.1983 as L.D.C. in the light of the letter

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dated 24.6.1992(Annexure—III) and pass appropriate orders within a period of three months from the date of receipt of this order.

With the above observation and direction, this O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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