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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O.A.No.654 of 2011


Cuttack this the 10 day of August, 2012

Hari Chandra DasApplicant
Versus
Union of India & Ors.Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? X
2. Whether it be sent to PB New Delhi for circulation? X


(A.K. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.654 of 2011

Cuttack this the 10th day of August, 2012

CORAM:

THE HON'BLE SHRI C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE SHRI A.K.PATNAIK, MEMBER (J)

...

Hari Chandra Das, 46 years, S/o. late Debendra Chandra Das – at present working as Lift Khalasi in the Office of Executive Engineer, C.P.W.D.Electrical, At-House No. C1/3, Old A.G.Colony, Unit-IV, Bhubaneswar-751 001

...Applicant

By the Advocates: M/s.J.Sengupta & S.Das, Counsel

-Versus-

1. Union of India represented through Director General (Works), C.P.W.D., Nirman Bhawan, New Delhi-110 001
2. Chief Engineer Electrical, Eastern Zone, C.P.W.D., 234/4, AJC Bose Road, Nizam Palace, Kolkata-20
3. Superintending Engineer, C.P.W.D., 234/4, AJC Bose Road, Nizam Palace, Kolkata-20.
4. Executive Engineer Electrical, C.P.W.D., At-House No. C 1/3, Old A.G.Colony, Unit-IV, Bhubaneswar-751 001.
5. Surendranath Das, C/o.Muralidhar Das, At-Qr.No.II/218, Unit-IV, Bhubaneswar-751 001

...Respondents

By the Advocates: Mr.S.B.Jena, ASC
M/s.B.Mohanty-I, S.Patra,
P.K.Mohapatra,A.Panda,
S.J.Mohanty & D.Sahu,
Counsel.

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ORDERC.R.MOHAPATRA, MEMBER (A)

Assailing the legality and validity of publication made by the Respondent-Department vide Annexure-A/6 dated 29.3.2011 for filling up one post of Lift Operator in un-reserved category on regular basis, applicant, who is presently working as Lift Khalasi has moved this Tribunal in the present Original Application with prayer for quashing Annexure-A/6 with further direction to Respondent-Department to absorb him as Lift Operator forthwith.

2. According to the Applicant, he joined under the Respondent-Department as Lift Operator on 1.6.1990 after a due process of selection. Earlier he had moved this Tribunal in O.A.No.793 of 2005 before this Tribunal seeking regularization of his service as Lift Operator. This Tribunal, vide order dated 29.6.2007 disposed of the said Original Application with following direction.

“In the light of the discussions made above, the Respondents are hereby directed to examine the case of Applicant for conferment of benefits available under Annexure-A/2 and grant of other consequential relief as per Rules/Law ...”

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3. In compliance of the above direction of this Tribunal, the Respondent-Department conferred him with Temporary Status with certain terms and conditions vide order dated 12.2.2008 in the post of Lift Khalasi, on the ground that at the relevant point of time the post of Lift Operator was not available. Pursuant to this, the applicant submitted his joining report on 19.2.2008 (Annexure-A/5). While the matter stood thus, Respondent-Department, vide Annexure-A/6 dated 29.3.2011 invited applications for filling up one post of Lift Operator. Hence, aggrieved with the above publication, the applicant moved this Tribunal seeking relief as referred to above.

4. Respondent-Department have filed their counter opposing the prayer of the applicant. The main thrust of the counter of the Respondent-Department is that pursuant to advertisement under Annexure-A/6 nine candidates did appear for the Trade Test. Whereas applicant had secured 100 out of 100 marks, Respondent No.5 had also secured the same marks. While assigning the reason of selection of Private Respondent No.5, Respondent-Department have stated that since Respondent No.5 had more experience as

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Lift Operator on casual/daily wage basis than the applicant, who was working as Lift Khalasi with Temporary Status with effect from 19.2.2008, the former was considered suitable and selected for the post in question.

5. Private Respondent No.5 has entered appearance and filed counter. It has been submitted that while he was working as Lift Operator on daily wage basis, applicant was working as Lift Klahasi on casual basis which is a Group-D post. According to Respondent No.5 whereas the post of Lift Operator is a Group-C post the post of Lift Khalasi is a Group-D post and since the applicant had been engaged as Lift Khalasi, he cannot claim for regularization against the higher post of Lift Operator.

6. We have heard Shri J.Sengupta, learned counsel for the applicant, Shri S.B.Jena, learned ASC for the Respondent-Department and Shri B.Mohanty-I, learned counsel appearing on behalf of Private Respondent No.5 and perused the materials on record.

7. At the out set, it is to be noted that the applicant has not produced any unimpeachable document to show that he had been engaged as Lift Operator with effect from

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2 1.6.1990 through a due process of selection, as has been averred in Paragrph-4.1 of the O.A. It is an admitted fact that in compliance with the order of this Tribunal in O.A.No.793/2005 he has been conferred with Temporary Status in the post of Lift Khalasi and joined as such with effect from 19.2.2008. It is not in dispute that Respondent No.5, based on the decision of Industrial Dispute Case No.361/2001, had been taken back to service with the status that he was enjoying prior to his termination on 1.9.1999.

8. In the above backdrop the Tribunal is to adjudicate, firstly, as to whether Respondent-Department were justified in issuing advertisement for filling up the post of Lift Operator and secondly, whether selection of Respondent No.5 to the post of Lift Operator is in order.

9. In this connection, we have gone through the entire material on record. Since the applicant, by producing concrete evidence, has not substantiated that he has all along been holding the post of Lift Operator under the Respondent-Department, his claim for regularization in the said post in the absence of any public notice inviting applications from the eligible candidates is violative of Articles-14 and 16 of

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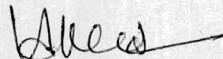
the Constitution of India. This apart, applicant has not produced before the Tribunal any order/scheme/instruction set out by the Respondent-Department for regularization in the post of Lift Operator, notwithstanding the fact that he has been working as Lift Khalasi with conferment of Temporary Status w.e.f. 19.2.2008. As such, we are not in agreement with the learned counsel for the applicant that issuance of advertisement for filling up the post of Lift Operator vide Annexure-A/5 is in any way irregular or unlawful.


10. In so far as selection to the post of Lift Operator is concerned, it is an admitted position that whereas applicant has secured 100 marks out of 100, Respondent No.5 has also secured the same marks. What weighed with the Respondent-Department in selection of Respondent No.5 to the post in question is that the long standing experience gained by him as Lift Operator. In this connection, we have gone through Annexure-R/3 dated 25.11.2009, which is a letter issued by the Respondent No.1 in compliance with the judgment of Hon'ble Supreme Court in State of Karnataka vs. Uma Devi. As per the dictum of Hon'ble Supreme Court in the aforesaid case, Respondent-Department are not at fault

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in giving weightage to Respondent No.5 for having been engaged for a significant period of time as Lift Operator on casual/daily wage basis via-a-vis the applicant engaged as Lift Khalasi with conferment of Temporary Status with effect from 19.2.2008. In view of this, we uphold the selection of Respondent No.5 to the post of Lift Operator.

11. For the discussions held above, we find that the applicant has not been able to make out a case for any of the relief sought. In the circumstances, O.A. being devoid of merit is dismissed. No costs.


(A.K.PATNAIK)
MEMBER(JUDL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)