

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 369 OF 2013
Cuttack the 17th day of July, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, JUDICIAL MEMBER
HON'BLE MR. R. C. MISRA, ADMINISTRATIVE MEMBER

Sri Amiya Kumar Mohanty,
aged about 47 years,
Son of Late Baishnab Chhan Mohanty,
Vill-Nagapur, Po.-Kolar,
Ps./Via-Tirtol. Dist-Jagatsinghpur,
now residing at Sagadia Sahi (ranihat),
Po.-Cuttack, G.P.O, Dist-Cuttack-753001
now working as Sorting Assistant,
R.M.S. 'N' Division, Cuttack.

...Applicant
(Advocates: M/s- P.K. Padhi, Mrs. J. Mishra)

VERSUS

Union of India Represented through

1. Secretary-cum- Director General of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi-110116.
2. Chief Post Master General,
Odisha Circle,
Bhubaneswar,
Dist-Khurda-751001.
3. Sr. Superintendent of R.M.S.,
'N' Division,
Nuapatna,
Po.-Cuttack G.P.O.,
Cuttack-753001.

... Respondents
(Advocate: Mr. J.K. Khandayatray)

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ORDER(Oral)

HON'BLE MR. A.K. PATNAIK, JUDICIAL MEMBER

The case of the applicant, in nut sell, is that his father while working as ~~Shorting~~ Assistant, after rendering 31 years of service, retired, on medical invalidation, w.e.f. 07.08.1996. Thereafter, Respondent Nos.1 & 2 directed Respondent No.3, on 09.05.1997, to appoint the Applicant on compassionate ground. Accordingly, on 23.02.98, Respondent No.3 deputed the Applicant for training to Daryanga. On completion of his training, instead of giving him regular appointment, he was engaged against casual vacancy. Applicant filed O.A. No.835/02, praying for his regularization in service/regular appointment. Similarly placed candidates were also approached this Tribunal by filing separate O.As. All those cases were heard together and disposed of in a common order, directing the Respondents to grant temporary status to the Applicant and others and regularize him/them against sanctioned post and also directed the Respondents to give another opportunity to the applicant to exercise option for being appointed/absorbed against GDS posts.

2. Being aggrieved, the Applicants therein filed W.P. (C) No.11481/04 before the Hon'ble High Court of Orissa which was disposed of in a common order dated 28.09.06. The relevant portion of the Hon'ble High Court of Odisha is quoted herein below:

“ The case of the petitioners before the Tribunal was that they have been working against casual vacancies for long periods and no action has been taken by the respondent-opposite parties to regularize them against permanent posts. It was also alleged that some of the persons working on casual basis and junior to the petitioners were given appointment against permanent vacancies on compassionate grounds whereas the petitioners have been discriminated. The Tribunal disposed of all the Original Applications in a common judgment directing that all the petitioners who are working

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as Casual Sorting Assistants since 1997/1999 onwards to manage the leave vacancy situations may continue as such provided it is so required. But on a long term solution. Without keeping the ball rolling, the respondents were directed to consider the case of the applicants for grant of temporary status pending regularization against sanctioned posts. Challenging the said judgment of the Tribunal, these writ petitions have been filed. During pendency of these writ petitions, a similar matter came up before the Hon'ble Supreme Court in a batch of Civil Appeals and the principal Civil Appeal Number is 7773 of 2009. On perusal of the judgment of the Madras High Court which was challenged before the Hon'ble Supreme Court as well as the judgment of the Hon'ble Supreme Court in the said S.L.P., we find that these petitioners stand on the same footing as that of the respondents before the Hon'ble Supreme Court and *prima facie* we are of the view that the case of the petitioners is squarely covered by the judgment of the Hon'ble Supreme Court in the aforesaid Civil Appeal.

Accordingly, we set aside the order of the Tribunal impugned before us and direct the opposite parties specially opposite party Nos.2 & 3 to consider the case of the petitioners in the light of the judgment of the Hon'ble Supreme Court in the aforesaid case and pass necessary orders within a period of three months from the date of communication of this order.”

The relevant portion of the decision of the Hon'ble Apex Court, in Civil Appeal No.7773/2009 relied on by the Hon'ble High Court of Orissa reads as under:-

“ In the circumstances, the applicants are directed to regularize the services of all the 202 respondents who are working in the Department against short term/leave vacancies **with effect from their date of appointment**. However, the respondents shall not be entitled for payment of any arrears on account of such regularization. But their pay and pensionary benefits are protected.”

3. Based on the aforesaid order of the Hon'ble High Court of Orissa, the Applicant was regularized in the post of Sorting Assistant w.e.f. 27.08.2011. Being aggrieved, the Applicant submitted representation and



the said representation was rejected and communicated to him vide letter dated 02.04.2013. Relevant portion of the order is quoted herein below:-

“ In obedience to the order of the Hon’ble Tribunal the representations dated 28.11.2011, 07.02.2012 and 28.03.2012 of the applicant are again taken into account. In his representation the applicant has mainly stressed on the point that he was recommended for compassionate appointment in the year 1997 for being kept in the panel for the year 1997 but was not given actual compassionate appointment on unjustified grounds. As mentioned in the previous pages, the Department did not give him compassionate appointment on regular basis not on unjustified grounds but because the recommendation of the CRC itself was flawed. When recommendation is to be made restricting the number of compassionate appointment to 5% of the direct recruitment vacancies on a particular year, at that time the CRC had drawn up a panel of candidates for compassionate appointment beyond the prescribed limit, which was not to be done as per rules. However, as thereafter, the Department had extracted work from the applicants time to time, on a casual basis (but not on regular basis continuously from any particular date) and as the Department’s action on drawing up a panel and engaging someone on casual basis had given the applicant some right to claim regular appointment, he had gone to the High Court of Orissa and obtained orders from the High Court of Orissa for offer of regular appointment. Basing on the orders of the High Court of Orissa, the Department offered him regular appointment but only in the year 2011 vide Directorate’s letter No.66-39/2011-SPB.1/C dated 27.07.2011. On the basis of this order of the Directorate which was in compliance with the order of the High Court of Orissa vide order dated 28.09.2010, the candidate actually took up regular appointment from 27.08.2011.

Thus, his actual regular appointment commences 27.08.2011. Seniority in Government service is counted only from the date a candidate regularly joins the service and not on the date he could have been offered earlier, as claimed by him in his representations. Hence, there is no scope of antedating his seniority from the date he was kept in the panel for compassionate appointment in the year 1998.”



4. Being aggrieved by the aforesaid order of rejection especially his prospective date of regularization, the applicant has filed the instant O.A. seeking the following relief:-

“ To quash Annexure-A/20 and direct the respondents to regularize the service of the applicant from 1996 along with all candidates those who were approved against the vacancies meant for 1996 quota and in the CRC of 30.04.96 with all consequential service benefits including seniority and all benefits like regular employees.”

5. We have heard Sri P.K. Padhi, Learned Counsel for the applicant and Sri J.K. Khandyatray, Learned Addl. Central Govt. Standing Counsel appearing for the Respondents.

6. Sri Padhi vehemently contended that the order of regularization and order of rejection being contrary to the order of the Hon'ble Apex Court vis-à-vis the Hon'ble High Court of Orissa the Respondents are to be proceeded under the Contempt of Court Act and the Rules made there under. Besides, it was argued by the Ld. Counsel for the applicant that the applicant is entitled to be regularized retrospectively in compliance of the order of the Hon'ble Apex Court and the Hon'ble High Court of Orissa. On the Other hand Sri Khandayatray submitted that regularization cannot be made retrospectively and seniority in Government service is counted only from the date when a candidate joins in service and not prior to that. Therefore, there is no scope for antedating his regularization and consequently granting him seniority. We have considered the rival contention of the parties with reference to the pleadings. We find that when the Hon'ble High Court of Orissa set aside the order of the Tribunal and directed the Respondent Nos.2 & 3 to consider the case of the applicant in



the light of the judgment of the Hon'ble Supreme Court referred to above and the Hon'ble Supreme Court in the said case specifically directed to regularize the service of the persons working in the Department against short-term leave vacancy as in the case of the applicant w.e.f. the date of their appointment, no authority is available with the Respondent Nos.2 & 3 to deny such benefit. Since the order of rejection dated 02.04.2013 is contrary to the law laid down by the Hon'ble Supreme Court and Hon'ble High Court of Orissa, prima facie we do not find any justifiable reason to keep this matter pending by way of inviting counter/objection from the Respondents. Hence, the order of rejection is hereby quash. As a result the Respondent Nos.2 & 3 are hereby directed to consider/re-consider the case of the applicant strictly in accordance with the direction of the Hon'ble Supreme Court in Civil Appeal No.7773 of 2009 (Union of India & Anr. Vrs. M. Nallavan) followed by the Hon'ble High Court of Orissa in order dated 28.09.2010 in W.P. (C) Nos.11481, 11507, 11508 & 12115 of 2004 and intimate the result thereof to the applicant in a well reasoned order within a period of 60 (sixty) days from the date of receipt of the copy of this order.

7. Send copy of this order along with copy of the O.A. to Respondent Nos.2 & 3 at the cost of the Applicant for which Sri P.K. Padhi, Learned Counsel for the applicant undertakes to deposit the postal requisite in the Registry.


(R.C. MISRA)
ADMN. MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER