

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 375 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Shri Tapan Swain, aged about 32 years, S/O Juria Swain, At: R&B Section-IV, Unit-III, Bhubaneswar At/Present: Data Entry Operator, In the office of CSIR-INSTITUTE OF MINERALS & MATERIALS TECHNOLOGY, Bhubaneswar-751013, Odisha.

.....Applicant.

VERSUS

1. Union of India, represented through it's Union of India represented through its Secretary, Department of Science and Technology, New Delhi – 110001.
2. Director General, CSIR, Council of Scientific and Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi - 110001.
3. CSIR-INSTITUTE OF MINERALS & MATERIALS TECHNOLOGY, (Council of Scientific & Industrial Research), Bhubaneswar-751013, Odisha Represented by its Director.

.....Respondents.

CP No. 71 of 2019

1. Shri Tapan Swain, aged about 32 years, S/O Juria Swain, At: R&B Section-IV, Unit-III, Bhubaneswar At/Present: Data Entry Operator, In the office of CSIR-INSTITUTE OF MINERALS & MATERIALS TECHNOLOGY, Bhubaneswar-751013, Odisha.

.....Petitioner.

VERSUS

1. Dr. Shekhar C Mande, Secretary, Department of Scientific & Industrial Research, Anusandhan Bhawan 2, Rafi marg, New Delhi – 110 001.
2. Prof Suddhasatwa Basu, Director, CSIR-Institute of Minerals & Materials Technology, Bhubaneswar – 751 010.

.....Contemnors.

For the applicant : Mr. J. Mohanty, Advocate

For the respondents: Mr. A. Pradhan, Advocate

Heard & reserved on : 16.03.2020

Order on :02.06.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

O.A No. 375/2019:

- (i) *That the applicant may be allowed to continue in the present post on regular basis in regular scale of pay, so long Project ERP has not been terminated by Respondent No. 2. Moreover the judgment/order dtd. 10.05.2018 of the Hon'ble High Court of Orissa passed in writ petition WP(C) 6661/2018 is very much applicable to this case.*

C.P. No. 71/2019:

- i) *To issue notice to the contemnors as to why contempt proceeding should not be initiated against the contemnors for wilful and deliberate violation of the order of this Hon'ble Tribunal.*
- ii) *And after hearing both the sides at an early date contempt proceeding against the contemnors for non compliance of order dated 27.03.2019 passed in O.A. No. 347/2018 (Annexure – A/1) may kindly be taken up and the contemnors may kindly be punished as per provision of law.*

O.A. No. 375/2019

2. The case of the applicant in brief as averred in OA is that the applicant who was having requisite qualification and age limit was selected for the post of

Data Entry Operator against advertisement by the respondent No. 3 vide Advt. No. 02/2012 (Annexure-A/5) on the basis of proficiency test held on 24.12.2012 followed by interview/viva voce test on 08.01.2013. The applicant was engaged by respondent No. 3 as “Data Entry Operator” DEO on contractual basis purely temporary for a period of six month in CSIR-IMMT, Bhubaneswar and the applicant joined the said post and was continuing as such till date for about a period of five years being extended from time to time without any interruption. The applicant had filed OA No. 347/2018 before this Tribunal for regularization of his service which was disposed of by this Tribunal vide order dtd 27.03.2019 (Annexure A/2) wherein the Tribunal was pleased to issue direction to the respondents of the said OA to continue the engagement of the applicant as long as the project entitled “Building Electronic Knowledge based Effective Work Places” is continuing with the need for the services of Data Entry Officer for the project and to consider extension of their services as done in the past subject to the applicant fulfilling the contractual norms. The applicant further submitted that the project is continuing as per office memorandum dtd 25/29.04.2019 (Annexure 3) of respondent No. 2 and information received under RTI vide Annexure A/4 series also points out that the project is ongoing activity but the Respondent No. 3 with malafied intention and vindictive motion and grudge has terminated the services of the applicant w.e.f. 07.06.2019 after noon vide Annexure A/1 by taking false plea that there is no need of any Data Entry Operator. The respondents who are legally bound to give at least one month notice as per term and condition of appointment and advertisement No. 2/2012 (Annexure A/5) which clearly stipulates that “contract may be terminated at any time by giving one month notice by either side” has not been adhered to since Respondent No. 3 has given one day notice which is not only illegal but also arbitrary and whimsical and violates the principle of natural justice. The applicant further avers that respondent No. 3 has become vindictive to such an extent that they have not yet paid the salary of the applicant for the month of April and May’2019. Hence this OA.

3. The respondents in the counter inter alia averred that the applicant was engaged by the Respondent as Data Entry Operator on purely temporary basis to carry out data entry job for the ERP project and it was also amply made clear in his offer of engagement that his engagement is for specific project “Building Electronic

Knowledge Based Effective Work Places” for a period of 6 months from the date of joining and co-terminus with the preset project or till such time the job performed by him in the project exists and his engagement is specifically extended by the Director of CSIR-IMMT, whichever is earlier. His services was always extended for a definite tenure from time to time based on the need of his services, the last such tenure being extended up to 10.09.2018. The respondents further averred that the progress and status of ONECSIR ERP implementation was reviewed in meeting held on 05.04.2019 by the Director, CSIR-IMMT and all the user departments unanimously opined that all the bulk legacy data has already been captured and there is no need of entry of any bulk data. As far as operational part is concerned it shall be managed by the in house regular staff of the concerned departments. Accordingly the applicant was communicated through a speaking order vide OM dated 06.06.2019 that no further extension of his engagement as Data Entry Operator will be granted to him beyond 07.06.2019. The respondents also stated that the ONECSIR ERP project is a continuous process which is going on and being operated by the regular staff of CSIR-IMMT but it has nothing to do with the continuation of engagement of the applicant so it is crystal clear that the respondents have not violated the order dated 27.03.2019 of Tribunal. The respondents further averred that the applicant service was discontinued and not terminated after completion of his tenure which was extended up to 10.09.2018. If his services had been terminated before the completion of tenure then it would have amounted to termination of his service which would have required giving one month notice as per rules and terms and conditions of his offer of engagement. The services of the applicant was continued beyond 10.09.2018 as per the directives of the Hon’ble Tribunal vide order dated 19.09.2018. After the disposal of OA No. 347/2018 and in compliance of the direction passed by the Hon’ble Tribunal vide order dated 27.03.2019 the services of the applicant was discontinued through a speaking order as there was no need of his services for any further data entry, for which there was no need for giving one month notice as per rules, as it was not a case of termination by the respondents. As far as non-payment of salary for the month of April and May 2019 to the applicant, the respondents submitted that since his tenure had completed, he was requested to submit No dues certificate from all concerned vide office OM

dated 06.06.2019 but the applicant did not submit it and hence his salary has not been settled and paid.

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4. The case of the applicant as averred in brief in the CP is that he had filed an application before this Tribunal vide O.A. No. 347/2018 for regularization of his service which was disposed of vide order dated 27.03.2019 (Annexure A/1) with a direction to the respondents “to continue the engagement of the applicant as long as the project entitled “Building Electronic Knowledge based Effective Work Places” is continuing with the need for the services of Data Entry Officer for the project and to consider extension of their service as done in the past subject to the applicant fulfilling the contractual norms”. It is further averred by the applicant that the respondents/contemnors with mala-fide intention and vindictive motion and grudge have terminated the services of the petitioner w.e.f. 07.06.2019 afternoon vide (Annexure A/2) by taking false plea that there is no need of any Data Entry Operator even though the project is continuing as per office memorandum dated 25/29.04.2019 (Annexure A/4). The applicant further submitted that the respondents/contemnors are legally bound to give at least one month notice in view of terms and conditions of appointment as per Advertisement No. 2/2012 (Annexure A/4) which clearly stipulates that contract may be terminated at any time by giving one month notice by either side. Hence the CP.
5. The respondents/contemnors in their show cause submitted that they have not violated the order dated 27.03.2019 of this Hon’ble Tribunal and the progress and status of the ONECSIR ERP project was reviewed in the meeting held on 05.04.2019 and all the user departments unanimously opined that all the bulk legacy data has already been captured and there is no need of entry of any bulk data and as far as operational part is concerned it shall be managed by the in house regular staff of the concerned departments. Accordingly the applicant was communicated through a speaking order dated 06.06.2019 that no further extension of his engagement as Date Entry Operator will be granted to him beyond 07.06.2019.
6. The applicant have relied on the following citation in their favour:

a) Judgment dated 10.05.2018 of the Hon'ble High Court of Orissa passed in writ petition WP(C) 6661/2018.

7. This Tribunal has heard both the parties and gone through the pleadings, documents and citation relied by both the. The citations relied upon by learned counsel for applicant are different from the facts and circumstances of the present case and therefore are not applicable to the present case.
8. The petitioner was engaged for a period of six months and it was stipulated in the terms of engagement that one month notice is required to terminate the service of the applicant. It was contended by the learned counsel for the applicant that the said notice was not given prior to one month of termination of the applicant. Learned counsel for the respondents on the other hand submitted that since the initial terms of engagement of 6 months in favour of the applicant had already expired and thereafter he was still continuing, therefore, there was no necessity of sending notice by giving one month time to him for termination.
9. There is much force in the said submission of learned counsel for the respondents. This Tribunal finds that there was no need or requirement for giving any such advance notice of one month before dis-continuing the service of the applicant.
10. It was further submitted by learned counsel for the applicant that although there is necessity for engaging the applicant and other persons still then the respondents have preferred not to further engage the applicant. And therefore the said action of the respondents is illegal.
11. In this regard learned counsel for the respondents have submitted that respondents have not engaged any outsiders and had not engaged anybody else but have managed the bulk work by engaging the existing regular staff, since the project is ongoing.
12. Taking into consideration the terms of engagement of the applicant and averments of the parties, this Tribunal finds that there was nothing illegal on the part of the respondents in not further engaging the applicant in the work in question as there was no necessity or requirements for his further engagement.

It was submitted by learned counsel for the respondents that the applicant was working as Data Entry Operator and his further engagement was not required as the bulk work is being managed by the existing regular staff. The applicant cannot claim as a matter of right to be further engaged by the respondents in the project in question in view of his terms of engagement in question. Therefore the OA is devoid of merit and accordingly dismissed, since this Tribunal finds that there has been no illegality or irregularity committed by the respondents, but in the circumstances there shall be no order as to the costs.

13. So far as the allegation that the respondents have committed contempt of this Tribunal by violating the order dated 27.03.2019. It is seen from the said order that this Tribunal had directed that “In view of the above discussions, we are unable to accept the prayer for regularization of service of the applicants in the OA and dispose of the OA with direction to the respondents to continue the engagement of the applicant as long as the project “Building Electronic Knowledge based Effective Work Places” is continuing with the need for the services of Data Entry officer for the project and to consider extension of the services as done in the past subject to the applicant fulfilling the contractual norms.” Since no outsiders have been engaged by the respondents after passing of the said order in question by this tribunal for the purpose of managing the work in question, which the applicant was earlier performing, this Tribunal finds that respondents have not committed contempt of this tribunal and have not violated the interim order in question. Accordingly the CP is dropped and notices are discharged.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)