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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.170 of 1986.

Date of decision: August 8, 1989.

K.G.Gopinath Nair, son of K.G.Nair,  
at present working as Temporary Khalasi,  
District Inspector's Office, South Eastern  
Railway, At/P.O.Charampa, Bhadrak,  
District-Balasore. ...

Applicant.

Versus

1. Union of India, represented through  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta-43.
2. Divisional Engineer, No.II,  
S.E.Railway, At/P.O.Khurda Road,  
Dist.Puri.
3. Assistant Engineer-I, S.E.Railway,  
Cuttack.

Respondents.

For the applicant ...

M/s.Sanjit Mohanty,  
P.K.Mohanty, Advocates.

For the respondents ...

Mr.Ashok Mohanty,  
Standing Counsel (Railways)

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C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)  
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1. Whether reporters of local papers may be allowed to  
see the judgment ? Yes.
  2. To be referred to the Reporters or not ? No
  3. Whether Their Lordships wish to see the fair copy  
of the judgment ? Yes.
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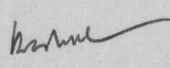
J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for back wages for the period from 4.7.1977 to 22.5.1979 which was ordered to be 'dies non', vide Annexure-2.

2. The facts, briefly stated, are that the applicant joined the service as a Temporary Khalasi under the South Eastern Railway. There was a disciplinary proceeding drawn up against him on the ground that he furnished wrong information relating to his date of birth. The applicant was dismissed from service by order dated 30.6.1977 with effect from 3.7.1977. The dismissal order was reconsidered on appeal by the Divisional Engineer-No.II, South Eastern Railway, Khurda Road vide his order dated 24.7.1979 (Annexure-1). For proper appreciation, we reproduce the order so far as the alleged offence is concerned.

" From the deposition of witness and from the statement of Sri Gopinath Nair, it is found that the date of birth mentioned in the application as 14.11.1944 instead of 14.2.1944 by Sri Nair, was a mistake unintentionally done and it was without any malafide intention. Though Sri Nair has committed the offence unintentionally yet the fact remain that his declaration was false one. "

Though the applicant was offered a fresh appointment on certain conditions vide this order, later by an order dated 19.6.1985 the Divisional Railway Manager, South Eastern Railway, Khurda Road decided that the period from 4.7.1977 to 22.5.1979 should be treated as 'dies non'



and his reappointment by same order was regularised with effect from 22.5.1979 and he was given the arrears of pay as well as seniority. The present application is against the order of the Divisional Railway Manager, S.E. Railway, Khurda Road that the period from 4.7.1977 to 22.5.1979 should be treated as 'dies non'.

3. The respondents have maintained in their counter that the period was treated as 'dies non' because the applicant did not work physically during this period and as per Rules, he is not entitled to any remuneration though this period will count towards his pension.

4. We have heard Mr. S.C. Samantaray, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration and perused the papers. It is a fact that the applicant did not work for this period i.e. 4.7.1977 to 22.5.1979. But it was not of his volition that he did not work. When the authority treated his action as unintentional, free from malafide, it was but proper that he should be given the wages for this period. We accordingly direct that the applicant should be given his emoluments for the period from 4.7.1977 to 22.5.1979. It should be possible for the Railway Authority to calculate the remuneration admissible to the applicant and pay to the applicant within three months from the date of receipt of a copy of this judgment.

*Kandhu*

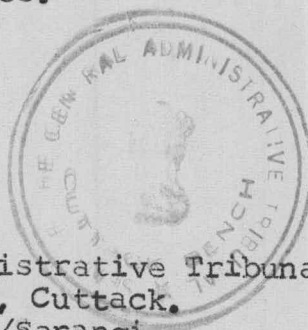


5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

*Mr. M. S. Sengupta*  
8.8.89  
.....  
Vice-Chairman

N. SENGUPTA, MEMBER (J)

I agree.



Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
August 8, 1989/Saranghi.

*Mr. Sengupta*  
8.8.89  
.....  
Member (Judicial)