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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.127 of 1988.

Date of decision : January 17, 1989.

Akhil Chandra Pattanaik, aged about 43 years,
son of late Banchhanidhi Pattanaik, at present
working as Driver, Crane Mobile (SK) INS Chilka,
P.O. Chilka, District-Puri.

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Applicant.

Versus

1. Union of India, represented by its
Secretary, Minister of Defence, New Delhi.
2. Commanding Officer, INS ,
At/P.O. Chilka, District-Puri.
3. Chief Staff Officer, INS Chilka,
At/P.O. Chilka, District-Puri.

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Respondents.

For the applicant ... M/s. Deepak Misra,
R.N. Naik,
Anil Deo, Advocates.

For the respondents... Mr. A.B. Mishra, Sr. Standing Counsel
(Central)
Mr. Tahali Dalai, Addl. Standing
Counsel (Central)

C O R A M :

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

A N D

THE HON'BLE MR. K. P. ACHARYA, 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

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K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority terminating his services as a Driver, Crane Mobile contained in Annexure-5.

2. Shortly stated, the case of the applicant is that he is an ex-serviceman of the Indian Army and after retiring from the Army the applicant was looking forward for a job and the Rajya Sainik Board recommended the case of the applicant to be appointed as a Driver, Crane Mobile in INS, Chilka, Vide Annexure-1 dated 29.6.1987 the applicant was directed to report to the establishment along with the original education certificate, heavy driving licence, experience certificate and employment registration card for a test and interview and so also the applicant was required to produce the original discharge certificate, educational certificates etc. during the interview. Vide Annexure-2 dated 7.11.1987 the applicant was intimated that he had been selected for the post of Driver, Crane Mobile and the appointment letter was enclosed. The applicant was advised to report to duty on 19.11.1987 along with the Character certificate duly attested by the District Magistrate or Sub-Divisional Magistrate and the applicant was also required to file a medical fitness certificate from the Civil Surgeon.

The applicant was further intimated that failure on his

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part to produce the documents will amount to cancellation of the appointment. Vide Annexure-3 dated 20.11.1987 the applicant was appointed with effect from 20.11.1987 to 16.2.1988 with certain conditions. The applicant accepted the appointment and worked as such. Vide Annexure-5 dated 24.3.1988 the applicant was informed that his services are terminated with effect from 24.4.1988. Being aggrieved by this order contained in Annexure-5 the applicant has invoked the jurisdiction of this Bench with the above mentioned prayer.

3. In their counter, the respondents maintained that the post in question is not a reserved one for Ex-servicemen. This has to go to a general candidate and such general candidate must be sponsored by the Employment Exchange because the applicant not having been sponsored by the Employment Exchange and the period of service was limited to a particular period and such period having elapsed the competent authority rightly ordered discharge of the applicant from service according to the terms and conditions laid down in Annexure-3 and therefore, the case being devoid of merit, is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. From the averments both in the original application and in the counter we find that admittedly the case of the applicant was sponsored by the Rajya Sainik Board for appointment. Further, admitted case is that the applicant is an ex-serviceman. Admittedly,

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the applicant had been appointed in two spells for different periods and ultimately, his services had been dispensed with. Learned counsel for the applicant vehemently pressed before us that once the applicant had been given a job he should not be ousted from the department and in order to fill up the post the applicant should be absorbed against such regular post irrespective of the fact that his name was not sponsored by the Employment Exchange. This contention of learned counsel for the applicant was sought to be repudiated by Mr. Tahali Dalai, learned Additional Standing Counsel (Central) on the ground that the Rules contemplate that such post has to go to a general candidate sponsored by the Employment Exchange. The case of the applicant not having been sponsored by the Employment Exchange, the concerned authority has no duty or obligation to consider the case of the applicant and therefore, according to Mr. Tahali Dalai the competent authority had rightly passed ^{an} order dispensing with the services of the applicant which should not be unsettled under any circumstances. We have given our anxious consideration to the averments made in the original application under section 19 of the Act and the counter and we have also perused the relevant documents in connection with this matter. Mr. Tahali Dalai invited our attention to the relevant rules which we have perused. But we are constrained to note that at the time when the recommendation of the Rajya Sainik Board was accepted by the competent authority, the Rules relied upon by Mr. Tahali Dalai were in existence and despite the Rules, the competent authority accepted the recommendations of the Rajya Sainik Board and

gave an appointment to the applicant in regard to the post of Driver, Crane Mobile. Such being the situation, in our opinion, the termination of the services of the applicant would not only be inhuman but it would be against all cannons of equity, justice and fairplay. One does not lack in experience to find that in every initial appointment it is also mentioned that the appointee is appointed on temporary basis and his services are terminable without notice. But the competent authority having observed the performance of the appointee and being satisfied with his work, the temporary appointment even for a particular period is converted into a regular appointment. In the present case, there is absolutely no iota of averment indicating or trying to impeach the credibility, sincerity, honesty and loyalty of the applicant in discharge of his official duties. Had there been any such averment we would have certainly taken an adverse view against the applicant. In the absence of any such stigma against the applicant, we feel that in these hard days it would be inhuman to snatch the plate of rice from the applicant. But however, accepting the contention of Mr. Dalai that recommendations are also to be made by the Employment Exchange we direct that the Employment Exchange be requested by the competent authority to sponsor the names of candidates for this post and the cases of those candidates be considered along with the present applicant and such candidate who is found to be suitable be appointed against the regular vacancy. We further direct that the experience gained by the applicant in the present job should also be

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taken into consideration in his favour and thereafter, suitability of all the candidates should be adjudged and he who is found to be suitable, the order of appointment may be issued in his favour.

Till the final selection^{is} made by the competent authority, which we expect to be done within three months from the date of receipt of a copy of this judgment, the applicant shall continue in the said post. In case, the final selection is made prior to expiry of three months, the interim order passed above shall become ineffective.

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

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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



[Signature]
17.1.89
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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 17, 1989/Sarangd.