

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.420 of 1988

Date of decision: April 11, 1989

- 1. Shri Bishnu Mohan Dash, aged about 35 years, Son of late Somanath Dash, serving as Assistant Cook, Bearer and Grinder, Cuttack G.P.O. Departmental 'D' Type Canteen, Cuttack G.P.O., At/P.O. Cuttack, G.P.O. P.S. Cantonment, Dist/Town-Cuttack.

..... Applicant

-Versus-

- 1. Union of India, represented through its Secretary Post, Dak Bhawan, Sansada Marg, New Delhi-110001
- 2. Senior Postmaster-cum-Chairman, Cuttack G.P.O Departmental 'D' Type Canteen, At/P.O. Cuttack G.P.O. Cuttack
- 3. Honorary Secretary, Cuttack G.P.O. Departmental Canteen, Cuttack G.P.O. Cuttack.
- 4. Postmaster General, Orissa, Bhubaneswar
- 5. Director, Canteen, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) New-Delhi. Respondents

For the Applicant. M/s. S.K. Mohanty-1
S.P. Mohanty, Advocates

For the Respondents. Mr. A.B. Mishra
Senior Standing Counsel
(Central)

C O R A M :

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

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to the respondents to communicate the fact of regularisation of services of the applicant and to direct the respondents to pay 100% of his salary and furthermore, to direct the respondents not to take any steps for removing the applicant without following the due procedure of law.

2. Shortly stated, the case of the applicant is of that he is an Asst. Cook of the Postal Departmental canteen of Cuttack General Post office and it is maintained by the applicant that on 10th December, 1988 the canteen of which the applicant was Asst. Cook ^{was} ✓ closed by the order passed by the Competent authority and being aggrieved by such order the applicant has come with this application and with the aforesaid prayer.

3. In their counter, the respondents maintained that the case being devoid of merit is liable to be dismissed in limine because the canteen is managed by a committee constituted under the Departmental Canteen Employees (Recruitment and Condition of Service) Rules, 1980 and therefore the closure of the canteen or termination of the services of the applicant has nothing to do with the authorities of the Postal Department i.e. the Postmaster General and others. In such circumstances, relief sought by the applicant cannot be and should not be granted in his favour.

4. We have heard Mr. S.K. Mohanty-1, learned Counsel for the applicant and Mr. A.B. Misra, learned Senior Standing

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Counsel (Central) at some length. Mr. Misra strenuously pressed before us that closure of the canteen is illegal and the relevant procedure not having been followed, the order passed by the competent authority closing the canteen should be set aside and the applicant should be allowed to continue in service. So far as the closure of the canteen is concerned, we have no powers to say that the canteen should function. The reasons for the same have been explicitly stated in Annexure-R/1. Therein it is found that a general body of the staff of Cuttack General Post Office was convened on 9.12.88. In pursuance to the decision taken by the Managing Body ~~and~~ the affairs of the canteen and management were discussed in detail. ^{and} The members of the said managing body stated that they do not like to take tiffin and meals in the canteen due to the increase of the rates of various food stuff by the Manager and the members also opined that despite repeated efforts made by the management the quality of the food stuff could not be improved in comparison to the food stuff available in the open market. It was therefore unanimously decided by the staff of the General Post Office, Cuttack to close down the canteen. In such circumstances, we cannot persuade ourselves to infringe our jurisdiction and direct that the canteen should continue.

5. As regards the services of the applicant a reference should be made to Rule 27 of the Departmental Canteen

✓ Employees (Recruitment and Conditions of Service) Rules 1980

which runs thus :

" (1) The members of the Service employed in a canteen, which is decided to be closed for administrative reasons by the office or establishment concerned, shall be deemed to have been retrenched from service with effect from the date of closure of such canteen. "

From the abovequoted provision it cannot but be said that by virtue of closure of the canteen the services of its employees in the canteen are deemed to have been retrenched. In otherwords, they automatically vacate. In such circumstances, we also cannot direct their continuance of service in the canteen

6. Due to the aforesaid reasons, we find no merit in this application. Therefore, the above mentioned prayers of the applicant cannot be allowed.

7. Before we part with this case, we may say that it is unfortunate that due to certain unforeseen circumstances, the services of the applicant have automatically come to an end. Mr. Mohanty submitted before us that the Postmaster General should be requested to adjust the applicant against any other suitable posts in the Postal Department. We therefore, request the Postmaster General to take a compassionate view in the matter especially in these hard days to throw out a man to the open street and deprive of his sustenance of livelihood would be a hardship. We hope and trust the Postmaster General, Orissa Circlex, Bhubaneswar would make an effort to appoint the applicant in a suitable post as early as possible if he is found suitable and subject to availability

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of post keeping in view the qualification and experience gained by the applicant in the canteen and we also hope that such kind attitude of the Postmaster General would be extended to the applicant as soon as possible.

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

[Signature]
11-4-89.
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Member (Judicial).....

B.R. PATEL, VICE-CHAIRMAN,



Central Administrative Tribunal
Cuttack Bench, Cuttack.
April 11, 1989/Sarangi.

[Signature]
11-4-89
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Vice-Chairman