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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.453 of 1989.

Date of decision 15 November 15, 1991.

Artatrana Das and others ...

Applicants.

Versus

Union of India and others ...

Respondents.

For the applicants.

M/s.J.Patnaik,
H.M.Dhal, Advocates.

For the respondents ...

Mr.Tahali Dalai,
Addl. Standing Counsel
(Central)

C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.J.C.ROY, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *ye*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes *no*

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J U D G M E N T

J.C. ROY, MEMBER (A), 40(forty) applicants, all working as Tradesmen or Helpers in the establishment of Heavy Water Plant, Talcher, were permitted to take out this common application under Section 19 of the Administrative Tribunals Act, 1985. They are challenging the notice of the respondents that they should apply for leave for regularisation of their periods of absence in April, 1988 failing which the days of absence would be

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treated as 'dies-non'.

2. The facts of this case are that the applicants were enjoying one day's off in a week at the end of the week which has been called as '4-1 system'. Besides this, the applicants were initially getting the usual earned leave, casual leave, public holidays and second Saturdays. Since Heavy Water Plant works on the basis of three shifts in 24 hours and all the days of the year the Management, from 1987 onwards had been trying to alter the cycle of the duty and off days in a week.. A dispute arose in the process of rationalisation of working hours. From April, 1988 the Management introduced workings of employees of 'A' shift so that they got one day off for 6 days of work, employees of 'B' shift got two days off after six days of work and employees of 'C' shift got three days off after six days work cycle. In this new system which was introduced in April, 1988 individual employees were entitled to casual leave and earned leave and leave on medical ground but public holidays and Second Saturdays were done away with in the new scheme. Following the introduction of the new schedule of duty and off day, there was a mass agitation and all the applicants joined this agitation and did not perform any duty for 4 or 5

days in the month of April, 1988. They also resorted

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to such tactics as go slow, refusal to do overtime and leaving the Plant without intimating the shift Engineer and Supervisor. A circular warning against this was issued by the Works Manager on 22.4.1988 (Annexure-1). The respondents claim that the annual shut down of the plant scheduled in May, 1988 was seriously hampered because of the agitation. The authorities, therefore, decided to implement the principle of 'no work no pay' on all defaulting employees in addition to the disciplinary action to be taken against them. Be that as it may, the reliefs sought in the application are as follows:

- (i) the letter in Annexure-3 be quashed and identical letters issued to all the applicants be declared as illegal and inoperative;
- (ii) the Respondents be directed to refund the salaries of the applicant which was deducted from their emoluments of July, 1988; and
- (iii) the Respondent Nos. 2 and 3 be permanently restrained from taking any disciplinary action against the applicants.

3. The case was contested by the respondents by filing a reply. After enumerating the damage caused to the annual shut down programme of the plant and the various warnings given to the agitating employees individually, the Respondents stated that the competent authority took a lenient view and decided to release the pay and allowances of the employees subject

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to the condition that they apply for leave for the period when they did not perform any duty failing which that period would be treated as 'dies-non'. In the case of these applicants, they were individually informed of this decision in July, 1988 and finally by the memo at Annexure-3 the deadline for such leave application was fixed on 28.10.1989. This is the impugned order. The respondents therefore, submit that the application is devoid of merit and should be dismissed.

4. We have heard Mr. S.K. Patnaik learned Counsel on behalf of the applicants and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents in some detail. There is no dispute about the fact that the applicant No. 11 did not perform duty on the dates shown in Annexure-3. There is no dispute that each of these 40 applicants were issued exactly similar memos giving the exact dates in April, 1988 when they did not perform their duties. According to the applicants the number of days on which the applicants did not perform any duties varies from 2 to 4 days. It is the accepted position of law that if a regularly employed person does not perform duty without prior sanction of leave on a day, that day is treated as 'dies-non' for the purpose of his service and he is not entitled to the pay for the day. The Hon'ble Supreme Court has held in the case of Bank of India Vs. T.S. Kelawala (1990 (3))

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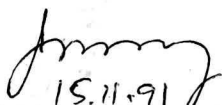
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SLJ SC 1) that even if the absence is for part of the day, the employee is not entitled to the pay for that day. It is also well settled that unauthorised absence attracts other penal action. In this case, we find that Respondents 2 and 3 cannot be blamed for their action. On the contrary they have exhibited great restraint in exercising their powers including the disciplinary power against the applicants and have tried to regularise the days of absence by grant of leave even after 4-5 months of the incident. It is the applicants who are to thank themselves for placing themselves in this predicament by their agitation unauthorised absence and subsequently by taking an inflexible attitude and refusing to apply for leave to enable the respondents to regularise the period of absence. We find therefore, no merit at all in the prayer no.(i). The prayer Nos.(ii) and (iii) are consequential to the findings above which determines our decision on prayer No.(i). These two prayers also have no legs to stand. The application is therefore, devoid of merit and is dismissed, without however, any order as to costs.


15/11/91
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VICE CHAIRMAN




15.11.91
.....
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal,
Cuttack Bench, Cuttack, November
15, 1991/Saranggi.