

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 212/90

Cuttack, this the 8th day of May, 1995

Prakash Chandra Mohanty Applicant.

-versus-

Union of India and another Respondents.

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the reporters *yes* or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes*

H. Rajendra Prasad
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
08 MAY 95

D. P. Hiremath
(D. P. HIREMATH)
VICE-CHAIRMAN
08 MAY 95

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.212/90

Cuttack, this the 8th day of May, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

...

Prakash Chandra Mohanty,
s/o late K.C.Mohanty,
Driver, Office of the Director (T&M), Ambaguda,
Under the Chief Administrator,
Dandakaranya Development Authority,
At/P.O:Koraput (Headquarters),
District-Koraput (Orissa),
at present Nuwasai 3rd Line,
At/P.O:Jeypore, PIN-764 001,
District-Koraput (Orissa)

.... Applicant

By the Advocate

- Mr.A.K.Mohapatra

-versus-

1. Union of India, represented through the Secretary to the Government of India, Ministry of Home Affairs, Department of Internal Security, Rehabilitation Division, Jaisalmir House, Mansingh Road, New Delhi-110 011.
2. The Chief Administrator, Dandakaranya Development Authority, At/P.O-Koraput (Koraput Headquarters), Koraput District (Orissa) ... Respondents

By the Advocate

- Mr.Ashok Misra,
Sr.S.C. (Central
Govt.).

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O R D E R

D.P.HIREMATH, VICE-CHAIRMAN

The applicant, who was working as a Driver in the office of the Chief Administrator, Dandakaranya Development Authority before it was wound up, applied in the first instance for declaration that action of the respondents in not paying his salary is illegal and arbitrary and to direct them to pay his arrears of salary forthwith and also to give him service benefits according to Rules. He is an ex-serviceman and was appointed as a Driver under the said Project on 2.4.1963 and he was allowed to cross the probation period on 10.4.1964. He was driving goods vehicle No. ORK 2649 and while on duty, was beaten by a mob at Ichhapur. As a result of such brutal assault, he was very often experiencing chest pain and other health complaints for which he was forced to remain on leave to undergo treatment. On 21.10.1976 he was granted leave right from August, 1973. During this leave he had received intimation from the Inquiry Officer, Assistant Engineer directing him to appear on 8.11.1975 to face disciplinary proceedings.

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^{He} Though ~~the~~ letter was dated 21.10.1975 directing him to appear on 8.11.1975, he had received it on 19.11.1975 and therefore, he could not participate in the inquiry. Throughout he complained that he had not received the copy of articles of charge and throughout there was violation of principles of natural justice and provisions of C.C.S. (C.C.A.) Rules, 1965 and Article 311 of the Constitution. Even though he applied on 26.11.1975 for supply of copy of articles of charge, without complying with it the inquiry was adjourned to 30.12.1975. Again on 23.12.1975 he submitted his another application stating all the facts. Thereafter nothing was communicated to him regarding the result of inquiry. Though he had submitted several representations, no salary was paid to him.

2. In resisting the application, the respondents by their counter dated 23.8.1991, denying the various allegations made in the application, made specific averment that the services of the applicant were terminated with effect from 21.7.1976 as a result of disciplinary proceeding initiated against him, but the file relating to the departmental inquiry could not be traced as the Dandakaranya Development

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Project was being wound up and all records were shifted to Delhi. They also suspected the hand of the applicant with his active supporters in the misplacement of records when deployment of the staff was under way on account of winding up of the Project. His personal file for the years 1963 to 1973 showed that his conduct was not satisfactory except upto the period of confirmation and he was chargesheeted on number of occasions for unauthorised absence, disobedience of orders, misuse of Government vehicle and loss to Government property. After 21.7.1976 his name did not find mention in any of the relevant records to show that he had continued in service. If the applicant was not getting any salary or remuneration during the period, he ought to have challenged the same at the appropriate time. Taking advantage of the fact that the entire Project has been wound up, he has come forward with this case of continuous service and the application is nothing but an act of fraud committed on the Tribunal.

3. When the application was being adjourned from time to time for hearing, the

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applicant came forward with an amendment petition dated 13.12.1993 to incorporate various averments in his original application contending that consequent upon the abolition of Dandakaranya Development Project, all employees working therein were deployed in other Departments except him. On verification he came to know from the office that his case for re-deployment was not considered on the basis of an order of removal which is non est in the eye of law. He thus sought deletion of paragraph 4(f) in his original application relating to non-communication of result of the inquiry till the date of his application and substituting in its place that the inquiry was conducted without considering his representation most arbitrarily. On the basis of such illegal inquiry, he was removed from service with effect from 21.7.1976 and he received the order of removal on 30.7.1976. This is how he annexed the order dated 24/26.7.1976, Annexure-8 to the amendment petition. Thereafter he immediately represented on 4.8.1976 to respondent no.2 to set aside the order contained in Annexure-8 and also pointed out therein that

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neither his leave application was rejected nor considered and his absence cannot be treated as unauthorised considering pendency of his leave application. He also made representations on 14.7.1981, 16.6.1983, 2.5.1986 and 9.11.1987 praying to consider his case in the light of the Annexures aforesaid and because nothing came out, he preferred an appeal on 12.7.1988 to respondent No.2. He, therefore, alleges by this amendment that the inquiry conducted was not bona fide or lawful and was vitiated for non-compliance of the principles of natural justice and the relevant C.C.S.(C.C.A.) Rules. He also averred that the Inquiry Officer acted with a closed and biased mind. The authorities had granted him leave that was admissible and rest of the period of absence was treated as dies-non. Even if it is assumed that he was removed from service, his arrears of salary and other financial benefits like G.P.F., gratuity and pension should have been immediately released. Even if it is assumed that there was valid termination of his services, he is entitled to pensionary benefits under the Pension Rules as he had put in more than ten years of service upto the date of removal. The amendment

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was allowed and these averments have been incorporated by filing a supplementary amended application.

4. Though no separate counter is filed by the respondents after amendment, the respondents' counsel has referred to various averments made in the objection statement to the amendment petition itself. It is pointed out specifically that the very assertion of the applicant that he received the copy of the order of removal on 30.7.1976 goes to show that he slept over the matter for nearly fourteen years before approaching the Tribunal. He has made a false averment in his application that he was never communicated of any order even till the date of filing of his application. He attempted to mislead the Tribunal and to claim arrears of salary as if he was in service. The process of re-deployment of surplus staff of Dandakaranya Project had started in and from 1980 and therefore, the question of his re-deployment did not arise as he was no more an employee of the Project. Therefore, as he was no longer in Government service when the

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process of re-deployment started, he is not entitled to this relief. The application is barred by time. Granting such kind of leave as was available and treating some part of absence as dies-non were only to facilitate finalisation of his case following the termination. They do not facilitate him to get his pay or allowances. The leave granted in the year 1978 with retrospective effect was only to finalise the applicant's case which was pending for want of 'no demand certificate' as he had certain items outstanding against him. That necessitated a recovery of Rs.1104.04 from his final dues (Annexure-R-1).

5. The applicant had put in less than ten years qualifying service at the time of his termination and the minimum qualifying service required for being eligible for payment of pension is twenty years under C.C.S.Pension Rules. Therefore, he is not entitled to any pensionary benefits. Employees with less than twenty years of qualifying service are eligible for terminal benefit in the form of gratuity which is,however, subject to the satisfactory service record. A person whose services have been terminated following disciplinary action cannot be said to be possessing satisfactory service record. The same points were urged even during arguments on merits.

6. The point of limitation has been strongly urged by the respondents as well as the bona fides of the applicant. According to learned counsel for the respondents, the applicant suppressed the material fact of his services having been terminated as far back as on 21.7.1976 which was conveyed to him in nine days thereafter, i.e. on 30.7.1976. This Original Application was filed on 16.3.1990, i.e. nearly fourteen years after the order of termination of his services in consequence of the findings of the disciplinary authority. The Original Application, as it stood prior to amendment, was wholly silent on this fact and his case was only for a direction to make payment of his salary as the same was withheld by the respondents arbitrarily and illegally, thus giving an impression that he had continued in service. He even went to the extent of alleging in paragraphs 4(e) and 4(f) that in spite of his representation to the enquiring authority to furnish him with a copy of the charge memo and provide him opportunity to defend himself, he never received any reply or any other communication even till the date of filing of the Original Application. In our view, the applicant did suppress from the Tribunal the material fact of his removal from service and

perhaps could not suppress it any longer after the counter was filed by the respondents. We have no hesitation in finding that this suppression is not only not bona fide but with ulterior motive.

7. It is an admitted fact that the disciplinary authority did pass an order of termination on 26.7.1976 (Annexure-8) and communicated to him by registered post which the applicant received on 30.7.1976. It is also noteworthy that the applicant did approach the Chief Administrator, Dandakaranya Development Authority, Koraput, in appeal by his representation dated 12.7.1988, i.e. nearly twelve years after the order of removal was passed. He no doubt made a grievance thereunder that he did inform the enquiring authority about the prejudice caused to him on account of lack of opportunities to defend himself. There is nothing to show how this appeal representation came to be disposed of. The applicant no doubt has made a representation on 26.11.1975 to the Inquiring Officer stating that he had not received any chargesheet or articles of charge and that the same may be furnished to him (Annexure-6). Again on 23.12.1975 with reference to the letter of the Inquiring Officer dated 2.12.1975 he invited his attention to his own representation dated 26.11.1975 and requested for supply of copy

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of the chargesheet and relevant documents and without supplying the same, date was fixed for hearing on 30.12.1975. He concluded his letter by requesting the inquiring authority to permit him to be represented by advocate and also to furnish necessary papers.

8. That a delinquent Government servant is required to be afforded all reasonable opportunity to defend himself is not at all in controversy. But the fact that the order of removal came to be passed by the disciplinary authority, as stated above, is also no longer in controversy now. The order of removal could be challenged before the Tribunal on the ground of non-affording of reasonable opportunity to him to defend himself. Unless the Tribunal agrees with him that principles of natural justice were violated in the matter of conducting of the disciplinary inquiry and interferes with such order, the order by itself does not become "non est" as now sought to be made out by the applicant. As long as order of such removal is not set aside on any ground permissible to be urged by the delinquent official, it does not cease to be in force and all the

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consequences of such removal or dismissal, as the case may be, do follow. It cannot be said that the limitation started running only after 12.7.1988 when he sent his appeal to the Chief Administrator.

9. It is further not in dispute that the entire Project was wound up as far back as in the year 1980 and the process of re-deployment started in that year. It is rather surprising that the applicant did not move either the Project authorities or this Tribunal for his re-deployment soon after the Project was wound up, if at all he had continued in service. At least he had become aware of his right to be re-deployed on the Project being wound up and could have moved the forum competent to give him relief including the High Court if at all he was aggrieved by the order of his removal dated 21.7.1976. He did not even approach the Tribunal when it was set up in the year 1986. We have come across a good number of cases from the same Dandakaranya Project in which the former employees complained about their non-deployment in some other Government departments and even a Surplus Cell was created to give relief to such employees being rendered unemployed on the winding up of the Project.

These serious lapses or omissions on the part of the applicant clearly lead to an inference that he was not aggrieved by the order of termination.

Practically no acceptable grounds are made out for this inordinate delay of nearly fourteen years to approach the Tribunal.

10. It was urged on behalf of the applicant that because he was granted leave by the order dated 27.1.1978 by the Assistant Engineer for the period of absence intermittently between 25.1.1971 and 22.7.1973 and therefore, he could ^{not} have been charged for the unauthorised absence. Though he urged in his application that he was brutally assaulted when he was on duty driving a lorry of the Project and therefore, was incapacitated ^{from} for attending to his duties, he did not spell out when actually this assault on him took place. The period of his absence from 29.8.1973 to 21.7.1976 was treated as dies non by the order dated 16.4.1981. The only medical leave granted to him by the order dated 27.1.1978 (Annexure-3) is for fifteen days, i.e. from 2.8.1971 to 16.8.1971. Prior to that, the Earned Leave granted is only for one or two days and thereafter the longest leave was for 147 days, i.e. from 11.12.1972 to 6.5.1973 and then for 72 days, i.e. from 7.5.1973 to 22.7.1973. Then comes the

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dies-non for nearly three years. It is patently clear that both these orders, Annexure-3 dated 27.1.1978 and Annexure-4 dated 16.4.1981 are long after the order of termination came to be passed and in the counter it is stated that the grant of such leave for different periods does not in any way vitiate the proceedings. In paragraph 13 of the counter it has been urged that grant of such leave and dies-non, as the case may be, was always done to finalise the applicant's case which was pending for want of 'no demand certificate' as the applicant had certain items outstanding against him. It is also urged that Rs.1104.04 was found to be outstanding against him after grant of whatever leave permissible to him and also dies-non period. Mere grant of such kind of leave as was admissible for the period of absence which even if could be the charge for disciplinary proceeding, it cannot be said that the said proceeding could be said to be wiped out. After finding the applicant guilty ~~of~~ ^{of} unauthorised absence, while settling his claim such kind of leave as is permissible has to be granted. we, therefore, find no merit in this contention of the applicant either.

11. We have found that order of termination cannot be interfered at this stage when the prayer has become hopelessly time barred on account of serious lapse on the part of the applicant to approach the Tribunal soon after he was made aware of the said order. If at all an appeal was preferred in the year 1988, perhaps it was with a view to gain a leverage in the matter of limitation which also cannot be permitted and time which started running against him could not be arrested. The reliefs substituted after amendment of his application include his re-deployment and appropriate orders with regard to financial and service benefits accruing to him. The order of termination comes into effect from 26.7.1976 which is the date of the order. Thereafter, as already stated above, such kind of leave as was permissible to him was granted for intermittent absence of the applicant from duty from 1971 to 1976. Admittedly the applicant had not put in twenty years of service before the order of removal. Even in the amended application he made a casual averment that in the worst case even it is assumed that Annexure-8 is valid, still he would have completed ten years of service upto the date of alleged removal and would be entitled

to pensionary benefits under the Pension Rules. That, however, was not made a part of the prayer though he prays for such other relief or reliefs as may be deemed fit. If a Government servant is removed from service and if he has not rendered qualifying service, if at all he is entitled to pension, then the same has to be considered on the applicant applying in this behalf. He also made an averment that even if he was removed from service, his G.P.F., gratuity and pension should have been immediately released. We are told that Dandakaranya Project was purely a temporary Project which came to be wound up in the year 1980 and subsequently those who were entitled to be re-deployed, were re-deployed in different departments. It, therefore, becomes necessary for the respondents to settle and pay his G.P.F. if there was contribution for the same and further consider if he would be entitled to gratuity and pension keeping in view the relevant Rules in this behalf. Necessary direction would be made in this behalf in conclusion.

12. For the reasons aforesaid, prayer of the applicant to set aside the order of removal from

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service passed on 21.7.1976 and borne out by Annexure-8 is rejected. The applicant shall make an application to the concerned authority within ^(30 days) thirty days from the date of receipt of copy of this order for whatever he is entitled to under the relevant Rules even after being removed from service and the competent authority/authorities shall pass a reasoned order and communicate the same to him ^(120 days) within hundred and twenty days from the date of receipt of such an application from the applicant.

No order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

08 MAY 95


(D.P. HIREMATH) 8/5/95
VICE-CHAIRMAN

A. Nayak, P.S.