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(9)

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:
CUTTACK.

ORIGINAL APPLICATION NO.490 of 1990.

Date of decision:- 7th August, 1991.

Nirmalendu Banerjee ... Applicant.

Versus,

Union of India & Ors. ... Respondents.

For the Applicant: Mr.P.K.Mishra, R.C.Das,
Mr.A.K.Nohapatra, Advocates.

For the Respondents: Mr.P.N.Mohapatra,
Standing Counsel(Central).

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C O R A M :

THE HON'BLE MR.N.SENGUPTA:MEMBER(JUDICIAL)

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1. Whether reports of local papers may be allowed to see the Judgment ?
2. To be referred to the reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the Judgment ?

....

J u d g m e n t .

N.SENGUPTA, MEMBER (J) .

The applicant, an employee of the Telecommunication Department, has prayed for direction to the Respondents to pay his monthly salary since June, 1990, his T.A. dues and ACE III Bills.

2. The applicant's case is ^{that} under the one time bound promotion scheme. He was entitled to draw pay in the Pre-revised Scale of Rs.380/- to Rs.530/- and in the scale of Pay of Rs.1320/- to Rs.2040/- with effect from 30.11.83, according to the order passed on 20th June, 1989 vide Annexure-1 to the application. He is a Cable Splicer. ^{besides} Prior to December, 1988, the applicant, there were three such cable Splicers but since January, 1989 he was the only person holding the post of Cable Splicer at Rourkela, the Station of his posting. The Respondents are getting the work done ~~through~~ by out side ~~of~~ payment of daily wages thereby depriving ^{of the} him/benefit of earning more. The applicant has averred that the Rules and practice of the department provide for the cable splicers to get the repair and maintenance work done through labourers whose expenses he is to bear initially and thereafter he is to be reimbursed by submission of bills known as A.C.E.III Bills. He submitted A.C.E.Bills from September, 1989 to June, 1990 but those bills have not yet been passed nor any payment made to him. It

*Mem Encl 12
28.91*

It has further been averred by the applicant that he has been denied the full payment of the Bonus for the year 1989-90 i.e. instead of being paid Rs.2472/- he has been paid Rs.1442/- leaving a balance of Rs.1030/- as due to him. He was attending to his work but he has not been paid his salaries since June, 1990. On these allegations, in the main, the applicant has prayed for the reliefs and the said allowances.

3. The Respondents have filed a reply in counter to the allegations made in the application, the details of this reply need not be stated, it would be sufficient to say that it is the case of the respondents that since 1.10.89 the applicant remained unauthorisedly absent i.e. without any leave. Therefore, a disciplinary proceeding has been started against him. The case of the Respondents is that he has, not been paid his salary as a disciplinary proceeding has been started against him for unauthorised absence from duty, the applicant never made any claim for any T.A. so no question of non-payment of T.A. can arise. The applicant has remained absent since 1.10.89 and that he is not entitled to bonus of Rs.2492/-.

*Recd. Secy
5.8.91.*

4. The applicant has not appeared at the hearing but Mr. P.N. Mohapatra, learned standing counsel for the Telecommunication Department has been heard and he has urged that as is evident from the letter

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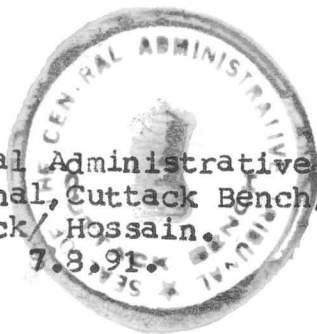
of the applicant dtd.4.6.91 vide Annexure-R/1, he is remaining absent and as such cannot claim any salary. Annexure R/1 would not suggest unauthorised absence of the applicant. On 28th February, 1991 an order was passed directing the respondents as a interim measure pay of the applicant earned thereafter should be paid to him regularly, Annexure-R/1 shows that this interim order has not been complied with. In Annexure-R/1 the applicant made it known to the Respondents that for non-payment of his dues as directed by this Tribunal it was not possible on his part to resume duty. It is not the case of the Respondents that infact any order for payment of the dues of the applicant as per order dated 20th February, 1991 was made. From Annexure-R/1 it would be apparent that the respondents were made aware of the order passed by this Tribunal on 20.2.91. During the course of arguments Mr. Mohapatra stated of an order of suspension, of course there is no pleading. If really the applicant was suspended he was entitled to an allowance under the rules, this has not been paid. Respondents cannot be allowed to take advantage of their own wrong and resist the claim of the applicant for whatever is due to him. The interim order of payment was passed on 20.2.91. At the end of February 1991, if there was an order of suspension, the applicant was entitled to some allowances

Mr. Mohapatra
28.2.91

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which should have been paid to him on first of March, 1991. The applicant offered to join on being paid his dues and the respondents did not pay him thereby put a hurddle in his resuming duties. In these circumstances it has to be found that the period commencing from Ist.March,1991 till the actual payment of dues of the applicant should not be treated as unauthorised ~~absence~~ and the period not covered by the ~~the~~ above two dates should be treated as directed in the disciplinary proceeding pending against the applicant. It is also made clear that if the applicant is under suspension, the absence during the period of suspension cannot be treated as unauthorised absence because the applicant ^{can} have not joined during suspension. The case is accordingly disposed of.No costs.

Central Administrative
Tribunal, Cuttack Bench,
Cuttack/Hossain.
7.8.91.



Member (Judicial)
Member(Judicial).