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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 399 of 1993

Date of Decision: 7.12.1993

Kunjabehari Das

Applicant(s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *NO*

  
MEMBER (ADMINISTRATIVE)

07 DEC 93

 7.12.93  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 399 of 1993

Date of Decision: 7.12.1993

Kunjabehari Das	Applicant
Versus	
Union of India & Others	Respondents
For the applicant	Mr. B. Nayak, Advocate
For the respondents	Mr. Ashok Mishra, Sr. Standing Counsel (Central)

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C O R A M:

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

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to be issued to the opposite parties to regularise the services of the petitioner with effect <sup>from the</sup> ~~date~~ on which his juniors were regularised and consequent to the regularisation the petitioner may be paid all back wages.

2. Shortly stated the case of the petitioner is that he was a Casual labourer working under OP No.3, viz. Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar. The petitioner not <sup>been</sup> having regularised against a regular post, this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain

that nodoubt the petitioner was working as a Casual labourer intermittantly till 1985, but after 1985, the petitioner was not to be heard and never attended the office and hence he was disengaged from discharging his duties of a casual labourer. The case being grossly barred by limitation should not be entertained, apart from the fact that the case is devoid of merit.

4. We have heard Mr.B.Nayak, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel. Mr.Nayak strenuously urged before us that the case put up by the opposite parties that the petitioner had not attended the office since, 1985 is absolutely false. The petitioner has been regularly attending the office and the concerned authorities do not pay any heed to it. It is not expected ~~by~~ the opposite parties that they can prove the negative. The positive assertion made by a particular party must be proved by him and therefore, onus lies on the petitioner to <sup>prove</sup> satisfactorily that he was attending the office from 1985. In order to meet this point Mr.Nayak relied upon the averments finding place in the counter and the averments finding place in the rejoinder and contents of Annexure-R/1. Placing reliance on these averments Mr.Nayak contended that the story set up by the opposite parties is absolutely false. We do not agree with Mr.Nayak and therefore, we cannot irresistibly conclude that the petitioner was attending office of OP No.3 since 1985. On the contrary, we are of opinion that the petitioner for his personal reasons had remained absent and has rose from the slumber too late

*Dr*

in the day for which the case is grossly barred by limitation. In the circumstances stated above, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

5. Before we part with this case, we would say that here is a poorman who was employed in the office of OP No.3 for some time. In these hard days, a sympathetic view should be taken in the matter. Therefore, we would say that in case any work is available, at the disposal of OP No.3, the case of the petitioner be considered to give such work on casual basis.

  
MEMBER (ADMINISTRATIVE)

07 Dec 93

  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 7.12.1993/B.K. Sahoo