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(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 278 of 1995  
Cuttack this the 19th day of February, 1998

Babaji Naik

..

Applicant(s)


-VERSUS-


Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

  
(SOMNATH SOM)  
VICE-CHAIRMAN  
19/2/98

  
(S.K. AGARWAL) 19/2/98  
MEMBER (JUDICIAL)

8

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.278 of 1995  
Cuttack this the 19<sup>th</sup> day of February, 1998

C O R A M

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. S.K.AGARWAL, MEMBER (JUDICIAL)

...

Babaji Naik  
aged about 23 years,  
S/o.Bhramar Naik  
Vill:Bhagawanpur  
P.O.Purushottam Prasad  
P.S.Fategarh,  
Dist:Nayagarh

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By the Advocate:

Applicant

M/s.D.N.Naik

S.N.Sharma

-VERSUS-

1. Union of India represented  
through the Director,  
Telecommunication, Micro  
Wave Project, Sambalpur
2. Asst.Engineer, Telecommunication  
Micro Wave Project,  
Sambalpur

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By the Advocate:

Respondents

Mr.P.N.Mohapatra

Addl.Standing Counsel  
(Central)

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O R D E R

MR.S.K.AGARWAL, MEMBER (J): This is an application under Section 19 of the Administrative Tribunals Act, 1985, with the prayer that Respondents be directed to withdraw illegal and arbitrary verbal retrenchment order and to reinstate the applicant in the post of regular Watchman including the payment of any appropriate solatium as deemed just and appropriate.

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19/2/98

9

2

2. In brief the facts of the case as stated by the applicant are that the applicant was earlier entered into the service of Respondent No.2 as N.M.R. Khalasi on February, 1990 and without any break up of his counterpart he has been rendering long four years of services for the unblemished appreciation to all of the Respondents. It is stated that the petitioner was discharging his duties with dedication and in result his name has been fairly recommended by the Respondent No.2 to extend him the other benefits which are applicable to regular person. It is also stated that the applicant was also directed to work in the project scheme and construction of micro wave communication in the district of Sambalpur and the applicant has been drawing the monthly salary of Rs.1200 at the stage of carrying the service in micro wave project. It is also stated that looking to the strong loyalty and strong rewardable devotion of the service of the applicant, he was deputed to Sambalpur for collection of necessary materials and the applicant had obtained permission for installation of electricity as per letter No.2316 dated 4.4.1992 by signing in the despatch register on behalf of Respondent No.2. It is also stated that the applicant, while working as Watchman on 2.1.1994 seized the stolen articles and presented to the authorised person on behalf of Res. 2 and on 25.7.1994 the same person with the assistance of certain working officials of Res. 2 caused another theft and the applicant has lodged an F.I.R. with

A-8  
19/2/98

8

O.I.C., Birmaharajpur Police Station. But this action of the applicant turned against him and as a result his constant service was orally terminated with effect from 25.7.1994. The applicant, thereafter submitted a representation of his grievance with Respondent No.1 by serving an advance copy in favour of Respondent No.2 dated 14.8.1994. But the respondents have shown complete inaction. It is stated that the services of the applicant have been terminated with oral order which is illegal and liable to be quashed. Therefore, by this application, the applicant has requested this Tribunal to direct the respondents to withdraw the illegal and arbitrary verbal retrenchment order and to reinstate the applicant in the post of regular Watchman including payment of any solatium as deemed just and proper.

3. On behalf of the Respondents counter was filed. It is stated by the respondents in the counter that the applicant was never engaged as an N.M.R. Khalasi under the respondents from February, 1990. There is no record in the Office of the Respondents to show the applicant's engagement as N.M.R. Khalasi. It is also stated that no recommendations were made by the Respondent No.2 in favour of the applicant. The applicant was never engaged by Respondent No.2 as N.M.R.Khalasi in micro wave project and was never drawing salary of Rs.1200 from the office of the

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19/2

respondents. It is also stated that the applicant was never deputed for collection of necessary materials and he was never deputed by any of the respondents to bring stores. It is also stated that Annexure-3 clearly shows that the applicant was engaged by the contractor and not by the respondents. The project construction work is done through the contractors under the supervision of the respondents. So, it cannot be said that the applicant was engaged by Respondent No.2. He was never in service under Respondent No.2, and therefore, the question of his termination with effect from 25.7.1994 does not arise. In this way the respondents have prayed that the application filed by the applicant is liable to be rejected.

4. We have heard the learned counsel for the applicant and learned Addl.Standing Counsel Shri P.N. Mohapatra appearing on behalf of the Respondents and perused the whole record.

5. The prayer of the applicant is mainly based on his averment in the application and annexures 1 to 8 filed with the application. The Respondents have clearly averred in the counter that the applicant was never engaged as an N.M.R.Khalasi under the Respondents from 1990 as has been alleged by him. It is also made very clear by the respondents that there is no record in the office of the respondents to show the applicant's engagement as N.M.R.Khalasi and the respondents have ceterorically denied that the applicant was not

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19/12


drawing salary of Rs.1200 per month from the office of the Respondents. On a perusal of the documents filed by the applicant it does not reveal that he was engaged as N.M.R.Khalasi by the Respondents. No document produced by the applicant does show that he was engaged by the Respondents as N.M.R.Khalasi and was drawing salary of Rs.1200 per month from the office of the Respondents. The documents produced by the applicant in support of his application do not prove the fact that he was ever engaged by the respondents as N.M.R.Khalasi. The respondents have clearly made an averment in the counter that the applicant was never engaged as N.M.R.Khalasi by the Respondents and he never drew salary of Rs.1200 per month from the office of the respondents. The respondents have also made it clear that the applicant was never deputed by any of the respondents to bring the stores. The project work was done through the contractors under the supervision of Res. 2. So the question of engaging the applicant as N.M.R.Khalasi does not arise. It has been very clear on perusal of Annexure-3 that the applicant was engaged by the contractor and not by the respondents. On the basis of the averments and documents produced by the applicant it cannot be held that the applicant was ever engaged by the respondents as N.M.R.Khalasi and the respondents have denied that the applicant

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19/2/98

never drew salary of Rs.1200 per month and therefore the question of his termination with effect from 25.7.1994 does not arise. In view of the above, we are of the considered opinion that the applicant fails to make out any case that the respondents have illegally and arbitrarily retrenched him by the verbal order. As the engagement of the applicant by the respondents could not be proved, therefore, withdrawal of the order of retrenchment and reinstatement of the applicant in the post of regular Watchman does not arise. Therefore, the application filed by the applicant is liable to be rejected.

We, therefore, reject the application filed by the applicant with no order as to costs.

  
SOMNATH SONI  
VICE-CHAIRMAN

  
(S.K. AGARWAL) 12/2/98  
MEMBER (JUDICIAL)