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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 193 OF 1996
CUTTACK THIS THE 14th DAY OF August 2001

Ashok Kumar Singh

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
(SOMNATH SOM)
VICE-CHAIRMAN
14.8.2001

14.8.2001
(G.NARASIMHAM)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 193 OF 1996
CUTTACK THIS THE 14th DAY OF August 2001

CORMA:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

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Ashok Kumar Singh,
aged about 40 years,
S/o. Laxman Singh,
At:Baratripa Nayabasti
P.O.Chhapara, Dist:Sarang Bihar.

By the Advocates

Applicant

Mr.S.P.Sahoo

- V e r s u s -

1. South Eastern Railways,
represented through its General Manager,
Garden Reach, Calcutta-43, West Bengal
2. Chief Personnel Officer,
S.E.Railway, Garden Reach,
Calcutta, West Bengal
3. Deputy Chief Personnel Officer(Con.)
S.E.Rly, Bhubaneswar.
4. Chief Project Manager(C)
S.E.Railway, Bhubaneswar.
5. Divisional Regional Manager,
S.E.Rly, Khurda Division
At/Po/P.O./Dist:Khurda.

Respondents

By the Advocates

M/s B.Pal
O.N.Ghosh
S.K.Ojha

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ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, who was employed as Casual Labourer on daily wage basis from 25.9.1980 to 23.11.1982 was retrenched along with many other workmen with effect from 23.11.1982 for non-availability of day to day casual work. In this application filed on 28.2.1996 following reliefs have been prayed :

- a) for quashing the impugned order of retrenchment;
- (b) for directing respondents-railway department to take action regarding appointment as per the seniority list or to prepare the seniority list as per the judgment of the Hon'ble High Court (Annexure-4); (c) for a direction to respondents to take back the applicant to employment as his junior persons have already taken back; (d) and for conferring all the service benefits as available under law from the date from which his juniors were taken back.

These reliefs are based on the following averments.

According to applicant, some of the retrenched employees filed O.J.C. 2178 and 2179 of 1982 before the Hon'ble High Court. These two Writ Petitions were disposed of by a common judgment dated 1.8.1984 directing the Opposite Parties to prepare a seniority list for the entire Division of casual labourers within two months from the date of service of that order and until such seniority list is drawn up, appointments to the new projects within the Khurda Road Railway Division may not be made; and on such list being drawn up appointments may be made in accordance with seniority. There was further direction that

12 (12) the seniority list drawn up should be hung on the notice board giving due publication so that the petitioners should know their respective seniority in the seniority list. This direction of the Hon'ble High Court, according to applicant, has not been implemented by the respondents in drawing up the seniority list. He being a workman under the Industrial Dispute Act, 1947, his retrenchment without following the provisions under the law needs to be quashed. Though he has due seniority, without his case being considered, some of his junior casual labourers viz., Manoranjan Mohapatra and Susanta Kumar Dasmohapatra were taken back to service.

2. Respondents in their counter take the stand that the applicant was not a party in O.J.C.s disposed of the Hon'ble High Court. Retrenchment having been made in the year 1982, he cannot challenge the order of retrenchment in this application filed 14 years thereafter as being barred by time. Seniority list as directed by the Hon'ble High Court has been drawn up and the casual labourers as per the seniority list will be absorbed as and when their turn comes up and that no junior to the applicant in the seniority list has been appointed. Shri Dasmohapatra, a retrenched casual labourer was appointed as Bungalow Peon and for that category recruitment procedure was different and he was not a casual labourer like the applicant. Shri Manoranjan Mohapatra was not a casual labourer. He was initially engaged as a substitute and was sent on transfer to Construction Organisation. Hence his name did not find place in the list of retrenched casual labourers on 23.11.1982.

3. No rejoinder has been filed by the applicant. In otherwards, applicant does not deny the averment of the respondents department that the seniority list in fact has been drawn up. He also does not deny the case of the respondents that Shri Manorajan Mohapatra was not a retrenched casual labourer like him, but was a substitute and that Shri Dasmohapatra, a Bungalow Peon stands in different footing.

4. Since the respondents take the stand that seniority list has since been drawn up which fact has not been countered by the applicant by filing rejoinder, the prayer of the applicant to direct the respondents to prepare the seniority list cannot be entertained. Since no casual labourer in the category of the applicant and junior to him has been absorbed in the employment, question of issuing direction to respondents to absorb the applicant and allow him of consequential service benefits does not arise.

5. We are aware that the applicant filed a xerox copy of judgment of this Bench pronounced on 5.12.94 in T.A.1/93 preferred by Dakshyarat Das a similar retrenched casual labourer like the applicants. In that judgment the Bench held that the Railway did not prepare a seniority list as directed by the High Court and directed the Railways to provide employment to Sh. Dakshyarat Das. It may be by the time the judgment was pronounced on 5.12.1994, the Railways had not prepared the seniority list but in the counter filed in this application on 17.12.1996, the Railway Department taken a specific stand that the seniority list as directed by the High Court had not drawn up. This specific averment in the counter has not been denied by the

applicant through in rejoinder. Hence we cannot accept the case of the applicant that no such seniority list was drawn up.

6. As to the relief for quashing the order of retrenchment under Annexure-2 passed on 23.11.1982, this Tribunal has no jurisdiction to consider the same. It is for the Court or Tribunal constituted under the Industrial Dispute Act to consider the same. Even otherwise this prayer has been made 14 years after the impugned order was passed and as such is hopelessly barred by time under Section 21 of the Administrative Tribunals Act.

7. In view of our discussion above, we are of the view that the applicant is not entitled to any of the reliefs prayed for. However, we have noticed from the materials placed before us by the respondents-department that they have carried out that part of order of the Hon'ble High Court in judgment dated 1.8.1984 that the seniority list drawn should be hung up in the notice board giving due publicity. Further in para 11 of the counter the respondents categorically admitted that the seniority position of the applicant is being maintained by the D.R.M.(P) S.E.Railway, Khurda Road. We, therefore, direct the respondents department to intimate in writing to the applicant as to his position in the seniority list so drawn up within seven days from the date of receipt of this order.

8. In the result the application is dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.8.2011

14.8.2011
(G. NARASIMHAM)
MEMBER (J)