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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

ORIGINAL APPLICATION NO. 482 OF 1998
Cuttack, this the 27th day of June, 2000

Prabir Kumar Jena Applicant

Vrs.

State of Orissa and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 2000

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Prabir Kumar Jena, son of Ashok Kumar Jena, At-Chhatamakhana,
P.S-Bolangir Dist.Bolangir Applicant

Advocate for applicant - Mr.S.R.Das

Vrs.

1. State of Orissa, represented through the Secretary, Department of Labour and Employment, Secretariat Building, Bhubanewar, Dist.Khurda.
2. Union of India, represented through the Secretary, Ministry of Defence, New Delhi.
3. The General Manager, Indian Ordnance Factory, At-Badamal, P.O-Badamal, Dist.Bolangir.
4. The Collector & District Magistrate, Bolangir, At/PO/Dist. Bolangir. Respondents

Advocates for respondents - Mr.A.K.Bose
Sr.C.G.S.C.for
R 1 to 3; and
Mr.K.C.Mohanty
Govt.Advocate
for R-4.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

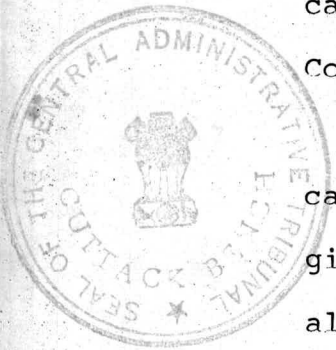
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In this Application the petitioner has prayed for quashing the order dated 9.1.1998 (Annexure-5) cancelling the appointment letter issued to him.

2. The admitted position between the parties is that General Manager, Indian Ordnance Factory, Badamal (respondent no.3) issued an advertisement inviting applications for appointment to the post of Danger Building Worker (Semi-skilled). The petitioner applied for the same and

was called to a written test and ultimately on being selected he was issued with a letter dated 31.8.1997 (Annexure-3) requiring him to submit attested xerox copies of certificates regarding educational and technical qualifications. Thereafter on 5.1.1998 offer of appointment was issued to him at Annexure-4. When the applicant went to the Ordnance Factory at Badamal to join, the impugned order dated 9.1.1998 was issued. In the letter dated 9.1.1998 issued by respondent no.3 it was mentioned that appointment order has been cancelled on the latest report of police verification from Collector, Bolangir (respondent no.4).

3. The petitioner has stated that such cancellation of appointment is illegal and he has not been given any opportunity before cancellation. The petitioner has also stated that later on in order dated 5.6.1998 (Annexure-6) issued by Land Acquisition Officer, Bolangir, the petitioner was asked to appear before Collector, Bolangir with all his educational and experience certificates, employment registration card, residential certificate etc., in support of his claim for appointment in the post of Danger Building Worker in Indian Ordnance Factory Project. In this letter it was mentioned that in case the applicant fails to appear or produce all the documents, his case for appointment to the post will not be considered in future. The applicant has stated that the order of appointment could not have been cancelled legally and that is why he has come up in this petition with the prayers referred to earlier.

4. Respondent nos. 2 and 3 in their counter have stated that the petitioner was issued with an appointment letter, but the Collector, Bolangir in his



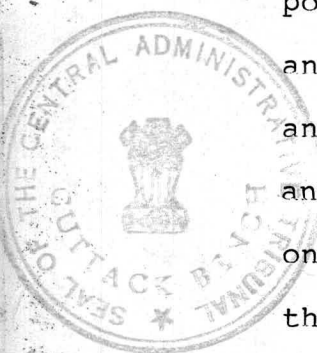
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confidential letter dated 20.10.1997 directed respondent no.3 to keep the issuance of appointment letter to 31 candidates in abeyance until further orders from him. In compliance of the above order, the appointment letter issued to the petitioner was cancelled. A copy of the letter dated 20.10.1997 of Collector, Bolangir is at Annexure-A to the counter. Respondent nos. 2 and 3 have also stated that the Hon'ble High Court in their judgment dated 11.8.1998 in OJC No. 15454/97 (Annexure-B) had directed the Collector, Bolangir (respondent no.4) and respondent no.3 to jointly make enquiries to allegations made by the petitioners before them within a reasonable time and after giving opportunity to the person concerned, take effective steps. Respondent nos. 2 and 3 have further stated that the Collector Bolangir in his confidential D.O. letter dated 7.12.1998 (Annexure-C) has fixed the date 16.12.1998 for joint enquiry for verification of residential certificates and experience of 31 candidates including the petitioner and in the context of the above facts respondent nos. 2 and 3 have stated that the impugned order dated 9.1.1998 has been rightly issued and the petition is without any merit.

5. Respondent no.4, the Collector, Bolangir has filed a counter opposing the prayer of the applicant. In his counter the Collector has stated that Ordnance Factory, Badamal was established in Bolangir District in 1985. Due to establishment of the factory, 1030 families of 12 villages under Sainala P.S. were displaced. These oustees were rehabilitated in 12 rehabilitation colonies around the Ordnance Factory Project. On 30.10.1984 the then Prime Minister, Indira Gandhi laid the foundation stone of the factory and in the meeting she gave a commitment that one


member of each displaced family as well as local people will be provided employment in the factory. The Government in Planning & Co-ordination Department accordingly made a request on 4.7.1997 (Annexure-A/1) to the Home Department to engage local people in Class III and Class IV posts in order to honour the commitment of the then Prime Minister. It is further stated in the counter that Chief Minister, Orissa, visited Bolangir on 11.5.1987 and gave a similar commitment to the local people which was communicated to Collector, Bolangir in the memo dated 20.5.1987 issued from Chief Minister's office. The Home Department in their letter dated 27.12.1989 (Annexure-R-A/3) proposed a rehabilitation scheme to the Ministry of Defence Production. The Collector has mentioned in the counter that this scheme was accepted by the Ministry of Defence. No order of the Ministry of Defence has however been enclosed to the counter. According to the above rehabilitation scheme, one member of each displaced family will be provided employment. The Government in Revenue Department had formed a Co-ordination Committee with Collector as the Chairman. A copy of the order dated 9.7.1990 of Revenue & Excise Department is at Annexure-R-A/4. It is further stated that so far 796 displaced persons have been employed in the Factory and there are still 234 families who have been left out. It is further stated that above families as well as local people of the District are always representing before Collector, Bolangir for their absorption in the Factory and serious discontentment has been aroused amongst the displaced persons as also local people and this is gradually going towards serious law and order situation in the locality. It is further stated that respondent no. 4 had sent requisition to

District Employment Exchange, Bolangir, to sponsor names of local candidates for the post of 188 Danger Building Workers. The Employment Exchange had sponsored 1084 candidates and after due selection 172 candidates were selected. After completion of the interview, complaint petitions were filed by the displaced persons as well as local people on the ground that many outside candidates have been selected for the above post by producing false residential/experience certificates and they demanded enquiry. In view of this, respondent no. 4 had an enquiry conducted through different Executive Magistrates and found that 31 outside candidates of which the applicant is one have manipulated and have been successful in sponsoring their names from the Employment Exchange. The report of Revenue Officer, Patnagarh and Nizarat Officer Titilagarh are at Annexure R-4/5. The Collector has further stated that in the meantime 62 local candidates filed OJC No. 15454 of 1997 before the Hon'ble High Court for quashing the entire selection process. The High Court in their judgment dated 11.8.1998 issued direction regarding a joint enquiry. It is stated that the case of the petitioner is also under investigation. It is further stated that the applicant had registered his name in the local Employment Exchange by adopting illegal means and had taken undue benefit and the matter is under investigation by Collector Bolangir and respondent no. 3 jointly. It is further stated that General Manager, Ordnance Factory, Badamal (respondent no. 3) without giving weightage to the letter dated 20.10.1997 issued appointment order which led to mass agitation and thereafter the appointment order was cancelled. It is stated that the action of the Collector is in accordance with the direction of the Hon'ble High Court. It is further stated that in the enquiry a notice was issued to the applicant in his address at



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Chhatamakhana but the Process Server reported that no such person is residing in that village. The report of Process Server is at Annexure-R-4/9. In the context of the above facts the Collector has stated that the cancellation of appointment has been rightly done and has opposed the prayer of the applicant.



6. The applicant in his rejoinder has pointed out that the Collector, Bolangir has no authority or jurisdiction to direct respondent no.3 to stop issuing appointment order moreso when the appointment orders have been issued to candidates who have come out successful in the written test and viva voce. It is also stated that the Hon'ble High Court in their order have held that the selection process does not suffer from any infirmity and therefore the cancellation order is unjust and contrary to law. On the above grounds the applicant has reiterated his prayer in the OA.

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7. We have heard the learned counsel for the parties and have perused the records. The various submissions made by the learned counsel of both sides will be referred to in course of our discussions.

8. Respondent nos. 2 and 3 in their counter have justified their action in issuing the impugned order at Annexure-5 on the letter dated 20.10.1997 (Annexure-A) of Collector, Bolangir. Quite apart from the question of authority of the Collector, Bolangir, to issue such a letter which will be gone into later, it has to be noted that the

Collector has stated in this letter that appointment letters to 31 candidates which include the present applicant may be kept in abeyance. In the impugned order dated 9.1.1998, however, it has been mentioned that the appointment order is cancelled and not kept in abeyance. Respondent nos.2 and 3 in their counter have mentioned nothing as to why the appointment order was cancelled when the Collector had "instructed" to keep the appointment order in abeyance. The second aspect of the matter is that the Collector has tried to justify his entire action which is prima facie arbitrary and overbearing on the basis of a supposed commitment given by late Prime Minister Indira Gandhi during her speech on 30.10.1984 at the time of foundation stone laying ceremony of the factory that one member of each displaced family and local people will be provided with employment in the factory. It goes without saying that a commitment given by a political leader however exalted he or she may be, in a public meeting is not binding on the State machinery nor is such a commitment enforceable in a court of law. Any such commitment has to be translated into a Government order to enable the official machinery to act accordingly. The Collector has mentioned in page 2 of the counter that the rehabilitation policy prepared by the State Government was accepted by the Ministry of Defence, Government of India. No order of Defence Ministry accepting the rehabilitation scheme has been enclosed. At Annexure-R-4/2 is only a letter proposing to Secretary, Ministry of Defence Production and Supplies, a rehabilitation scheme along with a request to agree to the aforesaid proposal. As there is nothing on record that the Ministry of Defence Production & Supplies have accepted the proposed rehabilitation scheme

it is difficult to accept the contention of the Collector that the Scheme has been accepted by the Ministry of Defence. Respondent no.2, Ministry of Defence in their counter have also not mentioned anything about acceptance of the scheme proposed by the State Government to the Ministry of Defence. Moreover, the scheme proposed by the State Government merely mentions that one member of each displaced family will be provided employment. There is no mention that only people of Bolangir District should be given appointment in the factory. Such a stipulation will also be plainly illegal and unconstitutional as Constitution specifically provides under Article 16 that no person can be discriminated against on the ground of his residence in a particular area in the matter of public employment. The Collector has further stated that out of 1030 families 706 displaced families have already been provided employment and 234 families are left. No order or instruction of any competent authority has been brought to our notice which provides that till employment is provided to the balance 234 families, others cannot be provided employment. Any such proposition would be patently absurd.

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9. It has been submitted by the learned counsel for the petitioner and it is also admitted that the applicant has registered his name in the Employment Exchange, Bolangir and his name was sponsored by the Employment Exchange Officer in response to the requisition placed by respondent no.3. The Collector has mentioned that 31 persons were outsiders meaning thereby persons from outside Bolangir district and their cases were taken up for enquiry. As we have already stated it cannot be legal to hold that only people of Bolangir District would get employment in the Ordnance Factory at Badamal. The Collector has further stated that these

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31 cases of so called "outsiders" were got enquired into jointly by the Revenue Officer, Patnagarh and Junior Employment Officer, Patnagarh as also by Nizarat Officer and Executive Magistrate, Titilagarh. These two reports are at Annexure-R-4/5. In the joint report of Revenue Officer, Patnagarh and Junior Employment Officer, Titilagarh, cases of 11 candidates have been examined. It is necessary to note that the name of the petitioner does not figure amongst the eleven candidates. In the report of Nizarat Officer, Titilagarh, there is no finding with regard to individual persons. It has been only mentioned that candidates got their names registered in the Employment Exchange on the basis of residential certificates issued by Revenue Officers. In the enclosure to this report it has been mentioned against the name of the applicant that his name has been registered in the Employment Exchange, Bolangir, on the basis of residential certificate issued by Additional Tahasildar, Bolangir in Misc. Case No. 94 of 1997. Therefore, in these two reports there is nothing with regard to the petitioner which goes to show that the petitioner has obtained employment under respondent no. 3 by misrepresentation.

10. In his counter the Collector has further mentioned that for the purpose of further enquiry in the petitioner's case a notice was sent to him in his address at village Chhatamakhana and the Process Server reported that no such person is staying in that village. The notice and the report of Process Server is at Annexure-R-4/9. It is, however curious to note that along with the O.A. the petitioner has enclosed a copy of letter dated 5.1.1998 (Annexure-4) which is the offer of appointment to him and which he has evidently received and in response to which he had come to the Factory.

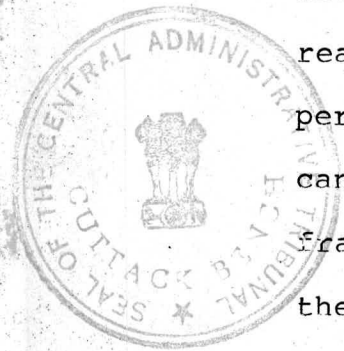
to join. This letter has been issued to the applicant in his address At/PO-Chhatamahan. In any case once the applicant has been issued a residential certificate by the Tahasildar and he has registered his name in the Employment Exchange, Bolangir and his name has been forwarded by the Employment Exchange Officer, it cannot be said that because of any mistake on the part of revenue authorities in the residential certificate, the entire selection and appointment is illegal.

11. The Hon'ble High Court in paragraph 11 of their order have clearly mentioned that their Lordships are of the considered view that the selection proess does not suffer from any infirmity. They have directed that in case any false residential certificate has been given by the applicants, then the matter should be jointly enquired into by the Collector, Bolangir and General Manager, Ordnance Factory, Badamal. The Collector has mentioned that he is conducting enquiry which is yet to be over in pursuance of the above order of the Hon'ble High Court. This is prima facie not correct because the Hon'ble High Court have directed for a joint enquiry through Collector and General Manager, Ordnance Factory. But the notice to the applicant was issued on 3.12.1998 incidentally only after this OA was filed on 4.9.1998 and presumably after the notice in the O.A. was issued to the respondents including the Collector. In this notice issued by the Collector it is stated that the Collector, Bolangir has ordered to conduct enquiry. This does not indiate that any joint enquiry in terms of the order of the Hon'ble High Court is being undertaken. As the direction of the Hon'ble High court is clear that a joint enquiry has to be made by the Collector and General Manager Ordnance Factory, an enquiry by Collector alone cannot be held to be in



J. J. J.

terms of the order of the Hon'ble High Court. Moreover in this case the admitted position is that the applicant has obtained a residential certificate from Additional Tahasildar, Bolangir in Misc. Case No. 94 of 1997. Therefore the residential certificate prima facie does not appear to be a fraudulent one. We have already pointed out that no instruction or circular has been placed before us stating that only people of Bolangir district can be given appointment in the factory. The Hon'ble High Court have stated that joint enquiry should be conducted within a reasonable period of time and after giving opportunity to the person concerned and their appointment shall be deemed to be cancelled in case the appointment has been obtained by fraudulent means and necessary consequence will follow. From the above direction of the Hon'ble High Court it is clear that their Lordships have not directed that the appointment should not be given. They have only directed that in case on enquiry it is found that a particular candidate has secured employment by fraudulent means then necessary consequence will follow. In view of this we find no justification on the part of the Ordnance Factory to cancel the order of appointment issued to the applicant. The Collector has acted clearly beyond his authority while instructing the General Manager, Ordnance Factory, Badamal, initially in D.O. letter dated 20.10.1997 that the appointment orders of 31 candidates should be kept in abeyance. We are surprised to note that in this letter a threat has been held out to the General Manager that in case "above instruction" of the Collector is not complied with and any law and order problem arises, then General Manager will be held responsible for the same. Possibly because of this unreasonable stand of the Collector, respondent no. 3 has cancelled the appointment order. In a subsequent letter dated 7.1.1998 at Annexure-R-4/8 the Collector has again requested the General Manager, Ordnance Factory not to issue appointment



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order to 31 candidates including the petitioner. As per our discussion above we do not find any legal and justifiable basis for such action on the part of the Collector as also the action on the part of the departmental authorities not to give appointment to the applicant. In view of this, the order dated 9.1.1998 at Annexure-5 of respondent no.3 cancelling the appointment order is quashed. Respondent no.3 is directed to work out the order of appointment dated 5.1.1998 (Annexure-4) within a period of 15 (fifteen) days from the date of receipt of copy of this order. It is needless to indicate that in case in pursuance of the joint enquiry by the Collector and General Manager, Ordnance Factory it is found that the applicant has obtained the employment through any fraudulent means then necessary consequence under the rules would follow.

12. In the result, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

27.6.2000
VICE-CHAIRMAN