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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 537 OF 1998
Cuttack this the 16th day of April, 1999

Aparesh Bhoi

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.

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

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
16.4.99

16.4.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)



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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.537 OF 1998
Cuttack this the 16th day of April, 1999

CORAM:

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

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Aparesh Bhoi,
aged about 25 years,
S/o. Dibakar Bhoil
At: Jhatiada
PO: Haripur
Via: Amarda
Dist: Mayurbhanj
(Orissa)
PIN: 757 055

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Applicant

By the Advocates : In person

-Versus-

1. Union of India through
its Secretary, Ministry of Personnel,
Public Grievances and Pension
(Department of Personnel and Training)
North Block
New Delhi-110001
2. Chief Personnel Officer(Administration)
South Eastern Railway,
Garden Reach Road,
Calcutta-700 043

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Respondents

By the Advocates : -

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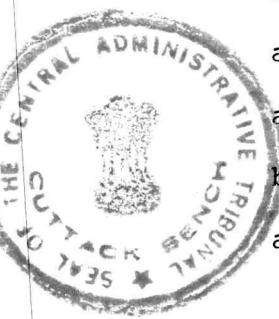
ORDER

MR.G.NARASIMHAM, MEMBER(J): This application under Section 19 of the Administrative Tribunals Act, 1985, was received by the Registry through post. Subsequently on a memo, it was listed for hearing on admission on 26.10.1998. On that day one Shri Dibakar Bhoi claiming to be the father of the applicant Aparesh Bhoi started addressing the Bench. When the Bench questioned his locus standi to address the Bench, he submitted that he has the Power of Attorney from the applicant Aparesh Bhoi and on the basis of the same he had even appeared before the Hon'ble Supreme Court on behalf of the applicant and also before the Principal Bench and also before the State Administrative Tribunal. We then adjourned the case to 2.11.1998 for orders on the point whether Dibakar Bhoi had the locus standi to address this Bench. Through an elaborate order passed on 2.11.1998, we held that hearing of application can only be done by hearing submissions of the applicant in person or of his Advocate, if engaged and not through a Power of Attorney holder. Since the applicant was absent, Registry was directed to intimate him to appear in person or through an Advocate on 15.12.1998 for hearing on admission of the application. On 15.12.1998, applicant Aparesh Bhoi appeared in person and filed order dated 10.12.1998 of the Hon'ble High Court passed in O.J.C. No.16890/98 and submitted that this O.J.C. has been filed against our order dated 2.11.1998. The order of the Hon'ble High Court is only to the effect : Issue notice. Moreover, the cause title of the O.J.C. would reveal, besides applicant, seven others



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 have been impleaded as petitioners and it does not specifically reveal that our order dated 2.11.1998 is under challenge in this O.J.C. When this was pointed out to the applicant, he wanted adjournment till 15.2.1999 to obtain stay order from the Hon'ble High Court staying the order dated 2.11.1998 and also that he ^{would} filed documents indicating that the O.J.C. had been filed against our order dated 2.11.1998. Accordingly, the case was adjourned to 15.2.1999. On 15.2.1999, the applicant, however, did not appear. None also represented him. No stay order was also received and no document even filed. Hence the case was adjourned to 9.3.1999 for hearing on admission. Even on 9.3.1999 the applicant remained absent. There was also no intimation was to receipt of any order of stay from the Hon'ble High Court. No document was also filed. The case ^{would} then adjourned to 9.4.1999 for peremptory hearing on admission. Even on 9.4.1999 the applicant remained absent without any intimation. None also represented him. No stay order was also received. No document was also filed. Since the application was posted for peremptory hearing on admission, the records were perused and the matter had been adjourned to this day for delivery of orders on admission.

In the meanwhile, Registry had put up notice in the O.J.C. communicated to the Tribunal. Through that notice, it is seen that our order dated 2.11.1998 is under challenge in the O.J.C. But the fact remains no stay order has been received. Hence we presume that the Hon'ble High Court did not pass any stay order in this O.J.C.



2.

The applicant's case is as follows :

He is a cured Leprosy patient. Two cured leprosy patients like the applicant were taken to railway service without any written test or interview on the basis of the Standing Medical Board at Regional Leprosy Teaching and Research Institute at Gouripur, Pankada(W.B.) in terms of Government of India circular dated 2.3.1965 as directed by the Hon'ble Supreme Court in order dated 17.8.1987 in Civil Appeal No.1749/87(Annexure-A/2). Accordingly the applicant met Respondent No.2, viz., Chief Personnel Officer(Administration), S.E.Railway, Calcutta, with an appeal, who had drawn attention of the applicant to the observation of this Bench in order dated 24.4.1998 in C.P. 19/98 arising out of O.A.499/96 to the effect "if there is a circular dated 2.3.1965 giving preference in employment to cured leprosy patients, this observation of this Bench, according to applicant, stands as an impediment on the recruitments of cured leprosy patients in S.E.Railways, in spite of binding nature of the order dated 17.8.1987 of the Hon'ble Supreme Court, and has unsettled the settled position that cured leprosy patients pursuant to circular dated 2.3.1965 are eligible for recruitment without written test or interview".



Hence this application has been filed with a prayer to this Bench to quash the aforesaid observation passed in C.P.19/98 arising out of O.A.499/96 and to direct the respondents to give consequential relief to the applicant in terms of orders passed by the Hon'ble Supreme Court giving priority in employment to cured leprosy patients in suitable posts in Kharagpur Division of the S.E.Railway on par with appointments of Srikant Mahal and Rupak Kumar Das made in the year 1995.

3. We have carefully perused the records. An identical prayer was made by one Jayakrushna Rana claiming to be a cured leprosy patient in O.A.536/98, disposed of by this Bench at the admission stage on 16.11.1998 through an exhaustive order. We held that such

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a prayer was not maintainable mainly on the following grounds:

- a) The relevant observation dated 24.4.1998 in C.P. 19/98(O.A.499/96) was not for the purpose of framing an issue as mentioned in the Original Application to be decided by the Tribunal at a later stage. This observation was made while rejecting the Contempt Petition. While making such observation, this Tribunal left open the matter whether circular dated 2.3.1965 gives preferential employment to cured leprosy patients ~~was~~ to be decided during regular hearing of O.A. 499/96., as the respondents denied circular dated 2.3.1965 makes mention of any such preferential employment to cured leprosy patients and in the C.P. there was no such scope for the Tribunal to decide an issue of this nature. This observation of the Tribunal was, therefore, ~~not~~ a definite finding as to the existence or otherwise of such a circular.
- b) If the aforesaid impugned observation of this Bench was beyond the jurisdiction of the Tribunal, the remedy would lie by moving the Hon'ble High Court. In fact as against the order dated 24.4.1998 dismissing the C.P. 19/98 an appeal had been preferred and the same is pending and the Tribunal would be bound by the decision of the Hon'ble High Court.
- c) Prayer for quashing the aforesaid observation on the ground of lack of jurisdiction to make such observation, it is not for the Tribunal to take a view on such lack of jurisdiction and this has to be urged before the higher adjudicating forum.
- d) Through (Annexure-2) /Order dated 17.8.1987 ~~xx~~ the Hon'ble Supreme Court considering the facts and circumstances of the case had expressed the opinion that in the fact of that case it was necessary to direct that in case the petitioner or persons situated like the petitioner, i.e. those who were suffering from leprosy and have been declared fit for public service, if and when they apply their applications should be treated keeping in view the Ministry of Home Affairs Notification dated 2.3.1965 bearing No.14-11/65-Estt.(D) and in accordance with the law. According to applicants in O.A. 499/96 pending before

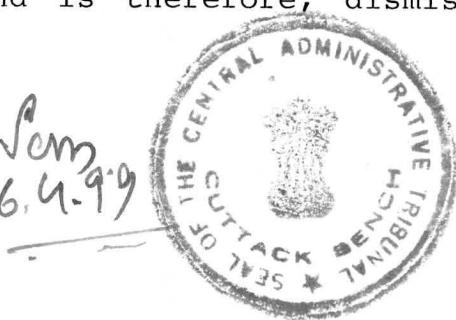


this Tribunal there are two circulars dated 2.3.1965 and they rely on the circular dated 2.3.1965 which according to them provides preferential treatment to all cured leprosy patients in employment under Government of India. The departmental authorities had denied the existence of any such circular to that effect. They indicated that there is a circular dated 2.3.1965 which deals with physically handicapped persons. It is well-known that persons suffering from leprosy occasionally lose some of their limbs and thus become physically handicapped. From the order of the Hon'ble Supreme Court it is not clear whether the Hon'ble Supreme Court referred the circular dated 2.3.1965 dealing with giving preference to physically handicapped persons or the circular relied on by the applicants giving preference to cured leprosy patients. Circular dealing with physically handicapped persons will also apply to all cured leprosy patients, who in course of their illness, have become physically handicapped by losing some of their limbs. This is again a matter to be dealt exhaustively during regular hearing of O.A.499/96 and that how the aforesaid observation was made by this Bench in the Contempt Petition 19/98.

4. This application filed by the applicant Aparesh Bhoi as earlier stated contains the identical prayer made in O.A.536/98 filed by Jayakrushna Rana disposed of on 16.11.1998 at the stage of admission as being not on the basis of averment made in that O.A. We do not come across any new grounds in this application requiring our consideration. This application, according to us, is not maintainable and is therefore, dismissed without being admitted.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO



16.4.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)