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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 311 OF 1999
Cuttack this the 28th day of February/2002

Jayasankar Nayak

...

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.

J. Mohanty
28/02/2002
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO.311 OF 1999
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CORAM:

THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL)

...

Jayasankar Nayak, aged about 80 years,
S/o. Late Baladev Nayak, At-Tangarapalli,
PO: Talapatia, PS/Dist-Jharsuguda - at present
C/o. Naresh Kumar Nayak, At: Beheramal,
PO/PS/Dist-Jharsuguda

...

Applicant

By the Advocates

Mr. S.K. Mohapatra

-VERSUS-

1. Union of India represented through Director General, Nirman Bhawan, Central Public Works Division (C.P.W.D.), New Delhi-11
2. Executive Engineer (Electrical), Calcutta Central Electrical Division No.V, Central Public Works Division (C.P.W.D.), Nizam Place, 234/4, A.J.C. Bose Road, Calcutta-20
3. Executive Engineer, B.C.E.D., Central Public Works Division (C.P.W.D.), Plot No.3-A, Unit-8, Bhubaneswar - 12
4. Superintending Engineer, Central Public Works Department (C.P.W.D.), Patna (Bihar)

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Respondents

By the Advocates

Mr. S.B. Jena
Addl. Standing Counsel
(Central)

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL): In this Original Application, the applicant (who is now more than 80 years old) has raised a grievance that he had worked under the C.P.W.D. as a Khalasi since 1944 and, by an order rendered in 1962, his services were confirmed w.e.f. 01.04.1958. It is his case that he became sick during 1972, whereafter his care was not taken and his date of birth being 05.03.1921 (as per the Records of the C.P.W.D., produced to-day, in this

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Bench, by the learned Addl. Standing Counsel) he was due to face retirement during March, 1981. No pensionary benefits having been granted to him, he has filed this Original Application on 28.06.1999 seeking a direction to Respondents to provide him retiral dues. He has placed on record statements that he carried representations, time and again, to the authorities and there were correspondences between him and his authorities on 02.07.1998, 13.07.1998, 28.08.1998 and 14.09.1998 and no heed having been paid to his grievances, he was constrained to file this Original Application on 28.06.1999.

2. In the counter filed by the Respondents it has been disclosed that the applicant having faced termination from service on 01.11.1979 (on the ground of unauthorised absence for a period of five years) he (applicant) was/is not entitled to any retiral benefits, as available to his category of C.P.W.D. employees.

3. In the rejoinder to the abovesaid counter, it has been disclosed that before terminating the services of the applicant, no opportunity was given to him to have his say in the matter and as such the alleged termination was in gross violation of the principles of natural justice/provision of Article 14 of the Constitution of India.

4. At this stage my attention has been drawn to certain provisions of Vol.III of 1984 Edn. of C.P.W.D. Manual (pertaining to Work Charged Establishment) published under the authority of Director General of Works, C.P.W.D., New Delhi. At Para-6.05 of Page 11 of the said Manual deals with provisions relating to Extraordinary Leave. It precisely states that one who

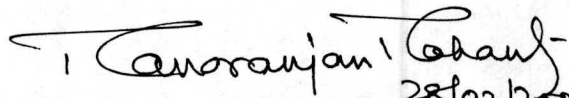
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overstays leave for a period exceeding five years, he is liable to be removed from service after following the disciplinary procedures. Thus, apart from the general principles of natural justice and the policy enshrined under Article 14 of the Constitution, the Manual governing the applicant and the respondents also insists for following a procedure before terminating anybody on the ground of unauthorised long absence.

5. In the aforesaid premises, a bald statement, as made in the counter filed by the respondents, that the applicant faced a termination and, therefore, he is not entitled to pensionary benefits cannot be sustained and is bound to be overruled.

6. The order of termination, if any, passed on 1.11.1976, is accordingly quashed and, as a consequence, the applicant should be entitled to get his retiral dues as admissible, under the law, in respect of the category of persons like him available in C.P.W.D. Organisation.

7. In the result, this O.A. succeeds. Respondents are directed to provide pensionary/retiral benefits to the applicant within a period of one month from the date of receipt of copy of this order. There shall be, however, no order as to costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
28/02/2002

B.K.SAHOO//