

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 206 OF 2000

Cuttack, this the 1st day of August, 2001

S.Purna Chandra Rao

....

Applicant

Vrs.

Chief of Naval Staff 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

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 206 OF 2000

Cuttack, this the 18th day of August, 2001

CORAM:

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

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S.Purna Chandra Rao, aged about 37 years, son of late S.Satyanarayan of Sombarthota Street, Jeypore, Dist.Koraput, at present working as Asst. Grade-II, National Aluminium Company Ltd. (NALCO) Damanjodi, District-Koraput, Qrs.No.2RA-43/4, A.E.F.Colony, Sunabeda-I, Dist.Koraput

.... Applicant

Advocates for applicant - M/s N.K.Mohapatra
B.S.Mishra
P.K.Dash

Vrs.

1. Chief of Naval Staff, Naval Headquarters,
R.K.Puram, New Delhi, Pin-110 011.
2. Flag Officer, Commanding-in-Chief, Headquarters,
Eastern Naval Command, Naval Base, Visakhapatnam,
Andhra Pradesh.
3. Deputy General Manager, Naval Armament Depot,
Sunabeda, Koraput, Pin-763004

.... Respondents

Advocate for respondents - Mr.A.K.Bose,
Sr.CGSC

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to sanction him appropriate service gratuity and pension and other retiral benefits

including encashment of 269 days of E.L. in full.

2. The case of the applicant is that he was appointed as Stenographer in Naval Armament Depot at Sunabeda in 1988 and joined on 8.3.1988. He sought for permission to apply to other organisation and in letter dated 31.5.1994 at Annexure-2, Deputy General Manager, Naval Armament Depot, Sunabeda, certified that he has got no objection if the applicant seeks other employment for his better prospects. The applicant was duly selected for the post of Assistant Grade-II in National Aluminium Company (NALCO), a public sector undertaking. The order of appointment of the applicant in NALCO, dated 24.6.1998 is at Annexure-3. The petitioner in his letter dated 6.7.1998 (Annexure-5) resigned from the post of Temporary Stenographer under the respondents and his resignation was accepted in letter dated 16.7.1998 at Annexure-6. He represented on 22.7.1998 (Annexure-7) stating that he is entitled to terminal benefits in accordance with the instructions applicable to temporary employees on absorption in public sector undertakings. This was followed up by two other representations dated 2.3.1999 and 21.4.1999. Ultimately, his prayer for terminal benefits was rejected in order dated 4.11.1999 at Annexure-8. In the context of the above, the petitioner has come up in this petition with the prayer referred to earlier.

3. Respondents in their counter have admitted that the applicant was granted "No Objection Certificate" on 31.5.1994 for seeking other employment. Respondents have stated that normally such "No Objection Certificates" are issued to enable the employees to

re-register their names in the Employment Exchange. The respondents have stated that the applicant appeared at the interview for the post in NALCO on 24.6.1998 without any prior intimation or permission from the competent authority of Naval Armament Depot, Sunabeda. After getting the appointment order from NALCO he submitted his resignation stating therein that he wanted to resign due to personal reasons and for future benefits. Accordingly, he was relieved on 22.7.1998. The respondents have stated that in accordance with Rule 26(1) of CCS (Pension) Rules and Rule 36(6)(ii) of CCS(Leave) Rules, the applicant's representations have been rightly turned down. They have stated that the applicant's resignation cannot be treated as a technical formality and therefore, the prayer has been rightly rejected.

4. We have heard Shri N.K.Mohapatra, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the record.

5. The learned Senior Standing Counsel has referred to sub-rules (1) and (2) of Rule 26 of Central Civil Services (Pension) Rules, 1972. Rule 26(1) provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. Sub-rule (2) of Rule 26 provides that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government

where service qualifies (Emphasis supplied). Sub-rule (2) deals with resignation from one Government post to take up, with proper permission, another appointment under the Government. This rule, therefore, is not applicable to the case of the applicant. However, it is necessary to note that instruction dated 21.9.1960 of Government of India, Ministry of Finance, the gist of which has been printed at page 58 of Swamy's Compilation of CCS Pension Rules (14th Edition), provides that even in that case the Government servant intending to apply for a post should have his application forwarded by the competent authority under whom he was serving at the time of applying for the post. So far as taking up employment in public sector undertaking is concerned, the relevant instruction is D.O.P.T.'s letter dated 31.1.1986, printed at page 402 of Swamy's Compilation of CCS Pension Rules (14th Edition). Paragraph (4) of this circular dealing with pensionary benefits provides that resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service. In the instant case the applicant had admittedly obtained permission from the competent authority to apply for other post. In his representation dated 22.7.1998 at Annexure-7 he has mentioned that after getting "No Objection Certificate" he had registered his name in the local Employment Exchange, Koraput and he got the interview call letter from NALCO, a public sector undertaking. The respondents have stated and the applicant has not denied that for appearing at the interview for the post in NALCO, he did not obtain permission

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from the competent authority. It is also clear from his resignation letter that in the resignation letter he did not mention that he is resigning for the purpose of taking up employment in a public sector undertaking, i.e., NALCO. The applicant has stated that he did not mention about the offer of appointment from NALCO in his resignation letter, thinking that it will delay acceptance of his resignation. Even if it is taken to be correct, the fact remains that in his resignation letter he did not mention that he is resigning for the purpose of accepting an employment under NALCO. In view of this, his past service under the respondents has been rightly forfeited and he is not entitled to pro rata retirement benefits and service gratuity.

6. As regards encashment of leave, because of our finding above, his case is not covered under Rule 39-D of the Central Civil Services (Leave) Rules, 1972 but is covered under Clause (a)(ii) of sub-rule (6) of Rule 39. Under this rule, on resignation, a Government servant is entitled to cash equivalent in respect of earned leave at his credit to the extent of half of such leave, subject to a maximum of 120 days. The applicant in his petition has stated that he had 269 days of E.L. The learned counsel for the petitioner stated that the applicant has already received cash equivalent of E.L. to the tune of 120 days. In view of this, we hold that the applicant is not entitled to get any more cash equivalent of leave.

7. In consideration of all the above,
we hold that the O.A. is without any merit and the same
is rejected. No costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

CAT/CB/1st day of August, 2001/AN/PS