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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

O.A.NO. 380 OF 2001

Cuttack, this the 3<sup>rd</sup> day of February, 2003

Bibudha Bhusan Palei

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *no*

*Label-  
03/02/03*  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*huh*  
(B.N. SOM)  
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN  
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....  
Bibudha Bhusan Palei, aged about 22 years, son of Gangadhar Palei,  
resident of village Nuagarh, P.O. Barkul, P.S. Balugaon, District  
Khurda ..... Applicant

Advocate for the applicant - Mr.N.Jhujharsingh  
Vrs.

1. Union of India, represented by its Secretary to the government of India, Ministry of Defence, At Raksha Bhavan, New Delhi.
2. The Commanding Officer, INS Chilka, P.O. Chilka, Dist.Khurda, Orissa 752 037
3. The Canteen Officer, Ships Canteen, INS Chilka, P.O. Chilka, Dist.Khurda, Orissa 752 037
4. The Executive Officer, Ships Canteen, INS Chilka, P.O. Chilka, Dist.Khurda, Orissa ....Respondents

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

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed by Shri Bibudha Bhusan Palei under Section 19 of the Administrative Tribunals Act, 1985. This

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Application has arisen consequent on the implementation of the direction of the Orissa High Court in OJC No. 5177 of 2001, contained in the judgment dated 30.4.2001, by Respondent No.2. The said Respondent was directed by the Hon'ble High Court to dispose of the representation of the applicant dated 21.3.2001 with a reasoned order. The Respondent, complying with the direction, disposed of the said representation by rejecting the same on 7.7.2001. Aggrieved by that order of rejection, the applicant has filed this O.A.

2. Shorn of other details, it may be stated that there are two issues involved in this matter. They are:

- (i) Whether the applicant was an employee of the Unit Canteen, INS Chilka. If so, what was his status as an employee of that Canteen? And
- (ii) Was the termination of service of the applicant with effect from 25.2.2001 bad in law?

3. The applicant has claimed that he was an employee of the Unit Canteen. He has stated that he was discharging the duties of Cashier there. His learned counsel argued that since he was an employee of them Unit Canteen, he was a Government servant and could not have been driven out of the job without going through the due process of

law, as laid down in this regard. He has also drawn our notice to the judgment of the Apex Court in the case between Union of India v. M.Asalam, AIR 2001 SC 536 regarding status of the employees of the Unit Canteens. The Respondents, though have admitted that the applicant was working in the Unit Canteen, denied that he was a regular employee. They have stated that the applicant was engaged as a labourer on part time basis. They have further stated that he was being paid honorarium on monthly basis as remuneration and not any pay scale, as prescribed for the Government servants. The Respondents have submitted Annexure R/2 in support of this statement. The learned Senior Standing Counsel argued that the applicant was not even a casual worker but only a part time worker.

4. From the said averments of both the parties, it is clear that the applicant had worked for about three years in that Canteen as a labourer on payment of honorarium on monthly basis. The Respondents have also produced vouchers showing that the applicant was receiving honorarium of Rs. 1000/- per month. On the other hand, the applicant could not produce any document like letter of appointment to prove his status as an employee in the Canteen. As the applicant has not been able to

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produce any document to establish his status of engagement in that Canteen and as he has always accepted payment of honorarium for his service to the Canteen, we are unable to accept his plea that he was a regular employee of the Unit Canteen, INS Chilka.

5. Regarding the second issue about termination of his service, the applicant has submitted that he had on 25.2.2001 to 10.3.2001 for appearing at P.G.Degree Examination. After submitting his leave application, he stated, he had proceeded on leave. However, when he came back to join his duty on 11.3.2001, he was not allowed to join his duty by the Respondents. He has alleged that he was thrown out of the job without initiating any disciplinary proceedings against him and that action was bad in law. The Respondents in the counter have refuted this allegation of the applicant. They have argued that the applicant had remained absent from 25.2.2001 on his own accord without taking prior approval/permission of the Canteen Officer. As he had absented himself without permission, they stated, the Canteen Officer had engaged another labourer in that vacant position for smooth functioning of the Canteen. In effect, there was no vacant position in the Canteen to offer to the applicant when he re-appeared on 13.1.2001. The Respondents further stated that the applicant had neither made any

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request or submitted any application for leave, nor was he permitted to remain absent from his duty. On the other hand, the Respondents have alleged in the counter that the applicant had abstained from work with effect from 25.2.2001 on being caught by the security personnel when he attempted to bring some items like batteries, tooth paste, blade, etc., from local market for unauthorized sale to the new recruits in INS, Chilka. The Respondents have submitted a copy of the report of the Security Officer (Annexure R/3) in support of this statement.

6. The applicant merely stating that he was on leave from 25.2.2001 to 10.3.2001 has not produced a copy of his leave application dated 24.2.2001 or any other material evidence to substantiate his statement. He has of course submitted a copy of the "Duplicate Admit Card" for appearing at P.G.Degree Examination of Utkal University. But that does not lend credence to the fact that he had actually appeared in that Examination during this period of his absence or that he had applied for leave. Thus, from the facts of the case, it is clear that the applicant had remained absent from duty without permission and that cost him his position in the Canteen. An unauthorized absence being a misconduct even on the part of the regular employees, the Respondents could not be faulted for not excusing a labourer for such a misconduct. The fact

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of the matter is that the applicant was involved in certain undesirable activities and caught napping by the Security Officer and his misconduct was reported by the Security Officer to the Canteen Manager who had, after interviewing the applicant, directed him (the applicant) to give a factual written statement to the Security Officer at the Main Gate. It has been reported by the Security Officer in his report at Annexure R/3 that the applicant never came back to the Main Gate to render any statement. The Security Officer has further stated that the matter was reported by him to the Assistant Naval Provost Marshal, Orissa Area. From the report of the Security Officer, it appears that the statement made by the Respondents that the applicant had stayed away from duty to avoid facing consequences of bringing unauthorized items from outside into the security area is credible. In the circumstances, the plea of the applicant that his service was terminated by the Respondents arbitrarily, is devoid of merit and hence rejected.

7. The O.A. is accordingly rejected. No costs.

*03/02/03*  
**(M.R. MOHANTY)**  
**MEMBER (JUDICIAL)**

*[Signature]*  
**(B.N. SOM)**  
**VICE-CHAIRMAN**

CAT/CTC  
AN/PS