

10 7

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.1425 OF 2004
CUTTACK, THIS THE 3rd DAY OF OCTOBER 2007

Suleman Dahenga Applicant

Vs.

Union of India & Others.....Respondents

FOR INSTRUCTIONS

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


(N.D.RAGHAVAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.1425 OF 2004
CUTTACK, THIS THE 3rd DAY OF OCTOBER, 2007

CORAM:

HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN

.....

Sri Suleman Dahenga, aged about 25 years, S/o. Adem Dhanga, of Nuajamada, P.O. Hirakud, Dist. Sambalpur, at present working as Mazdoor, S.D.O., Office of the TDM Sambalpur.

.....Applicant

Advocate(s) for the Applicant - M/s. S.D.Das, H.S.Satpathy,
D.R.Bhokta, D.R.Behera, A.N.Sahu,
N.Bisoi, D.Mohanty.

VERSUS

1.Union of India represented through its Secretary, Ministry of Telegraph, Doorsanchar, etc., New Delhi.

2.The Chief General Manager, Telecom Department, Orissa Circle, At/P.O. Bhubaneswar, Dist. Khurda.

3. S.D.O. Telegraph department, At/P.O./Dist. Sambalpur.

4. Sub-Divisional Engineer, S.D.O. G.M.T.D. At/P.O./Dist. Sambalpur.

.....Respondents.

Advocate(s) for the Respondents - Mr. S.B.Jena(ASC).

.....



ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

This was filed on 25.6.2004 and notices were directed to be issued to the Respondents by order dated 16.12.2005. After completion of pleadings, the Registry, while indicating the question of maintainability of *the when it was adjourned to 17.07.07 at applicant's request* the O.A., listed the O.A. before the Bench for hearing on 4.7.2007 and on 17.7.2007 *when* the O.A was adjourned to 23.7.2007 on the prayer of the learned counsel for the applicant *for adjournment being allowed.*

2. On 23.7.2007 the learned counsels M/s S.D.Das, H.S.Satpathy, D.R.Bhokta, D.R.Behera, A.N.Sahu, N.Bisoi and D.Mohanty for the applicant and the learned Additional Standing Counsel Mr.S.B.Jena for the Respondents remained absent due to advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar Association resolutions *- any foundation, etc.* passed without substance or value but violating principles of natural justice too. In this connection, I would like to refer to the decision in the case of **Ramon Services Private Limited Vrs. Subash Kapoor and Others,** reported in JT 2000 (Suppl. 2) Supreme Court 546, holding as follows:

“When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel.”
(Judgment Paras-5 & 14)

“In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable



13

to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate."

(Para-15)

"In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate."

(Para-16)

"Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence."

lidi

“No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court.”

(Paras-24, 27 & 28)

Keeping in view the aforesaid case law laid down by the Hon'ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon'ble Supreme Court itself and leaving the Ld.Counsels including those representing Governments at the peril of facing the consequences thereof and in view of the provisions contained in Section 22(2) of the Administrative Tribunals Act, 1985 that Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of the documents and written representations and after hearing such oral arguments, as may be advanced and in accordance with Rule 15 of the CAT (Procedure) Rules, 1987, the available record on hand has been perused for adjudicating the issue as below.



3. The brief facts leading to the cause of filing of this O.A., according to the applicant, are as follows: Applicant joined as Mazdoor in the Section of SDO, Sambalpur for assisting the works related to cable repair, telephone repair and office work since 2001. He has submitted that he continued as such from 2001 to 2003 and to this effect he has filed a certificate issued by the departmental authority vide Annexure-A/1. The grievance of the applicant is that the Respondent-Department took up the matter for regular absorption of some casual Mazdoors on the basis of seniority and suitability and although he is senior well up in all respects, his juniors were short listed for regular absorption without having regard to his claim. Being aggrieved, the applicant filed a representation (not dated) vide Annexure-A/2 to the Chief General Manager, Telecom Orissa Circle, Bhubaneswar ventilating his grievance, which having not been considered he has moved this Tribunal, inter alia, alleging discriminatory treatment to have been meted out to him, with the following relief:

“...directing the respondents to consider this case for absorption as regular employee of the Department, otherwise the applicant will suffer irreparable loss and injury”.



4. The Respondents have filed their counter, urging, at the out set, the maintainability of this O.A. since Bharat Sanchar Nigam Limited is not amenable to the jurisdiction of the Central Administrative Tribunal. On merit, the Respondents have submitted that the applicant having not been engaged at any point of time by BSNL, the question of persons juniors to him have been regularized does not arise. It has been submitted that the authorities of Sambalpur Telecom District after verification of their records found no truth in the version of the petition and could not testify the certificate as has been annexed to the O.A. as Annexure-1. They have stated that there was a ban on engagement of casual mazdoors w.e.f. 30.3.1985(Annexure-R/2). With all these submissions, the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

5. No rejoinder has been filed by the applicant.

6. I have considered the materials on record. The first point urged by the Respondent-BSNL is regarding maintainability of this O.A. The applicant in his O.A. has stated to have worked under the Respondent-organization from 2001. This by itself is enough testimony to throw light to determine the point of



maintainability. It at all the applicant was engaged as casual Mazdoor in the year 2001, he was so engaged in BSNL in as much as the Telecom Department became Bharat Sanchar Nigam Limited prior to 2001 and BSNL has not yet been notified under Section 14(2) of the Administrative Tribunals Act, 1985 and therefore, is not amenable to the jurisdiction of the C.A.T.

7. Besides the point of maintainability, the representation which applicant has filed vide Annexure-2 is undated and the contents thereof are nothing but guesswork. In this connection, it would be worthwhile to quote Para-2 thereof, which reads as under:

“Recently a list of 27 person of Sambalpur Telecom district has come for regularization, but my ill luck my case has not been considered”.

8. The applicant, in order to substantiate his version, ~~the~~ applicant, has not produced any contemporaneous documents showing that the persons, who are junior to him, are in the zone of consideration for the purpose of regularization of their services nor has he adduced any material evidence to convince the Tribunal that he being the senior has been left out of consideration to which he is entitled. ~~to~~ The Tribunal cannot proceed to decide a matter on the basis of mere conjecture or surmises. There should be enough

18

- of his ad.

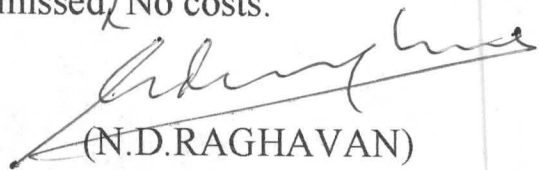
testimony and corroborative materials in support ~~the~~ standpoint.

The applicant has not even given a delicate hint with regard to the method of his engagement as casual Mazdoor and as to how he being senior has been discriminated against. Therefore, there appears to be not even a prima facie case in favour of the applicant.

9, Having regard to what has been discussed above, I am of the considered view that the present O.A., besides being not maintainable before this Tribunal, does not merit consideration.

- accordingly. ad.

10. In the result, the O.A. is dismissed/ No costs.



(N.D. RAGHAVAN)
VICE-CHAIRMAN

PPS

fix for pronouncement.

lidi