

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A. No. 922 of 2005

Cuttack, this the 31st day of July 2007

CORAM:

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

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Sri Arabindra Sahoo, aged about 39 years, son of Sri Hrudananda Sahoo, Village Dorabanga, P.O.Chanahata, Dist. Khurda, Temporary Status Worker, Archaeological Survey of India, Raipur Sub Circle, At/PO-Raipur, Dist. Raipur (Chhatisgarh)

Applicant

Advocates for applicant - M/s Ashok Kumar Mohapatra,
BP Rath & G.Senapati.

Vrs.

1. Union of India, represented through the Secretary, Ministry of Culture, Government of India, New Delhi.
2. Director General, Archaeological Survey of India, New Delhi 110 0011.
3. Superintending Archaeologist, Bhubaneswar Circle, Archaeological Survey of India, VIP Area, Nayapalli, P.O: Nayapalli, Bhubaneswar 751015, Dist. Khurda, Orissa.
4. Superintending Archaeologist, Raipur Circle, Archaeological Survey of India, Anupam Nagar, J/10, near Aroma Beauty Parlour, Raipur 492, Chhatisgarh.

..... Respondents

Advocate for respondents - Mr. R.C. Behera, ASC.

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ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

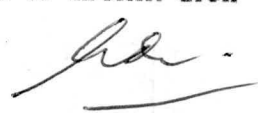
Applicant Arabinda Sahoo has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the Respondents to accept his joining report (Annexure 5) and



also allow him to resume duties with all consequential service and financial benefits. He has also prayed for a direction to the Respondents to take a final decision regarding deployment of the applicant in pursuance of the order contained in Annexure 3.

2. Brief facts of the case of the applicant are as follows: By order dated 14/15.12.1988 (Annexure 1) issued by the Superintending Archaeologist, Archaeological Survey of India, Bhubaneswar Circle, the applicant was instructed to report to the Senior Conservation Assistant, ASI, Bhubaneswar Sub Circle, Santrapur, Bhubaneswar, to work as Casual Labourer. The applicant was granted temporary status w.e.f. 01.09.1993 and posted to Laxman Temple under Raipur Sub Circle by office order dated 19.12.2000 (Annexure 2) issued by the said Superintending Archaeologist.

2.1 In pursuance of the Director General, Archaeological Survey of India, New Delhi's letter dated 10.1.2003 for setting up of three new Archaeological Circles in the newly created States of Uttaranchal, Chhatisgarh and Jharkhand with their headquarters at Dehradun, Raipur and Ranchi respectively by re-organizing Agra, Bhubaneswar, Bhopal and Patna Circles, the office order No.317 dated 29.1.2003 (Annexure 3) was issued by the Superintending Archaeologist, Bhubaneswar Circle, asking the staff, such as Technical, Conservation, Photography/Drawing/Survey, Ministerial and Group D to submit their



option, by 15.2.2003, for transfer to Chhatisgarh Circle. It has been stated by the applicant that no such option was called for from casual labourer with temporary status, including the applicant, who were then working under Archaeological Survey of India, Bhubaneswar Circle.

2.2 The applicant has stated that he fell ill and by his application dated 1.7.2003 (Annexure 3) addressed to the Superintending Archaeologist, Archaeological Survey of India, Raipur Circle, Raipur (Respondent No.4), requested for grant of leave from 1.7.2003. Thereafter the applicant extended his leave from time to time and on 11.10.2004 submitted his joining report along with medical fitness certificate (Annexure 4).

2.3 It is the grievance of the applicant that Respondent No.4 did not accept the joining report and allow him to resume duties on the ground that Respondent No.3 was yet to pass any final order regarding deployment of the applicant under Raipur Circle and also did not forward his Service Book. Thereafter the applicant approached Respondent No.3 to issue necessary instructions in this regard and to send his Service Book to Respondent No.4. Though the service book of the applicant was sent to Respondent No.4 on 29.12.2004, the Respondent No.4 is yet to take a decision in the matter and, as a result, the applicant is unable to resume duties. The further grievance of the applicant is that he has not yet been paid his salary for the month of March 2003 and leave salary for the



period from 1.7.2003 to 11.10.2004. He has also not been paid his arrears of financial dues although all other temporary status workers have already received their arrears of financial benefits and are also receiving their salary regularly.

3, The Respondents have filed a counter opposing the prayer made by the applicant. They have stated that the Original Application is not maintainable before this Bench of the Tribunal as the applicant was engaged in Raipur Sub Circle under Raipur Circle which is in Chhatisgarh State. It has been stated in the counter that the Respondents have already given the financial benefits to the temporary status casual workers including the applicant w.e.f. 10.9.1993. The applicant and 20 other temporary status casual workers were posted at Chhatisgarh region as there were no watch and ward staff to look after important national monuments and also valuable sculptures and that the applicant gladly accepted and joined the new place of duty. The Respondents, while denying the statement of the applicant that he had applied and was sanctioned leave, have stated that he remained absent without informing the Respondent No.4. It has been submitted by the Respondents that in pursuance of the direction contained in the order dated 1.12.2005 passed by the Tribunal, the Respondent No.2 took a decision, vide letter dated 6.9.2006 (Annexure R/2), allowing the applicant to join his duty at Adbhar under Bilaspur Sub Circle in Raipur Circle in the State of



Chhatisgarh and accordingly the applicant has already resumed his duties at the said place. The Respondents have stated that salary for the month of March 2003 has already been paid to the applicant. In view of this, the Respondents have submitted that the O.A. is liable to be dismissed with exemplary cost.

4. I have perused the pleadings and heard Shri A.K.Mohapatra, the learned counsel for the applicant, and Shri R.C.Behera, learned Additional Standing Counsel for the Respondents.

5. The learned counsel for the applicant submitted that the Original Application may be disposed of with liberty to the applicant to file a fresh Original Application. The learned Additional Standing Counsel for the Respondents submitted that the Original Application has become infructuous; and that the Original Application is not maintainable and is liable to be dismissed, as alternative remedy has not been exhausted by the applicant. In reply, the learned counsel for the applicant, referring to paragraph 6 of the counter, submitted that as the Respondents have granted the main relief itself, it cannot be said that the O.A. is not maintainable.

6. I have carefully perused the pleadings of the parties and the submissions made by their learned counsels. From Annexure 2, the office order dated 19.12.2000 it is clear that the applicant upon being conferred with temporary status w.e.f. 10.9.1993 was posted to Raipur



Sub Circle in the State of Chhatisgarh. While continuing to work as a temporary status casual labour, the applicant by his purported application dated 1.7.2003 (Annexure 4) addressed to the Superintending Archaeologist, Archaeological Survey of India, Raipur Circle (Respondent No.4) sought leave from 1.7.2003 and by his another purported representation dated 11.10.2004 (Annexure 5) purportedly reported for duty. The office order No. 317 dated 29.1.2003 (Annexure 3) calling for option from regular staff in various categories for their transfer to Chhatisgarh Circle was not only applicable to the applicant nor did it confer any right to claim his deployment either under Bhubaneswar Circle or Chhatisgarh Circle. Therefore, the cause of action, if any, for the applicant to approach the Tribunal arose when the Superintending Archaeologist, Archaeological Survey of India, Raipur Circle (Respondent No.4) did not allegedly permit him to join his duties on or after 11.10.2004 and it cannot be said that the cause of action arose within the territorial jurisdiction of the Cuttack Bench of the Tribunal, as has been rightly contended by the Respondents in their counter. The learned Single Member Bench, while directing issuance of notice of admission to the Respondents by order dated 1.12.2005, rightly made the issuance of the notices subject to the question of jurisdiction to be decided at the time of final hearing. The submission of the learned counsel for the applicant is that as the Respondents have, in compliance



with the direction of the Tribunal contained in their order dated 1.12.2005, taken decision vide Annexure R/2 allowing the applicant to join his duties at Adbhar under Bilaspur Sub Circle in Raipur Circle in the State of Chhatisgarh, thereby granting the main relief prayed for in the O.A., it cannot be said that the O.A. is not maintainable on the ground of lack of jurisdiction of Cuttack Bench of the Tribunal. Compliance of the order of this Bench of the Tribunal by the Respondents shows their respectfulness to the Tribunal, but does not prevent them from submitting the point of lack of jurisdiction of this Bench. Such compliance of the interim direction of this Bench of the Tribunal does not cure the legal defect, i.e., lack of jurisdiction of Cuttack Bench which is incurable. In consideration of all this, the Original Application is liable to be rejected as being not maintainable before this Bench.

7. Before parting with this case, I would like to observe that as the Respondents, vide order dated 6.9.2006 (Annexure R/2), have already allowed the applicant to join his duties in compliance with the interim direction contained in the order dated 1.12.2005 passed by the Tribunal, the rejection of this O.A. on the ground of lack of jurisdiction of this Bench will in no way disturb the applicant's present position.

8. With the aforesaid observations, the Original Application is rejected as being not maintainable before this Bench. No costs.

(N.D. RAGHAVAN)
VICE-CHAIRMAN

31-07-07.