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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.720 OF 2002
Cuttack, this the 26th day of February, 2004

Bijay Kumar Mohapatra Applicant

Vrs.

Union of India and others Respondents

For Instructions

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

Original Application No. 720 OF 2002
Cuttack, this the 26th day of February, 2004

CORAM:

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

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BIJAYA KUMAR MOHAPATRA,
aged about 40 years,
S/o Anam Charan Mohapatra
Village-Muruna, P.O: Kalasuni,
P.S. Simulia,
Via: Ranital, Dist. Balasore

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Applicant

By legal practitioner: Mr. P. K. Mallick, Advocate

Vrs.

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2. Senior D.P.O., South Eastern Railway, Kharagpur (West Bengal).
3. Sr. Divisional Engineer, South Eastern Railway, Kharagpur, West Bengal.
4. D.R.M., South Eastern Railway, Kharagpur, West Bengal.
5. Assistant Divisional Engineer (West), Kharagpur, West Bengal.
6. SSE/P.Way, Marshaling Yard, Kharagpur, West Bengal.
7. Divisional Engineer, DEN (West), Kharagpur, West Bengal

..... Respondents

By legal practitioner: Mr. Ashok Mohanty, Sr. Counsel for Rlys.
M/s S. Ray, A.A. Khan, Counsel for Rlys.

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O R D E RMR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Mr. B. K. Mohapatra, had filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the Respondents to allow him to continue in his post as CPC Gangman with full back-wages.

2. The facts of this case, in brief, are that he joined as Casual Gangman on 24.6.1986 and acquired temporary status on 20-11-1989. Then on 13.11.1990 he was sent for medical examination; which was fixed on 25.11.1990. He, however, fell ill suddenly, and could not appear before the Medical Board for examination. After getting cured of his illness, he reported on 27.7.95 for duty whereupon, he was sent for further medical examination; which was not held then and there. He, was, again sent for medical examination on 13.10.1995. The said medical examination report was not made known to him; nor was he allowed to continue in service from 8.4.1996. Then the Asst. Divisional Engineer, Kharagpur, vide his letter dated 18.12.2001 directed the Applicant to join his duty within seven days of receipt of that letter. However, the Applicant received the said letter only on 3.1.2002, met the Asst. Divl. Engineer on 7.1.2002 and he was directed to report before the PW-I, Marshall yard, Kharagpur. But the Applicant was not allowed to join. He, has, therefore approached this Tribunal seeking justice.

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2. Respondents have contested the application on the ground that it lacks any merit. In the counter, they have clearly stated that the Applicant was required to be medically examined before he could be made permanent in the cadre of Gangman and, therefore, the Applicant was sent to report to the Senior DMO, Kharagpur with necessary memos for his medical examination on 13.10.1990. But since that day he remained absent without any intimation to the office for five long years, therefore, when the Applicant reappeared in October, 1995, he was again sent for medical examination ; when also it was found that he was unfit in B/One category. They have also submitted that after that medical examination, the applicant had not approached any authority for his alternative appointment, as he was aware that having failed in the medical test, his service was liable to be terminated. The Respondents have also opposed this Original Application on the ground of jurisdiction. They have submitted that the Applicant had been working under the SSE(P.Way), M.Yd. at Kharagpur, which is located in West Bengal. So he should have filed this Original Application at Calcutta Bench of the Tribunal, in term of Sec.6 of the CAT(Procedure) Rules, 1987.

3. It is profitable to note Sec.6 CAT(Procedure) Rules, 1987 which reads as under:-

"(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

i) the Applicant is posted for the time being; OR
ii) the cause of action wholly or in part has arisen;

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the Order under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter;

(2) Notwithstanding anything contained in Sub-Rule(I) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

Although in terms of sub-section (1) of Sec.6, this Original Application is not maintainable before us, however, as the Applicant is residing at Muruna in the District of Balasore (Orissa) and he is being treated as an employee; whose services were terminated, he should get the benefit of the provision of sub-sec.(2) of Sec.6 of the Rules, 1987 and in the circumstances, we over-ruled the objection raised by the Respondents and held to hear this Original Application filed by the Applicant on merits.

4. We have heard learned counsel for both sides and perused the materials placed on record.

5. The admitted facts of this case are that the Applicant remained absent from October, 1990 to 1995 and on his reporting for duty, he was again sent for medical examination for classification of his medical category. Respondents have submitted that although, as per the Rules, a medically recategorised casual worker is entitled to alternative appointment, the benefit of this rule, could not be extended to the applicant as he had not rendered a total period of six years of casual service. As per Rule 2007(4)(a)(b)

of IREM Vol.II, a Casual Labourer having rendered a total period of 6 years service, may be considered for relaxed standard of medical examination for an alternative employment in the event of not passing in the medical test. They have further submitted that the Applicant had admitted that he had not rendered total 6 years of service, and, therefore, he is not eligible for any relaxed medical standard examination and also for alternative appointment.

6. The point to be adjudicated in this case is whether the Applicant in this Original Application is entitled to the benefit of his employment as Casual Labour in terms of Rule 2007(4)(a)(b). In terms of Rule-2007(4)(a)(b); which has been laid down that a casual labour who has put in six years service, whether continuous or in broken periods, is entitled to relaxed standard of medical examination and in terms of Rule 2007(4)(b), such of the Casual labour as are found, on medical examination, unfit for the particular category for which they are sent for medical examination despite the relaxed standard prescribed for re-examination, may be considered for alternative category requiring a lower medical classification subject to their suitability for the alternative category being adjudged by the Screening Committee to the extent it is found possible to arrange absorption against alternative posts requiring lower medical classification.

7. Respondents, in their counter have submitted that the Applicant did not have six years of casual service. They have also stated that this fact is admitted by the Applicant.

From the facts of the case, as stated by the Applicant in his Original Application, it has been submitted that the Applicant joined as Casual Gangman on 24.6.86 (copy of the order of appointment is filed at Annexure-1) and continued with broken period till 23.9.1987 under PWI, Sorre. Thereafter from 6.10.1989 to 17.11.1989 he worked under the PWI-I, Rupsa, where he continued till 25.11.1990. He remained absent without leave after 25.11.1990 till 15.10.1995 when again he was sent for medical examination by Assistant Divisional Engineer. It is, therefore, evident that the Applicant did not have six years either continuous or broken service as casual labour and, therefore, he does not get the benefit of rule, referred to above.

8. In the circumstances, this Original Application is dismissed, being devoid of any merit. There shall be no order as to costs.

B. N. S. S.
VICE - (B. N. S. S.) CHAIRMAN

KNM