

Trilochan Behera Applicant

Vrs.

Union of India and others Respondents

ORDER DATED 19/09/2007

1. Applicant Trilochan Behera, who claims to have been working as Chargeman, Grade II (Technical) under the General Manager, Ordnance Factory, Badmal, Dist. Bolangir (Orissa State), filed this Original Application on 30.7.2007, praying for quashing the order dated 24.7.2007 (Annexure 14) issued by the General Manager, Ordnance Factory, Badmal, Dist. Bolangir (Respondent No.3) reverting the applicant from the post of Chargeman Grade II/T/Elect. to the grade of Electrician/HS Gr.II with effect from 20.7.2001(FN) and for issuance of a direction to the Respondents to allow the applicant to continue against the post of Chargeman Grade II (T) against which his promotion has already been confirmed. He also prayed for interim relief to stay operation of the order dated 24.7.2007 (Annexure 14) and to allow him to continue as Chargeman Grade II(T) till final disposal of the O.A.

2. The O.A. was placed before the Bench on 6.8.2007 for considering the question of admission and the prayer for interim relief. The Bench, by order dated 6.8.2007, directed issuance of notice of ~~notices on the~~ motion for admission and interim relief to the Respondents and status quo to be maintained for a period of 14 days as an ad interim measure and the matter was posted to 20.8.2007.

3. On 20.8.2007 when the matter was taken up by the Bench for considering the question of admission and continuance or otherwise of the interim order of status quo, Shri U.B. Mohapatra, learned Senior Standing Counsel, appeared for the Respondents and prayed for time to file counter and accordingly, the hearing on the question of admission of the O.A. was adjourned to 18.9.2007.

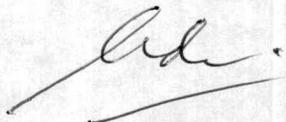
4. On 6.9.2007 the applicant filed MA No.444 of 2007 praying for passing of appropriate orders. In the M.A. it has been averred by the applicant that despite the issuance of direction to the Respondents to maintain status quo of the applicant, the Respondents have not allowed him to discharge the duties of



Chargeman Grade II and have called upon him to return the Smart Card of the post of Chargeman Grade II earlier issued to him for the purpose of issuance of Smart Card in respect of the post of Electrician/HS Gr.II, vide Annexures 17 and 18 to the M.A. The applicant also filed a Memo on 6.9.2007 praying for taking up the matter on 6.9.2007 to consider his prayer contained in the M.A. But as the O.A. was not yet admitted and on the request of the learned Senior Standing Counsel appearing for the Respondents, the hearing on the question of admission was adjourned to 18.9.2007 and also for the purpose of filing of the counter, the O.A. was directed to be placed before the Bench on 7.9.2007 for considering the question of admission and the prayer made by the applicant in the M.A.

5. On 7th September 2007 the learned counsels M/s B.Routray, D.K.Mohapatra and B.B.Routray for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents did not appear, but the applicant was present in person. As in this case the applicant was represented by the learned Advocates, he should not have been permitted to make his submissions in this case, but for the non-appearance of his learned counsels due to Advocates' strike on Court work before this Bench. In this connection, I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, JT 2000 (Suppl.2) SC 546, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no advocate can take it for granted that he will appear in the court according to his whims and fancies 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 appropriate cases the court itself can 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 and the defaulting Courts may also be contributory to the contempt of the Hon'ble Apex Court. Keeping in view the case law laid down by the Hon'ble Supreme Court, the applicant was heard in person and the materials available on record were perused.

6. After hearing the applicant and upon perusal of the averments contained in the O.A. and the documents annexed thereto, I find that the applicant challenges Annexure 14, the order dated 24.7.2007 issued by the General Manager, Ordnance Factory, Badmal, Balangir (Respondent No.3) reverting the applicant from



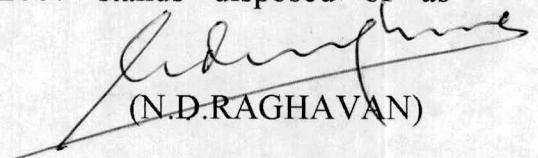
the post of Chargeman Grade II/T/Electrical to the post of Electrician/HS Gr.II with effect from 20.7.2001(FN). Before issuance of the order of reversion (Annexure 16), Respondent No.3 had issued show-cause notice on 16.12.2006 (Annexure 12) and the applicant had also submitted his representation on 22.1.2007 (Annexure 13). In the show-cause reply the applicant has, more or less, urged the same grounds, as in the present O.A., and the competent authority has issued the order of his reversion which is assailed by the applicant in the O.A. As I find ~~from~~ that the present O.A. can be disposed of on the preliminary point of maintainability itself, it is not necessary to go into the merits of the matter.

7. Section 20(1) of the Administrative Tribunals Act, 1985, mandates that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In order to satisfy myself as to whether the applicant has exhausted the remedies available to him, I have carefully gone through the O.A. and found that in paragraph 6 under the Details of the Remedies Exhausted, the applicant declared that he has exhausted all the remedies by filing the representations before the authorities which are pending for adjudication. The applicant has not filed copy of any representation made by him to any authority higher than Respondent No.3 with regard to his grievance against the order of his reversion (Annexure 14). He has also failed to give the particulars of any such representation in the O.A. Therefore, adverse inference has to be drawn that the applicant has not made either any representation or appeal against the order of his reversion (Annexure 14). In order to be further satisfied as to whether there is any provision under the service rules by which the applicant is governed, I have gone through the CCS (CCA)Rules, 1965 and found that Rule 23 (v)(b) of the said Rules provides that a Government servant may prefer an appeal against an order reverting him while officiating in a higher service, grade or post, to a lower service, grade or post. In view of this rule position and in view of the fact that the applicant has not exhausted the remedy of preferring an appeal against the order of his reversion (Annexure 14) to the appellate authority, I hold that the present O.A. is not maintainable. It is also not the case of the applicant that Respondent No.3 is not competent to issue the order of his reversion and that the principles of natural justice have not been complied with by the Respondent No.3 while issuing the reversion order. In this view of the matter, I also do not find any exceptional circumstance under which the applicant can maintain this O.A.



8. Before parting with, I would like to observe that in the event the applicant prefers an appeal, if so advised, before the appellate authority (Respondent No.2) questioning the order of his reversion dated 24.7.2007 (Annexure 14), the said appellate authority may consider and dispose of the same at the earliest in accordance with law.

9. With the above observation, the Original Application is rejected at the stage of admission itself, as being not maintainable. Consequently, MA No.444 of 2007 stands disposed of as infructuous.


(N.D.RAGHAVAN)

VICE-CHAIRMAN

fix for pronouncement
on 19.09.07 at 2.30 P.M.
