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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.19 OF 2009

Cuttack this the 3rd day of March, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER

AND

THE HON'BLE SHRI C.R. MOHAPATRA, ADMINISTRATIVE MEMBER

...

T. Ramulu, aged about 58 years, S/o. late T. Pandeya, Village-Narsipuram, PO-Tekilitelugaon, Dist-Sikakulam (A.P.) resided at C/o. Akshaya Kumar Baliarsingh, At/PO/PS-Jatni, Dist-Khurda, Orissa

...Applicant

By the Advocates: Mr. T.K. Mishra

-VERSUS-

1. Union of India represented through Director General of Post Offices, Dak Bhawan, New Delhi-110 001
2. Chief Post Master General, Andhra Pradesh Circle, Hyderabad-I
3. Post Master General, Andhra Pradesh, Visakhapatnam, Andhra Pradesh
4. Senior Superintendent of Post Offices, RMS-V Division, Visakhapatnam, Andhra Pradesh
5. Sub Divisional Inspector, RMS-V IIIrd Sub Division, Vizianagaram-535023

...Respondents

By the Advocate Mr. R.C. Swain

...

ORDER

HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER:

The applicant, a part time Chowkidar, who was put off duty from 1997 onwards, has approached this Tribunal to set aside the put off duty order dated 3.7.1997 (Annexure-A/2) and also for further relief to reinstate him in service with other benefits.

2. The applicant was engaged as part time Chowkidar/Waterman in the rest House of RMS, Khurda Road, Jatni, as per Annexure A-1 Memo dated 23.4.1970. His duty hours were also fixed as five hours daily with effect from

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1.2.1970. The period of engagement of the applicant was extended from time to time up to 3.7.1997. While the applicant was working as such, complaints were received from the neighbours of the rest house alleging illegal activities of the applicant inside the rest house. In this regard, an inquiry was conducted wherein the applicant was found guilty of misconduct and on the findings of the Inquiry Officer, Respondent No.5 issued Annexure-A/2 put off duty order to the applicant with effect from 3.7.1997. The applicant also filed an appeal which, according to the applicant, is still pending with the 4th Respondent. However, the applicant had taken the matter to the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, which formed the subject matter of Industrial Dispute Case No.16/2000. The said Tribunal passed an award on 28.7.2008 holding that the reference in its present form was not maintainable and this is how, the applicant has approached this Tribunal with the present O.A.

3. We have heard the learned counsel appearing for the parties on the question of admission. The learned counsel for the applicant Shri Mishra had urged the following contentions challenging the Annexure-A/2 order. Firstly, put off duty order was issued in violation of Article 311(2) of the Constitution. Secondly, the termination of the service of the applicant is not in accordance with the orders or guidelines issued by the Postal Department. Thirdly, the impugned order at Annexure-A/2 is without giving sufficient opportunity to the applicant. Finally, the evidence adduced before the I.O. by the witness has been

accepted without giving an opportunity to the applicant to cross-examine or to give any chance of adducing evidence to establish his case and therefore, the impugned order suffers from violation of principle of natural justice.

4. Resisting the above contentions, the learned counsel for the Respondent Shri R.C.Swain contended that since the engagement of the applicant was on temporary basis, in the normal course no rule or procedure of inquiry is to be followed. That apart, the appointment of the applicant was part-time Chowkidar, say on purely contractual basis, and if the authorities were of the view that the services of the applicant should not be continued or extended, it is within their domain to terminate the service of the applicant. Further, it is contended that since Annexure-A/2 order has been passed on 3.7.1997, the O.A. is barred by limitation. Besides, there is no evidence to show that the applicant had filed any appeal before the 4th Respondent. It is the further case of the Respondents that though the engagement was for a temporary period, the applicant has no right to continue, he being the source annoyance to the public by his deeds and words. It is also contended by the learned counsel for the respondents that on the basis of the complaints received from the public of the locality of the rest house, an inquiry had been conducted wherein the allegation against the applicant had been proved. Hence the applicant has no right to claim any relief before this Tribunal.

5. On anxious consideration of the contentions and the arguments narrated in the O.A. and on perusing the records, the question to be decided is whether

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the applicant is justified in approaching this Tribunal and claiming the relief, which he has claimed in the O.A. It is to be noted that as per Annexure-A/1 engagement memo, it is recorded that the engagement of the applicant is purely temporary and does not confer on him any right whatsoever for permanent absorption in the Department. Further, it is to be noted that the inquiry conducted by the authorities is on the basis of a complaint received from the public and the Inquiry Officer, after considering all the evidences adduced before him, came to the conclusion that the allegations stated in the complaint were correct and on the basis of the above findings, the 3rd Respondent issued Annexure-A/2 order. The applicant has explained that he had filed the I.D. Case before the Industrial Disputes Tribunal and hence the delay in approaching this Court has occurred. The wrong legal advice received by the applicant is not a reason to condone delay occurred in filing the present O.A. before this Tribunal. That apart, the appointment/engagement order itself shows that the applicant was engaged purely on temporary basis and his work was on daily rate and for few hours. Even if any misconduct is not proved against the applicant, as contended by the Respondents, as per the provisions of Annexure-A/1 itself, the Respondents are free to terminate the services of the applicant as and when his services are not required or it is felt not to retain the applicant in service any more. In this context, it has to be noted that as per the inquiry conducted by the I.O., who was appointed by the Department, has analyzed the entire evidence adduced before him and come to the conclusion that the complaint filed against

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the applicant is true and the applicant is not fit to continue in the post any more. Whether the applicant is entitled to approach this Bench of the Tribunal as his engagement was ordered by the Sub-Divisional Inspector, RMS, V-3rd Sub Division, Vizianagaram, Andhra Pradesh and only on the reason that his work place was Khurda Division, within the jurisdiction of this Bench of the Tribunal where the applicant has filed this application, is a matter to be considered. However, since there is no prima facie case made out for admitting this O.A., the question of maintainability or the jurisdiction of this Bench of the Tribunal, as the case may be, is not being considered. With regard to delay also, it is stated in Paragraph-3 of the O.A. that since the I.D. case had been filed, the delay occurred. As we have already held above that the wrong legal advice received is not a reason to condone delay occurred in filing the present O.A. before this Tribunal, the point of delay is thus answered. Apart from this, though the applicant has averred that he had filed an appeal before the 4th Respondent, there is no material before this Tribunal to hold that such an appeal had ever been filed by the applicant as no copy of the appeal memorandum is filed or rather any hint is given for filing an appeal. It is also to be noted that since Annexure-A/1 engagement order does not contemplate any status of a casual employee except that of daily rated employee, this Tribunal is not in a position to hold that any rule regarding inquiry of employees either part time or full time could be applied to the case of the applicant.

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6. On overall consideration of the above facts, we are of the view that the O.A. is devoid of merit and accordingly, the same is rejected. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER