

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00811 OF 2011
Cuttack, this the 21st day of February, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

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Sri Himansu Kumar Ray,
aged about 26 years,
S/o Bimal Ch. Ray,
At/P.O-Bagalpur, Via-Anakhia,
Dist- Jagatsingpur, Odisha.

...Applicant

(By the Advocate-Mr. T. K. Mishra)

-VERSUS-

Union of India Represented through

1. Secretary, Department of Information and Technology, Ministry of Information Technology (Govt. of India) Electronics Niketan, 6-CGO Complex, Lodhi Road, New delhi-110003.
2. Director General, Software Technology Parks of India, Electronics Niketan, 6-CGO Complex, Lodhi Road, New Delhi-110003.
3. Director, Software Technology Parks of India, STPI, Guwahati City Centre, Institution of Engineers (India) Building, Panbazar, Guwahati-1.
4. Additional Director, Software Technology Parks of India, C-Ground Zero, Fortune Tower, Chandrasekharpur, Bhubaneswar-751023.
5. Managing Director, Oriental Security Service, Plot No. 65, Sahidnagar, Bhubaneswar, Dist- Khurda.

...Respondents

(By the Advocate- Mr. S. K. Patra)

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ORDER

S. K. PATTNAIK, MEMBER (J):

The applicant has filed this O.A. praying for a direction to the Respondents to consider the applicant in the post of operation and maintenance technical staff in Software Technology Parks of India (STPI, in short) and to regularize his services.

2. The case of the applicant in nutshell runs as follows:

The Ministry of Information Technology, Govt. of India, in the year 1991 set up a society of Software Technology Parks of India with the objective of encouraging, promoting and boosting the Software explores from India. Accordingly, two centers in Orissa, i.e. at Bhubaneswar and at Rourkela, were established by STPI. In pursuance of the Advertisement issued by Respondent No.4 (Annexure-A/1), the applicant applied for the post of Operation and Maintenance Technical Staff. He was called for interview vide letter dt. 24.08.2009 (Annexure-A/2) and having been selected was issued with the letter of appointment dated 15.01.2009 (Annexure-A/3) with the condition that his engagement is purely on contract basis initially for a period of one year w.e.f. 15.10.2009 and his performance shall be evaluated after completion of six months and subject to the outcome the evaluation of his service, the engagement shall be continued for the remaining contract period and after expiry of the contract term, his engagement shall stand terminated/discontinued automatically unless the same is extended in writing by the Competent Authority of STPI. Vide Annexure-A/4, his contractual engagement was extended from 29.10.2010 to 30.11.2010.

On the applicant's prayer to extend his casual engagement, he was informed vide Annexure-A/5 dt. 18.02.2011 that as per the instruction received from STPI Hqrs. vide letter dated 18.09.2010 all the contractual staffs would be shifted to placement agency with immediate effect and, accordingly, his service was shifted to placement agency w.e.f. 02.01.2011. Subsequently, Annexure-A/6 dated 04.01.2011 was issued, which contains the decision of head office that all the contractual posts, including the post of the applicant, have been handed over to M/s Oriental Security Service, Bhubaneswar, to provide manpower on outsource basis for the period 02.01.2011 to 31.12.2011. Accordingly, the applicant's salary was paid by the STPI through Oriental Security Service. The grievance of the applicant is that while the matter stood thus, all of a sudden on verbal instruction his service was terminated. The applicant ventilated his grievance to the Additional Director, STPI, Bhubaneswar (Respondent No. 4) vide representation dated 22.07.2011 (Annexure-A/7), however, having received no response from the Respondents, he moved this Tribunal in this present O.A.

3. The applicant has prayed for the aforesaid relief on the ground that STPI is centralized and administered by the Govt. of India under the Ministry of Information and Technology. The CCS Rule is applicable to its employees and STPI has its own bye laws and for smooth administration the STPI General Rules, 2004 governs the field and, as per clause 8.1 of this Rule, STPI shall prepare man power plans. Therefore, outsourcing, in this case, being illegal and violative to the

General Rules, 2004 is detrimental to the interest of the applicant. In the garb of outsourcing substitution of a set of employees by the another set of employees is not permissible under law.

4. Respondent Nos. 1 to 4 have filed their counter stating therein that the Advertisement dated 27/28.06.2009 was issued for various posts, including the post of Operation & Maintenance Staff, with consolidated salary on a short term contractual basis. It was also mentioned that the post is purely temporary and no claim/demand for regular posting in future after joining in consolidated work shall be entertained. On the aforesaid terms and conditions, the applicant joined the post on one year contractual basis with consolidated salary @ Rs. 7000/- per month w.e.f. 28.10.2009. However, with the approval of the competent authority, his contract was extended up to 31.12.2010 with same terms and conditions. However, as per letter dt. 18.09.2010 (Annexure-R/2) to engage contract employees on short terms basis through placement agency, applicant's contract was not extended beyond 31.12.2010 and he was deployed through M/s Oriental Security Services, Bhubaneswar, a placement agency, w.e.f. 02.01.2011. As per letter dated 14.07.2011 (Annexure-R/3), M/s Oriental Security Services informed the STPI, Bhubaneswar that service of the applicant was withdrawn w.e.f. 17.07.2011 due to exigency of work and he was advised to report for further deployment at suitable site. However, the applicant instead of reporting to the placement agency filed this O.A. claiming continuance of service in STPI with regular post. Respondents have submitted that the

Software Technology Park of India is an autonomous society under Dept. of Information and Technology and it has its own recruitment process for regular appointment. The petitioner was engaged on contractual basis and purely on temporary arrangement for one year but neither against any vacancy nor against any sanctioned post. The specific stand of the Respondents is that after completion of the contract period, the applicant is no more under the engagement of Respondent No.1 and 4. Hence, they have prayed for dismissal of this O.A.

5. On going through the initial appointment letter (Annexure-A/3), it is crystal clear that the “post is purely temporary and no claim/demand for regular posting in future, after joining in consolidated work, will be entertained”. This stipulation will indicate that at the time of joining/accepting the post, the applicant was aware of his service condition vis-à-vis future. The engagement of the applicant was on coterminous basis through service provider, M/s. Oriental Securities Services, Bhubaneswar on a consolidated wages of Rs. 9000/- per month. It is an admitted fact that the engagement of the applicant was not through regular recruitment process as per the rules. Rather, his engagement was through service provider with the specific condition that such engagement shall not confer any right on him to claim regular appointment dehors the rules. As the applicant accepted and joined the work in an open eyes with the specific condition that the engagement shall be terminated/discontinued unless same is extended in writing, the

applicant cannot have any claim for his regularization dehors the recruitment rules.

6. For the discussions made above, we find no merit in this O.A., which is accordingly dismissed. There shall be no order as to costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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