

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 16659 OF 2014

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Nityananda Barik Petitioner

-Versus-

Union of India
and Others Opp. Parties

For Petitioner : M/s. Nirmal R. Routray,
(Mrs.) J. Pradhan,
T.K. Choudhury and
S.K. Mohanty, Advocates.

For Opp. Parties : Mr. Chandrakanta Pradhan,
Sr. Panel Counsel, Government of
India.

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HON'BLE MISS JUSTICE SAVITRI RATHO**

Date of hearing: 21.04.2022 :: Date of judgment: 05.05.2022

DR. B.R. SARANGI, J. The petitioner, who was working as a Substitute Bunglow Lascar, has filed this writ petition seeking to quash the orders dated 22.04.2014 and 11.08.2014 passed by the Central Administrative

Tribunal, Cuttack Bench, Cuttack in O.A. No.501 of 2011 and R.A. No. 5 of 2014 under Annexures-5 and 7 respectively.

2. The factual matrix of the case, in brief, is that opposite party no.3-Assistant Personnel Officer, Integral Coach Factory, Chennai in the State of Tamilnadu issued an order bearing No.PB/RR/39/Sub. Bung Lascar dated 12.02.2009 appointing the petitioner as Substitute Bungalow Lascar in PB Rs.5200-20,200/- with G.P. of Rs. 1800/-. Such offer of appointment was purely temporary for a term of four months subject to fulfillment of conditions stipulated in the order itself. At Para-10 of the order, the petitioner was directed to report before opposite party no.3 immediately at 9.30 hours along with certain documents for verification. The petitioner complied the terms and conditions of the order dated 12.02.2009, for which finally, on 21.02.2009, opposite party no.3 issued order No. PB/S5/274 and accordingly the petitioner was attached to Mr. D.P. Dash, Deputy Chief Electrical Engineer, C & D, Integral Coach Factory, Southern

Railway, Chennai, in the same pay band as had been provided in the offer of appointment. The employment number of the petitioner was 843497. Before issuance of order of appointment, the petitioner was working in the house/bungalow of Mr.D.P. Dash-opposite party no.2 since long, for which his officer took the initiative for his appointment as Substitute Bungalow Lascar.

2.1 Consequent upon his joining, the petitioner received the salary with effect from March, 2009. But a dispute arose between the petitioner and his employer-opposite party no.3 owing to demand of some portion of the salary and ultimately in a blank paper signature was obtained from the petitioner which was converted into an emergency leave application for a period of 10 days, though during the said period he had discharged the duty in the bungalow for his officer. He was denied to sign the muster roll and ultimately opposite party no.2 refused to report his presence, which compelled the petitioner to come back to his native place.

2.2 Thereafter, the petitioner submitted a representation to opposite party no.1, on 14.12.2010, ventilating his grievance for necessary action, but no order was communicated in response to such representation. Thereby, he submitted a reminder on 04.01.2011. In response to the same, the petitioner received order No. Dy. CEE/I/DPD dated 30.03.2011 by which, the order dated 08.11.2010 passed by opposite party no.3 was communicated to him in his permanent address indicating that opposite party no.3 accepted the resignation submitted by the petitioner and the reason had been indicated to be domestic. The order was effective from 09.11.2010.

2.3 The petitioner, on receipt of the order dated 30.03.2011, along with the order passed on 08.11.2010, submitted his appeal to opposite party no.1 by speed post, taking a specific plea that his officer-opposite party no.3 had taken his signature in a blank paper to use the same as a leave application, but the same was used by opposite party no.2 for the purpose of his resignation to

deprive him of his service. Opposite party no.2 in his order dated 30.03.2011 clarified that the petitioner had left his place of work on 29.10.2010 and thereafter he has not returned. As a consequence thereof, he was terminated from service with effect from 08.11.2010, pursuant to the so called resignation submitted by him. Even though the petitioner had submitted his appeal on 29.04.2011, since no communication was received, he preferred O.A. No. 501 of 2011 on 24.07.2011 under Section 19 of the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal, Cuttack Bench, Cuttack seeking to quash the order dated 08.11.2010 and to direct the opposite parties to allow him to work against his post or provide alternative employment. The petitioner had also prayed for interim relief, seeking direction to opposite party no.1 to dispose of the representation/appeal.

2.4 Pursuant to the notice issued by the tribunal, opposite parties filed their counter affidavit, enclosing the resignation letter dated 29.10.2010 and some other

documents, including the report dated 06.11.2010, and denied the allegations made by the petitioner. It was contended in the counter that the petitioner had submitted the resignation, which was accepted and, as such, he was terminated from service. On receipt of copy of the counter affidavit, the petitioner submitted his reply denying the allegations made by the opposite parties. Relying upon the report dated 06.11.2010, with regard to service performance and behaviour of the petitioner, wherein it was reported that “ On 29-10 he insisted for leave and handed over the resignation letter to the office and left”, the petitioner requested the tribunal for production of the record to ascertain as to whether the letter, as mentioned in clause-14 of the report dated 06.11.2010, should form part thereof or not. As a consequence thereof, the tribunal passed an order on 24.07.2013 to the following effect:-

“Heard Mr. N.R. Routray, Learned Counsel for the Applicant and Mr. S.K. Ojha, Learned panel counsel for the Respondents IN PART. Call this matter week commencing 26th August, 2013 for giving further hearing in the matter. Meanwhile, Mr. S.K. Ojha, Learned Panel counsel for the Respondents is directed to obtain the records dealing with the appointment and acceptance of resignation of the

applicant and keep the records ready with him for the perusal of the Tribunal on the next date of hearing.”

2.5 In spite of such order being passed by the tribunal, no record was produced. Instead of taking an adverse view against the opposite parties, the tribunal passed the order in paragraph-4 to the following effect:-

“We have considered the rival submission of the respective parties and perused the records. We are in complete agreement with Mr. Ojha that if it is accepted that signature of the applicant was taken by Respondents on blank paper then according to him the same was utilized as his application for leave and, thereafter, subsequent signature of the applicant was taken by the respondents on blank paper is lacking in the pleading of the O.A. However even if conceding for a moment that at any point of time the Respondents have taken the signature of the applicant on blank paper out of his own will he should have brought the same immediately either to the notice of higher authority or police personnel. He has not done so. He was kept quiet for long time made representation only on 14.12.2010 (if it is accepted to be true). The applicant has not disowned his signature in the resignation application. All that he has tried to convince that he has not submitted his resignation of his own but his signature taken in the blank paper by the Respondent No.2 has been utilized as the resignation of the applicant. The Respondents have stoutly denied the same. Going by the records, we find no irregularity or illegality to have been committed by the Respondents. Sympathy, sentiment and hypothesis have no bearing for granting relief of party.”

2.6 Thereafter, petitioner filed Review Application No.05 of 2014 before the tribunal contending that even

though order dated 24.12.2013 was passed by the tribunal for production of records, but the same was not complied with by the opposite parties at the time of hearing. Therefore, the tribunal should have drawn an adverse inference and granted relief in favour of the petitioner instead of dismissing the claim made by him. In the review application the petitioner once again reiterated for production of the records, but the tribunal rejected the review application, vide order dated 11.08.2014, with the following observation:-

*“It is further well established proposition of law that Tribunal cannot sit on appeal on the judgment passed by it in R.A. Appeal against the order of the Tribunal lies in the Hon’ble High Court under appropriate jurisdiction. In the grab of RA the Tribunal cannot readjudicate the issue already decided. This view of ours is supported by the law laid by the Hon’ble Apex Court in **Union of India Vs. Tarit Mohan Das** (2003 STPL (L &E) 32747 SC) decided on 08.10.2003, **Gopal Singh Versus Cadre Forest Officers Association** (2007 STPL (LE) 38452 SC) and **State of West Bengal versus Kamal Sengupta** (2008) (8) SCC 612.*

3. Mr. N.R. Routray, learned counsel appearing for the petitioner contended that the tribunal reserved the order in O.A. No. 501 of 2011, vide order dated 11.09.2013, but pronounced the order on 22.04.2014,

after seven months of keeping the order reserved. Therefore, there is gross error in pronouncing the order beyond the period of time limit prescribed under Section 105 (b) of the C.A.T. Rules of Practice 1993, where it has specifically prescribed that the order shall be pronounced within three weeks from the date of reserve. If the tribunal has reserved the matter on 11.09.2013 and pronounced the order on 22.04.2014, after seven months from the date of reserve, then the order dated 22.04.2014 passed in O.A. No. 501 of 2011 cannot sustain in the eye of law.

3.1 It is further contended that by order dated 22.07.2013, the tribunal had directed the opposite parties to obtain the records dealing with the appointment and acceptance of resignation of the applicant and to keep the records ready with him for the perusal of the tribunal on the next date of hearing. But such records had never been produced nor the tribunal had ever seen those records and, thereby, for non-production of records the tribunal should have taken adverse view. Instead of doing so, the tribunal, after lapse of seven months of keeping the order

reserved, passed the order dismissing the original application, which cannot sustain in the eye of law.

3.2 It is also contended that, the petitioner had emphatically submitted before the tribunal that his signature was obtained in a blank paper, which was utilized for the purpose of submission of resignation. According to him, in the counter affidavit filed by the opposite parties it was disclosed that the petitioner, on 29.10.2010, had handed over his resignation letter at the officer's residence and left. But the document under Annexure-R/2 to the Original Application, which had been filed by the opposite parties in their counter affidavit, indicates that *"on 29-10, he insisted for leave and handed over the resignation letter to the office and left."* Because of this contradictory statement, the tribunal ought to have disbelieved the fact of tendering resignation by the petitioner, but the tribunal, instead of doing so, construed the letter dated 29.10.2010 as the letter of resignation and concluded the original application by

dismissing the same, which cannot sustain in the eye of law.

3.3 According to learned counsel for the petitioner, even though in the review application the petitioner had raised this question with regard to non-production of the documents and non-compliance of the order passed by the tribunal, but the same was not adhered to. On the other hand, the tribunal mechanically dismissed the review application stating that against the order passed by the tribunal, writ court has the jurisdiction. Thereby, it is contended that the order dated 22.04.2014 passed in O.A. No. 501 of 2011 and the order dated 11.08.2014 passed in R.A. No. 5 of 2014 by the tribunal are outcome of non-application of mind, contrary to the provisions of law and, as such, the same need interference by this Court.

4. Mr. Chandrakant Pradhan, learned Senior Panel Counsel of the Government of India appearing for the opposite parties contended that the petitioner was given offer of appointment in the post of Substitute

Bungalow Lascar, vide letter dated 12.02.2009, accepting which he had joined on 13.02.2009 and attached to opposite party no.2, vide office order dated 21.02.2009. As per letter dated 13.05.2010 of the officer, to whom the petitioner was attached, he was orally advised on number of occasions to improve his performance. But, after several counseling, his performance was still unsatisfactory, for which he was issued with a show cause notice on 13.05.2010 to improve his behaviour and performance. He was remaining frequent absent from the place of work during the duty hours and, as such, he remained absent from 05.06.2010 to 04.08.2010. Accordingly, disciplinary action was initiated against him under D&A Rules. Therefore, the petitioner submitted the letter of resignation on 29.10.2010. The remark of the attached officer to the offer of resignation was sought and in his letter dated 06.11.2010 he had stated that the performance of the petitioner had not shown any improvement. He was not punctual in his duty. His behavior had seriously deteriorated from February, 2010. From August, 2010, his behaviour had deteriorated even

further and become abusive. The entire family was at pain and his continuation as Bungalow Lascar had encroached upon safety of the officer's family. Therefore, he became untrustworthy to continue as Bungalow Lascar. As a consequence thereof, on 29.10.2010, he had handed over his resignation letter to the officer and left. Therefore, the officer recommended that petitioner's offer for resignation could be accepted. As a consequence thereof, the same was accepted with effect from 08.11.2010. Therefore, the tribunal is well justified in passing the orders impugned, which do not warrant interference at this stage.

5. This Court heard Mr. N.R. Routray, learned counsel appearing for the petitioner and Mr. C.K. Pradhan, learned Senior Panel Counsel for the Union of India appearing for the opposite parties, by hybrid mode, and perused the record. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. In the above factual backdrop of the case and rival contentions raised by learned counsel for the parties, the following issues are emerged for consideration:-

- (i) Whether the tribunal is justified to keep the order reserved on 11.09.2013 and pronounce the same on 22.04.2014, i.e. after seven months from the date of reserve?
- (ii) Whether the tribunal is justified in passing the order impugned dismissing the original application, without compliance of its own order dated 24.07.2013 by the opposite parties by producing the records?
- (iii) Whether the tribunal is justified by treating the signature of the petitioner on blank paper, which was utilized by the opposite parties as a resignation letter, as alleged?

7. **Issue No. (i)**
Whether the tribunal is justified to keep the order reserved on 11.09.2013 and pronounce the same on 22.04.2014, i.e. after seven months from the date of reserve?

To provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of

persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation (or society) owned or controlled by the Government [in pursuance of Article 323A of the Constitution] and for matters connected therewith or incidental thereto, the Parliament had enacted “Administrative Tribunals Act, 1985”, hereinafter to be referred as “1985 Act”.

7.1 Chapter-IV of 1985 Act prescribes the procedure. Section 19 deals with applications to tribunals. As per Section 19 (1), subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a tribunal may make an application to the tribunal for the redressal of his grievance. For filing of such applications before tribunal under Section 19 of the 1985 Act, other requirements under sub-sections (2), (3) and (4) are to be complied with.

7.2 Section 22 of 1985 Act, deals with procedure and powers of Tribunals, which reads as follows:-

“22. Procedure and powers of Tribunals.—(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and [after hearing such oral arguments as may be advanced].

(3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;*
- (e) issuing commissions for the examination of witness or documents;*
- (f) reviewing its decisions;*
- (g) dismissing a representation for default or deciding it ex parte;*
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*
- (i) any other matter which may be prescribed by the Central Government.”*

7.3 Whereas, it is expedient to frame unified and consolidated Rules of Practice, the Central Administrative Tribunal, in exercise of the powers conferred by Section 22 of the Administrative Tribunals Act, 1985 (Central Act 13 of 1985) and all other powers thereunto enabling it to frame Rules to regulate its own practice and procedure, made the Rules of Practice in supersession of all the existing orders, regulations and notifications, called the “The Central Administrative Tribunal Rules of Practice, 1993”, hereinafter to be referred as “1993 Rules”.

Chapter-XVII of 1993 Rules deals with pronouncement of the Order. Rule 105 reads as follows:-

“105 Pronouncement of order .—*(a) The Bench shall as far as possible pronounce the order immediately after the hearing is concluded.*

(b) When the orders are reserved, the date for pronouncement not later than 3 weeks shall be fixed. The date so fixed shall not be changed except after due notice to all parties/counsel.

(c) Reading of the operative portion of the order in the open Court shall be deemed to be pronouncement of the order.

(d) Any order reserved by a Circuit Bench of the Tribunal may be pronounced at the principal place of sitting of the Bench in one of the aforesaid modes as exigencies of the situation require.”

7.4 A bare perusal of the aforementioned rule would go to show that under sub-rule (a) of Rule 105, it has specifically mentioned that the Bench shall as far as possible pronounce the order immediately after the hearing is concluded. Sub-rule (b) provides that when the orders are reserved, the date for pronouncement not later than three weeks shall be fixed. Thereby, a mandate has been put on the tribunal that in the event of reserving any order, the tribunal has the obligation to discharge its responsibility by pronouncing the final order within three weeks. Per chance the tribunal could not able to pronounce the order of the reserve matter within three weeks, then it owes a responsibility that if the order is not delivered within the time fixed, then it has to give notice to all the parties/counsel for change of dates. Meaning thereby, if the date so fixed for the reserved order to be pronounced within the period of three weeks is changed, then it should be brought to the notice of the parties. But, the same has not been adhered to in the present case, because the matter was heard and reserved for orders on 11.09.2013, without fixing the date of pronouncement

within a period of three months. As such at the caprice and whims of the tribunal the order was delivered on 22.04.2014, long after expiry of seven months without giving any notice to the parties/counsel. As such, the date had been changed for pronouncement of judgment after seven months, without giving notice to the parties/counsel and the same was done at the caprice and whims of the tribunal, though the tribunal is duty bound to deliver the order in a reserve matter within the period of three weeks.

7.5 Principles have been decided in the case of **Taylor V. Taylor**, (1875) 1 Ch. D. 426 that “where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.” The said principles have been followed subsequently in **Nazir Ahmed v. King Emperor**, AIR 1936 PC 253, **State of Uttar Pradesh v. Singhara Singh**, AIR 1964 SC 358, **Dhananjay Reddy v. State of Karnataka**, AIR 2001 SC 1512, **Chandra Kishore Jha v. Mahabir Prasad**, AIR 1999 SC 3558, **Gujrat Urja**

Vikas Nigam Ltd. v. Essar Power Ltd., AIR 2008 SC 1921,
Ram Deen Maurya v. State of U.P., (2009) 6 SCC 735.

7.6 Pursuant to the direction of this Court dated 27.10.2014, the LCR was received and placed before this Court. On perusal of the same, it is found that the contentions raised by learned counsel for the petitioner, that the tribunal had kept the matter reserved on 11.09.2013 and pronounced the order on 22.04.2014, i.e., after seven months of reserve, has sufficient force.

7.7 Thereby, by applying Rule 105 of 1993 Rules to the present context, this Court is of the firm view that the tribunal, while reserving the order on 11.09.2013 and pronouncing the same on 22.04.2014, had acted contrary to the aforementioned provisions. Thereby, the impugned order of the tribunal passed on 22.04.20 cannot sustain in the eye of law. Issue No.(i) is answered accordingly.

8. **Issue No. (ii).**

Whether the tribunal is justified in passing the order impugned dismissing the original application, without compliance of its own order dated 24.07.2013 by the opposite parties by producing the records?

The contention raised by learned counsel for the petitioner is that opposite party no.2 had obtained a blank paper signature from the petitioner by coercing him to be treated as leave application, but ultimately the same was utilized as a letter of resignation and on that basis, the said letter was accepted and the petitioner was terminated from service. When the counter affidavit was filed by the opposite parties, on receiving the notice, the tampering of signature of the petitioner, vide letter dated 29.10.2010, having been alleged, in paragraph-2 (C) of the counter affidavit it was stated that on 29.10.2010 the petitioner had handed over his resignation letter, on that basis when the matter was listed on 24.07.2013, the tribunal passed the order directing the opposite parties 1 to 3 to obtain the records dealing with the appointment and acceptance of resignation of the petitioner and keep the records with him for the perusal on the next date of hearing. Neither such letter was produced nor verified. The same had also not been confronted to the petitioner at the time of hearing. The tribunal, without complying

such order dated 24.07.2013, kept the order reserved on 11.09.2013 and delivered the same on 22.04.2014 after long lapse of seven months, contrary to the statutory rules governing the field. Due to non-production of record, as directed vide order dated 24.07.2013, the tribunal would have taken an adverse view against the opposite parties, but without any application of mind, the order impugned was passed on 22.04.2014 after long lapse of keeping the order reserve on 11.09.2013. On perusal of the original records, the allegation made by learned counsel for the petitioner pertaining to issue no. (ii) is found to be correct. Therefore, the order impugned cannot sustain in the eye of law. The issue no.(ii) is also answered in favour of the petitioner.

9.

Issue No. (iii).

Whether the tribunal is justified by treating the signature of the petitioner on blank paper, which was utilized by the opposite parties as a resignation letter, as alleged?

The allegation is made by the petitioner that his signature on blank paper was taken from him on coercion by opposite party no.2, to whom he was

attached, to submit such letter as leave application, but, instead of doing so, the same had been utilized by opposite party no.2 as the letter of resignation, as he could not satisfy the demand made by him. Thereby, the blank paper containing signature of the petitioner was manipulated as letter of resignation and utilized against him, as a consequence of which he was terminated from service. Such a contention of the petitioner being a disputed one, this Court is not inclined to give any finding on the same. Rather, it is incumbent upon the petitioner to establish the same before the appropriate forum, if he is so advised. Thereby, this Court refrains from giving any observation on such plea advanced before this Court for adjudication of this case. Issue no.(iii) is answered accordingly.

10. In view of the foregoing discussions, this Court is of the considered view that the order dated 22.04.2014 under Annexure-5 passed by Central Administrative Tribunal, Cuttack Bench, Cuttack dismissing O.A. No. 501 of 2011, and the order dated 11.08.2014 under

Annexure-7 passed in R.A. No. 5 of 2014 cannot sustain in the eye of law and the same are liable to be quashed and are hereby quashed. The matter is remitted back to the Central Administrative Tribunal, Cuttack Bench, Cuttack for its hearing afresh by giving opportunity of hearing to all the parties. As the original application is an year old matter of 2011, this Court requests the tribunal to make all endeavour to dispose of same as early as possible, preferably within a period of four months from the date of communication of this judgment.

11. The writ petition is accordingly disposed of. There shall be no order as to costs.

12. The LCR be immediately transmitted to the tribunal, wherefrom it was received, to facilitate early hearing of the original application.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

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SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 5th May, 2022, Arun/GDS