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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No. 270 of 1987.

Date of decision : February 24, 1989.

Pradeep Kumar Sahoo, son of Banchhanidhi  
Sahoo, aged about 26 years, C/o Suryamani  
Khadanga, Plot No. 423, Muasahi, Nuapalli,  
Bhubaneswar-12.

... Applicant.

Versus

1. Superintendent Engineer, Civil  
Circle (Coordination) 101/A Sahid Nagar,  
Bhubaneswar.
2. Union of India, represented by Secretary,  
Telecommunication-cum-Director General  
Telecommunication, Sanchar Bhavan,  
20 Ashoka Road, New Delhi-110001.
3. Dambarudhar Das, Works Clerk Grade II,  
C/o Superintendent Engineer, Civil  
Circle (Coordination) 101/A Sahid Nagar,  
Bhubaneswar. ... Respondents.

For the applicant ... M/s. Samareswar Mohanty,  
R.Ch. Sahoo, S.C. Satpathy,  
Mrs. S.L. Patnaik, Advocates.

For the Respondents 1 & 2 .. Mr. A.B. Mishra,  
Sr. Standing Counsel (Central)  
Mr. Tahali Dalai,  
Addl. Standing Counsel (Central)

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C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the impugned order contained in Annexure-1 and to direct the respondents 1 and 2 to reinstate the applicant into service with all consequential service benefits. Furthermore, it is prayed that the applicant should be allowed to appear in the ~~next~~ special qualifying examination and his services should be regularised.

2. Shortly stated, the applicant, Shri Pradip Kumar Sahoo was appointed in the Telecommunication Department, Orissa Circle, as a Works Clerk Grade II on 89 days basis. The applicant continued to work as such for a particular period and vide Annexure-1 dated 23.7.1987 the Superintending Engineer, Telecom.Civil Circle, Bhubaneswar terminated the services of the applicant with effect from 24.7.1987. Being aggrieved by this order the applicant has come up with this application making a prayer to the extent mentioned above.

3. In their counter, the respondents maintained that the incumbents having come through the Staff Selection Commission they are bound to get preference to those contingent workers appointed on 89 days basis and therefore the competent authority had no other option but to dispense with the services of the applicants.

4. Initially when we heard arguments from Mr.S.S. Mohanty, learned counsel for the applicant and Mr.A.B.Mishra,

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learned Senior Standing Counsel (Central), there was a serious dispute regarding the vacancy position in the Office of the Superintending Engineer, Telecommunication Civil Circle, Bhubaneswar. The dispute being a pure question of fact and which could not be determined from the averments of the parties before us and the records available we thought it just and expedient in the interest of justice to examine certain witnesses who would unfold the truth of the matter. Accordingly, we had summoned Shri Padmanav Acharya, Assistant General Manager, Telecommunication who figured as Court witness No.1 and we had also summoned Shri D.V.Ramakrishna, Engineering Assistant to the Superintending Engineer, Telecommunication Civil Circle, Bhubaneswar who figured as Court Witness No.2. Their evidence was recorded and on a perusal of the evidence of both these witnesses it appears to us that at least there are two posts vacant out of which one post is reserved for Schdeuled Caste candidate and the other is covered by the lien maintained by one Shri S.N.Rao who has since been posted at Hyderabad on transfer. Such being the situation ~~we think~~ in all fairness to the applicant who has no discredit against him in discharge of his official duties, we ~~would~~direct that one of those posts be given to the applicant till it is filled up by regular recruit. We would like to further elucidate as to what we mean to say. These two posts would be filled up from four sources, namely,

- (i) candidates sponsored by the Staff Selection Commission;
- (ii) candidates who are already in the Reserve Trained Pool;

(iii) scheduled caste candidate whose case is to be decided relaxing the conditions of recruitment and (iv) return of Shri S.N.Rao, if any. In case, any of these two posts are to be filled up by any regular candidate from any of the above mentioned four sources, the present applicant should vacate the post he would be holding for being filled up by the regular candidate.

5. Mr.Mohanty submitted that apart from these two posts there are two other posts still lying vacant. We are unable to ascertain the correct position in this regard. We leave this matter open to be decided by the concerned authority i.e. the Chief General Manager, Telecommunications, and in case he comes to a conclusion that two more posts are still vacant then he may consider the appointment of the applicant to one such post. In case, the Chief General Manager, Telecommunications comes to a conclusion that there are no more posts available then the applicant is bound to vacate the post which he would be holding in favour of the regular candidates.

6. Lastly, Mr.Mohanty submitted that the applicant had filed an application before the Executive Engineer, Telecommunication, Civil Division, 17 Kharavelanagar, Bhubaneswar praying therein to allow him a chance to appear in the Staff Selection Commission examination for regularisation of his ad hoc appointment. Copy of this application forms subject matter of Annexure-3. Mr.Mohanty further submitted that no final orders have yet been

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passed on that application. We presume that the application is pending in the Office of the Executive Engineer, Telecommunication Civil Division. Despite our presumption, we direct that the applicant would file another application before the same authority within seven days and obtain a receipt thereof and after the application is filed it should be reconsidered by the Executive Engineer and disposed of according to Rules.

It was submitted by Mr. Mohanty that the application was filed on 23.1.1987 when the applicant was not age-barred and now that the applicant has become age-barred, this consideration should weigh with the Executive Engineer. We leave it completely to the discretion of the Executive Engineer to pass appropriate orders according to law.

7. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

*by a.m.s.m.p.  
24.2.88*  
.....  
Member (Judicial)

I agree.

*Ramnath  
24.2.88*  
.....  
Vice-Chairman

Central Administrative Tribunal, I  
Cuttack Bench, Cuttack.  
February 24, 1989/S. Sarangi.

