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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application Nos. 284 & 285 of 1987.

Date of decision : January 14, 1988.

In Original Application No. 284 of 1987:

1. Aparty @ Aparty Senapati son of Hallu @ Halu Senapati
2. Madhaba @ Madhab Chhatoi son of Rama Rama Chhatoi
3. Kelu @ Kelu Rautray son of Nabina @ Nabin Rautray.
4. Nitai @ Nityananda Barik son of Banchha Barik.
5. Benu @ Benu Baral son of Balia @ Balia Baral
6. Bauria @ Bauribandhu Nayak son of Aparty @ Aparty Nayak.
7. Brundaban @ Brundaban Das son of Siba @ Siba Das
8. Jamboo @ Jamboo Swain son of Natha @ Natha Swain
9. Krushna @ Krushna Das son of Jagara @ Jagara Das
10. Gobinda @ Gobinda Swain son of Natabar @ Natabar Swain
11. Murali @ Murali Chhatoi son of Fagu @ Fagu Chhatoi.
12. Biswanath @ Biswanath Parida @ Narayan @ Narayan Parida.
13. Basoo @ Basudeb Baral son of Ananda @ Ananda Baral.
14. Saratha @ Saratha Jena son of Mani @ Mani Jena.
15. Surata @ Surata Mohapatra son of Radhu @ Radhu Mohapatra
16. Ligaraj @ Lingaraj Jena son of Ramachandra @ Ramachandra Jena.

17. Dija @ Dijaraj Majhi son of
17. Kanduri @ Kanduri Majhi.
18. Nanda @ Nanda Behera son of Raghu @
Raghu Behera
19. Anadi @ Anadi Majhi, son of Kumar @
Kumar Majhi.
20. Gaji @ Gaji Swain son of Luka @
Luka Swain
21. Sadhu @ Sadhu Majhi son of Kellu @
Kelu Majhi
22. Manguli @ Manguli Parida son of
Fakira @ Fakira Parida.
23. Bharata @ Bharata Parida son of
Uchhab @ Uchhab Parida.
24. Udayanatha @ Udayanath Majhi son of
Aparti @ Aparti Majhi.
25. Bauribandhu @ Bouribandhu Majhi son of
Kumara @ Kumar Majhi
26. Abhimanyu @ Abhimanyu Raut son of
Mina @ Mina Raut.
27. Okil @ Okil Khan son of Madhu @
Madhu Khan.
28. Kulamani @ Kulamani Sahoo son of
Uchhab @ Uchhab Sahoo
29. Gobinda @ Gobinda Sahoo son of
Brundaban @ Brundaban Sahoo
30. Krushna @ Krushna Nayak son of
Narayan @ Narayan Nayak.
31. Sudarsan @ Sudarsan Parida son of
Udayanath @ Udayanath Parida.
32. Bhamara @ Bhamara Swain son of Loka @
Loka Swain.
33. Prafulla Kumar Nayak son of Krushna Ch. Nayak.
34. Gobinda @ Gobinda Parida son of
Fakira @ Fakira Parida.
35. Alekha @ Alekh Nisanka son of
Bhikari @ Bhikari Nisanka.

36. Bharata @ Bharata Raut son of Abhina @ Abhina Raut.
37. Charana @ Charan Jena son of Haria @ Haria Jena.
38. Fakira @ Fakira Pradhan son of Krushna @ Krushna Pradhan
39. Nalu @ Nallu Jena son of Sama @ Sama Jena.
40. Jogi @ Jogi Swain son of Loka @ Loka Swain
41. Alia @ Alia Swain son of Loka @ Loka Swain.
42. Laxmidhar @ Laxmidhar Maharana son of Benu @ Benu Maharana
43. Madhu @ Madhu Raut son of Bisuni @ Bisuni Raut.
44. Paramananda @ Paramananda Parida son of Lokenath @ Lokenath Parida.
45. Ghana @ Ghanashyam Mohanty son of Bainsi @ Bainsi Mohanty
46. Kailash @ Kailash Guru son of Kumara @ Kumara Guru.
All are casual labour U/Chief Permanent Way Inspector, Khurda Road, South Eastern Railway, Khurda Road Division, Dist-Puri. . .

APPLICANTS.

Versus

1. Union of India represented through General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, South Eastern Railway, Khurda Road, Jatni, District-Puri.
3. Assistant Engineer, South Eastern Railway, Khurda Road, Jatni, District- Puri.

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RESPONDENTS .

For the Applicants : M/s.P.Palit, B.Mohanty,
D.Mohanty, G.S.Namtoar,
D.P.Dhalsamanta, Advocates.

For the Respondents : Mr.B.Pal, Senior Standing Counsel
(Railways)
Mr.L.Mohapatra, Standing Counsel
(Railways)
Mr.R.C.Rath, Standing Counsel
(Railways)

In Original Application No.295 of 1987:

1. Kaibalya Pradhan, aged about 45 years, son of Basudev Pradhan of village Budadhia, P.O.Chandeswar, P.S.Tangi, Dist.Puri.
2. Budhia Routray, aged about 35 years, son of Raghu Routray, village-Chhakadipur, P.O.Biribati, P.S. Tangi, Dist.Puri.
3. Golekh, aged about 43 years, son of Arjuna of village Sunderpur, P.O.Sunderpur, P.S.Tangi, Dist.Puri.
4. Mochiram, aged about 35 years, son of Agadhu of village Ratanpur, P.O.Kuhan, P.S. Dist.Puri.
5. Kubera, aged about 38 years, son of Jadu of village Kochila, P.O.Kuhan, P.S.Tangi, Dist-Puri.
6. Dasa, aged about 45 years, son of Gadei, village Borik, P.O.Parinnagen, P.S.Tangi, Dist.Puri.
7. Narayana, aged about 40 years, son of Doli, village/P.O.Sunderpur, P.S.Tangi, Dist-Puri.
8. Panu, aged about 40 years, son of Sahadev, Village-Gunthuni, P.O.Gobabani, P.S.Tangi, Dist-Puri.
9. Kelu, aged about 40 years, son of Babana, village/P.O.Sunderpur, P.S.Tangi, Dist-Puri.
10. Bharat, aged about 35 years, son of Lokanath, village/P.O.Sunderpur, P.S. Tangi, Dist-Puri.

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11. Dandu, aged about 40 years, son of Jadu, village/P.O. Sunderpur, P.S. Tangi, Dist-Cuttack.
 12. Arjuna, aged about 38 years, son of Aparti, village/P.O. Sunderpur, P.S. Tangi, Dist-Puri.
 13. Surendra, aged about 35 years, son of Krupasindhu, village-Barunapada, P.O. Soren, P.S. Tangi, District-Puri.
 14. Shyama Srichandan, aged about 40 years, son of Ram Srichandan, village Sutipadar, P.O. Nirakarpur, P.S. Jankia, Dist-Puri.
 15. Bulla, aged about 40 years, son of Basudev, village Panchupatia, P.O. Kaluparah, P.S. Tangi, Dist-Puri.
 16. Laxmidhar, aged about 38 years, son of Indra, village Jajpur, P.O. Nirakarpur, P.S. Tangi, District-Puri.
 17. Rabi, aged about 35 years, son of Bauri, village Jajpur, P.O. Nirakarpur, P.S. Jankia, District-Puri.
 18. Bidyadhar Routray, aged about 45 years, son of Kartika of village Kuriasamantrapur, P.O. Nirakarpur, P.S. Jankia, Dist-Puri.
 19. Dhruba Das, aged about 40 years, son of Nrusingh Routray, village-Kunia Samantrapur, P.O. Nirakarpur, P.S. Jankia, Dist-Puri.
 20. Indramani Mohapatra, aged about 38 years, son of Khetra Das, village Chandramapatpur, P.O. Golabar, P.S. Jankia, Dist. Puri.
 21. Purna Khuntia, aged about 35 years, son of Banchu Mohapatra, village Dhabilimohan, P.O. Behapur, P.S. Khurda, Dist. Puri.
 22. Kunja Behera, aged about 40 years, son of Uchhaba Khuntia, village Chandanpur, P.O. Nirakarpur, P.S. Jankia, Dist. Puri.
 23. Lingaraj Mohapatra, aged about 40 years, son of Brundaban Behera, village Rambabil, P.O./P.S. Jankia, District-Puri.
 24. Bhagirathi Parida, aged about 40 years, son of Maheswar Mohapatra, village-Rambabil, P.O./P.S. Jankia, Dist-Puri.
 25. Dasarathi Harichandan, aged about 40 years, son of Panchi Parida, village Rambabil, P.O./P.S. Jankia, Dist-Puri.

26. Lingaraj Mangaraj, aged about 40 years, son of Kunja Harichandan, village Baghiput, P.O.Jankia, P.S.Jankia, Dist.Puri.

All are at present under PW Inspector, South Eastern Railway, Kalupadaghat.

... APPLICANTS.

Versus

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Personal Officer, South Eastern Railway, Khurda Road.
3. Asst. Engineer, South Eastern Railway, Khurad Road.
4. PW Inspector, South Eastern Railway, Kalupadaghat.

... RESPONDENTS.

For the applicants : M/s.Ganeswar Rath, P.K.Mohapatra, Advocates.

For the Respondents : Mr.Bijay Pal, Sr.Standing Counsel (Railways)
Mr.L.Mohapatra, Standing Counsel (Railways)
Mr.R.C.Rath, Standing Counsel (Railways)

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 ? *you*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, MEMBER (J) In both the cases, though parties are different, yet substantially and practically similar questions of fact and law being involved, we would dispose of both the cases by this common judgment.

2. In both the application there are several applicants. In O.A.284 of 1987 there are 46 applicants and in O.A.285 of 1987 there are 26 applicants. The grievance of all the applicants in both the cases is mainly against the Divisional Railway Manager, South Eastern Railway, Khurda Road who had passed orders appointing the applicants in both the cases for/particular period and on expiry of such period the services of the applicants stood automatically terminated in view of the specific condition laid down in those orders which are subject matter of Annexure-C series in Original Application No.284 of 1987 and Annexure-4 series in Original Application No.285 of 1987. The prayer in each of the cases should be separately stated so as to appreciate the contentions raised by counsel for both sides in both the cases.

Prayer in O.A.284 of 1987 runs thus :

- " A. Orders under Annexure C series be quashed ;
 - B. The services of the applicants be regularised and they may be made permanent ;
 - C. The applicants except applicant No.33 be accorded temporary status from the year 1986 and be given consequential benefits ;
 - D. The applicant Nos.24 and 28 be accorded temporary be given status from the year 1986 and consequential benefits;
 - E. And pass any other order/orders which this Hon'ble
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Tribunal would deem fit and proper. "

An application for amendment was filed in O.A.284 of 1987 and it has been allowed. It runs thus :

"D.1. In view of the unchallenged position that the applicants have acquired the eligibility for selection as regular employees at least by the time the circular Extt. Sr.1 No.180/80 has come into existence and has been in operation, nonconsideration of their case for selection as regular employees have rendered all the selections made for appointment of regular employees in the category of applicants since 1980, arbitrary, malafide and infringe the right of the applicants under Articles 14 & 16 of Constitution of India and as such, such selection for the aforesaid period be declared null and void."

In O.A.285 of 1987 the prayer of the applicants runs thus :

- " a) to quash the order of retrenchment as per Annexure 4 series;
- b) the termination of the applicants after completion of about 1000 days of work violated Article 14 and 16 of the Constitution.
- c) to direct the Railway authority to pay the applicants the salary to Class 4th employees as per the provision of equal pay Class 4th employees as per the provision. "

An application has also been filed in this case for amending the prayer of the original application and it runs thus :

- " 9.D) To direct the Railway authorities to absorb the applicants in group D posts from the date juniors were appointed in the Group D posts. "

3. We have heard Mr. Palit, learned counsel for the applicants and Mr. B. Pal, learned Senior Standing Counsel for the Railway Administration in O.A.284 of 1987 and we have also heard Mr. Ganeswar Rath, learned counsel for the applicants and Mr. B. Pal, learned Senior Standing Counsel for the Railway Administration in O.A.285 of 1987 at some length.

4. After hearing arguments from learned counsel for both sides in both the cases we are of opinion that the crux of the prayers made by the applicants in both the cases are as follows :

- (i) To give a declaration to the applicants (except applicant No.33 in O.A.284 of 1987) that they should be given temporary status from the year 1986 ;
- (ii) So far as the applicant Nos.24 and 28 in O.A.284 of 1987 are concerned, they should also be given the benefit of temporary status with effect from 1986 and consequential benefits.
- (iii) Automatic termination of services of the applicants ^{under} passed ~~xx~~ Annexure C series should be quashed ; and
- (iv) Juniors to the applicants in O.A.284 of 1987 having been absorbed in regular service, the case of the applicants should be considered and they should be given regular appointments prior to the dates on which their juniors had been regularised, or at least from the year 1980.

In O.A.285 of 1987 the crux of the prayer made by the applicants may be summed up as follows :

- (i) Automatic termination of services of the applicants on the basis of Annexure-4 series should be held to be illegal, inoperative and should be quashed.

(ii) All the applicants should be granted compensation in view of the provisions contained in Section 25 F & G of the Industrial Disputes Act, 1947; and

(iii) the case of all the applicants should be considered for absorbing them in regular service with effect from the date on which their juniors have been appointed to regular Group D posts.

5. Before we proceed to consider and give our findings on the arguments advanced at the Bar it is important to note that in O.A.284 of 1987 none had been given temporary status with effect from 1986 (except applicant No.33). All others have been given temporary status since 1987. As regards applicant No.24, he has been given temporary status with effect from 24.9.1987 which was not disputed before us. As regards applicant No.28, it was submitted before us by learned Senior Standing Counsel for the Railway Administration that since applicant No.28 had not qualified himself for having continuously worked for 120 days he has not been given temporary status as yet and this position was seriously disputed by Mr. Palit in view of the fact that the prayer made on behalf of the applicants is that to give temporary status with effect from 1986. However at the appropriate place we shall express our opinion as to whether applicant No.28 is entitled to temporary status at least from 1987 (if not from 1986) like that of other applicants.

6. In O.A.284 of 1987 it was submitted by Mr. Palit, learned counsel for the applicants relying upon a chart furnished by him that different applicants had been appointed
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as casual labour ranging from the year 1959 to 1969 and hence according to Mr. Palit this period of service rendered by the applicants at different spells not having been taken into consideration by the competent authority, a wrong conclusion has been arrived at by the competent authority that till 1986 none of the applicants (excepting applicant No.33) had completed 120 days of continuous service because admittedly the applicants were employed in open line. In order to repudiate this argument of Mr. Palit, learned Senior Standing Counsel for the Railway Administration, Mr. Pal relied upon a chart furnished by him and it was contended that for 13 years namely from 1972 to 1985 none of the applicants were available to do any work under the Railways and therefore, during this period they had not discharged any duties as casual labour and the period of absence of the applicants during the aforesaid period was not rightly given to the credit of the applicants and therefore, the competent authority rightly came to the conclusion that none of the applicants (except applicant No.33) had completed 120 days continuous service till the end of 1986. There was rightly no dispute presented before us that a particular casual labour in order to get temporary status has to discharge continuous service for 120 days and that would be the sole criterior^a to determine the entitlement of a particular casual labour to gain temporary status. Therefore, the moot question that needs determination is as to what is continuous service ? In order to determine this issue Mr. Palit relied upon paragraph C(c)-" Breaks in Service" contained in Establishment Serial No.132 of 1981 dated 19.6.1981(at page 310,

Establishment Serial Circulars, 1981 issued by the Chief Personnel Officer, Garden Reach, Calcutta) which runs thus :

" C. Breaks in service :

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(c) On completion of works or for non-availability of further productive work when casual labour on daily wages or in regular scale of pay or 1/30th of the minimum of the scale plus Dearness Allowance is discontinued and employed later when work is available such gaps in service will not count as breaks in service for the purpose of reckoning of continuous service of 120 days or 180 days as the case may be. "

From the above provision it is crystal clear that a particular casual labour, if does not work for a particular period, even though there was sufficient work available to give to the casual labour and he was willing and available to do the work, such gap in service will go to the credit of the particular casual labour while computing 120 days of continuous service. The very same interpretation has also been given by the Railway Board in their letter No.E(Ng)/83/CL/117 dated 25.1.1985 addressed to General Managers of all Indian Railways. Therefore, we would unhesitatingly hold that whenever any work is available and such work has not been given to a particular casual labour who is willing and available to do the work yet the gaps in service would be condoned and would not be treated as break in service. The argument of Mr. Palit on this account deserves no merit and cannot be accepted because firstly, the applicants being unable to prove the fact that during the period in question work was available for the respondents to be entrusted to the applicants and even though in their turn the applicants were willing and available to do the work, yet for

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certain unknown reasons such work was not entrusted to the applicants. There cannot be any dispute that when a particular fact is alleged by a particular person onus of proof lies on that particular person to prove such fact. We have already stated that the applicants have failed to prove this important fact to bring their case within the purview of the provisions quoted above, if at all it is applicable to them and on that account we would also unhesitatingly say that failure on the part of the applicants to prove the exceptions disentitles them to seek coverage under the provisions quoted above. That apart, it was emphatically submitted by learned Senior Standing Counsel for the Railway Administration, Mr.Pal that Serial No.132 dated 19.6.1981 has no application to the facts of the present case because the alleged period of absence of all the applicants is much prior to 1981 and the Establishment Serial No.132 of 1981 does not envisage any retrospective operation having been given. We have carefully gone through the provisions contained in the entire Serial and we find at no place any provision contained therein giving retrospective operation to the provisions of this serial. Hence, we feel that there is substantial force in the contention of Mr.Pal that the provisions contained in this serial would have no application to the facts of the present case.

7. It was further contended by Mr.Pal that at the relevant time the only provision which was prevalent in regard to cases of this nature is paragraph 2504 of Chapter XXV of the Indian Railway Establishment Manual dealing with casual labours. Before we discuss the provisions contained in paragraph 2504 it is worthwhile to mention a part of the
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provision contained in paragraph 2501 defining casual labour.

It runs thus :

" 2501. xx xx xx

(b) The casual labour on railways should be employed only in the following types of cases, namely :-

(i) Staff paid from contingencies except those retained for more than six months continuously- Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment."

In view of this provision, it cannot but be said that in order to gain temporary status a particular casual labour must have discharged continuous service either for six months or according to the amended rule - 120 days. It is also stated therein that there should not be any break in service during this period. But Paragraph 2504 of the same Manual has also elucidated the definition of 'Breaks in service' and it runs thus :

" 2504. Breaks in Service:- The following cases of absence will not be considered as breaks in service for the purpose of determining six months' continuous employment referred to in para 2501, viz :-

- (a) The periods of absence of a Workman who is under medical treatment in connection with injuries sustained on duty covered by provisions under the Workmen's Compensation Act.
- (b) Authorised absence not exceeding 15 days during the preceding six months."

In the present case we cannot but hold that the provisions contained in paragraph 2504 of the said Manual are applicable to the facts of the present case because we have already held that the provisions contained in Serial No.132 of 1981 dated 19.6.1981 are not applicable to the facts of the present case and

as we are told the only relevant rule prevalent at the relevant time is the provision quoted above and in this argument nothing was shown to us by learned counsel for the applicants that this provision has been superseded. In such situation we do hereby hold that the provisions contained in paragraph 2504 are applicable to the facts of the present case and curiously one would find that there is no specific averment in the application that during the period in question the applicants were absent because they were undergoing medical treatment in connection with injuries sustained on duty or they had remained absent not exceeding 15 days being authorised to remain absent. The more curious feature is that the period in question is not limited to 15 days. It is much more. There being no such averment in the pleadings, the question of proof of the same does not arise and rightly there was no such contention put forward at the Bar claiming protection under the exceptions quoted above and therefore, we would hold that the provisions contained in paragraph 2504 being applicable to the present case and the exceptions not having been pleaded or proved, there is no question of giving any credit to the applicants for the earlier spells of work.

8. Now, the question boils down to the fact as to whether the period of 120 days as computed by the competent authority in giving temporary status with effect from 1987 should be sustained or unsettled. Looking at the chart furnished by Mr. Palit and not disputed by Mr. Pal we find that in 1986 almost all the applicants (except applicant No. 33) have worked continuously for a period ranging between 69 to 112 days. At least none of the applicants except applicant

No.33 has completed 120 days continuous service during 1986. In such situation we cannot but find that the prayer of the applicants (except applicant No.33) to give temporary status with effect from 1986 cannot be acceded to. In view of this finding, necessarily we are to conclude that the action taken by the competent authority in giving temporary status to all the applicants(except applicant No.33) with effect from 1987 cannot but be held to be legal and hence it is sustained and therefore not liable to be quashed.

9. So far as the applicant No.28 is concerned at the risk of repetition we may say that the applicant No.28 is definitely not eligible till 1986 in view of our above findings. Now, the questionarises as to whether he is entitled to temporary status with effect from 1987. Mr.Pal, learned Senior Standing Counsel for the Railway Administration invited our attention to paragraph 20 of the counter filed on behalf of the respondents. It was maintained therein that the applicant No.28 not having rendered 120 days of continuous service and being unauthorisedly absent during September and October, 1986 for 13 days, he could not fulfil the requirements and therefore he was not given temporary status. This averment has not been refuted in any reply though a reply to the counter has been filed on behalf of the applicants in this case. In such circumstances, we cannot but accept the statement of fact made in paragraph 20 of the counter to the above effect to be true and correct. Applicant No.28 not having qualified himself according to Rules, he was rightly not given the temporary status and therefore, his claim on this account stands rejected.

As regards, applicant No.24 though he has been admittedly given temporary status with effect from 1987 yet his grievance is that he has not received the Central Pay scale and other benefits flowing from temporary status. Mr.Pal submitted it has since been paid on 24.9.1987. However, though we do not feel inclined to reject the statement made at the Bar yet for some reason or the other if there has not been physical delivery of such payment to applicant No.24 it may be so done within four months from the date of receipt of a copy of this judgment.

10. Now, the grievance of the applicants in Original Application No.284 of 1987 that they should have been selected for regular appointment much prior to 1986 should be appropriately dealt at this stage. Mr.Palit submitted that the competent authority have not prepared any seniority list of the casual labourers and therefore, in gross violation of the directions given by the Hon'ble High Court of Orissa and confirmed by the Hon'ble Supreme Court appointments are being made by the concerned authorities arbitrarily and according to their whims. To satisfy ourselves in regard to the correctness of the statement, on the prayer made by Mr.Palit we had called upon learned Senior Standing Counsel for the Railway Administration, Mr.Pal to produce before us the seniority list prepared in respect of all kinds of casual labourers. Mr. Pal did produce today. In this connection it may be stated that in regard to employees of project constructions a Division Bench of the Hon'ble High Court of Orissa while disposing of O.J.C.No.2178 of 1982 and O.J.C.No.2179 of 1982

made certain observations and writ was accordingly issued from the Hon'ble High Court which runs thus :

" That it is hereby directed that seniority list of the casual labourers working in the unit namely, Executive Engineer, Jakhapura-Bansapani line be drawn up within six weeks from the date of this order i.e. from August 9, 1984 and if the said project is continuing to employ some of the labourers, the continuance of the petitioners in that project be considered in accordance with the redrawn up of seniority list. "

Even though this order has been passed in case of project construction workers, yet there is no objection at the Bar to also make it applicable to the workers in the open line. To our great satisfaction we have found that the Railway authorities have maintained seniority list both in regard to project construction workers and open line workers till the year 1984. Hence, they have complied with the directions of the Hon'ble High Court of Orissa. After hearing arguments from both sides in both the cases we feel a little distressed that seniority list of all casual labourers including the applicants in both the cases have not been prepared up-to-date. The seniority list of all the casual labourers including the applicants in both the cases be prepared according to Rules within four months from the date of receipt of a copy of this judgment. It is needless for us to state that the date of fixation of seniority for the casual labourers should be done according to paragraph F(v) of Serial 132 of 1981 dated 19.6.1981 at page 313 of the Establishment Serial Circulars, 1981. After the seniority list is prepared as and when vacancy occurs in Group D posts for regular appointment, subject to suitability selection should be made according to seniority as indicated in the list for being absorbed in regular vacancies in the

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category of Group D. After 1981 if there are any other circulars issued by any other authority for maintaining seniority list those should also be considered while drawing up the seniority list.

11. As regards the next contention of Mr. Palit that some of the juniors of the applicants have been employed in different works in preference to the applicants we find there was an allegation in paragraph 6(k) of the application that juniors like Ganga son of Tagga, Gaji son of Gouranga, Dhadu son of Kunja, Dhumuri son of Kunja have been employed in preference to the present applicants and on that account it was submitted by Mr. Palit that this action of competent authority is against all canons of justice, equity and fairplay. This fact has been stoutly denied on behalf of the respondents at paragraph 25 of their reply to the application. The respondents maintained that such persons are non-existent and therefore, the question of employing them does not arise. Despite this averment made on behalf of the respondents, it was emphatically submitted before us by Mr. B. Mohanty on behalf of Mr. Palit that employment has been given to such persons. Here we find that there is oath against oath so far as this question is concerned and we do not think it appropriate to enter into the process of enquiry as to whose version is correct. But all the same we would say that the Divisional Railway Manager, Khurda Road would devote his personal attention to this aspect and in case he would be convinced that the contention of the applicants is true, then we hope and trust he would regularise the matter according to Rules. In case this version of the applicants is found to be incorrect and baseless no further

action need be taken by the Divisional Railway Manager, South Eastern Railway, Khurda Road.

12. The last contention of Mr. Palit to quash Annexure-C series would be appropriately dealt with while dealing with this nature of contention advanced by Mr. Ganeswar Rath in Original Application No. 285 of 1987.

13. Now, we would avert to the arguments advanced at the Bar in connection with Original Application No. 285 of 1987. The prayer of the applicants in the said case need not be repeated and succinctly it may be stated that the relief claimed by the applicants is that though they have been given temporary status yet they have not been absorbed in regular service from the date on which their juniors were given regular jobs and it is furthermore claimed that not only the applicants are entitled to compensation under section 25 F of the Industrial Disputes Act but discharging the applicants' services vide Annexure-4 series is illegal, inoperative and liable to be quashed.

14. Mr. Ganeswar Rath, learned counsel for the applicants submitted that juniors to the applicants have been appointed against regular vacancies in 1983 and to substantiate his contention only the name of a single person alleged to have been superseded has been mentioned as Syad Subirullah as per serial No. 10 of seniority list forming subject matter of Annexure-5. Besides this lone instance, there has been no specific averment in the pleadings indicating any other specific names who have ~~xxix~~ to have superseded the applicants though during the course of arguments it was submitted by

Mr. Rath that several persons have superseded the applicants. In this connection, the only prayer of the applicants is to consider their case for appointment to regular vacancies of Group D with effect from the date on which juniors were appointed against those vacancies. We do not feel inclined to act on this sort of bald assertions. In addition to the same, a striking feature appearing in this case is that there is neither any prayer to quash the appointments of those incumbents who have allegedly superseded the applicants and secondly none of them have been made parties in this application. Law is well settled that we cannot go beyond the four corners of the prayer made in an application. Non-impletion of those incumbents said to have superseded, being necessary parties, is definitely fatal to this part of the case put forward on behalf of the applicants.

15. The next additional factor is that there is no evidence before us specifying the date on which the said Syad Sabirullah had been given temporary status which would be the sole determining factor for fixing seniority of a particular casual labour. In absence of all the materials mentioned above, we are not prepared to accept this argument of Mr. Rath yet. We would say that after the seniority list is prepared, the Divisional Railway Manager, S.E.Railway, Khurda Road would devote his personal attention to this aspect and pass necessary orders according to law.

16. We would now deal with the next contention of Mr. Rath regarding the entitlements of the applicants as per the provisions contained under section 25 F of the Industrial Disputes Act. Section 25 F of the Industrial Disputes Act thus :

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" 25-F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice ;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay " for every completed year of continuous service " or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette. "

From the above quoted provision of Section 25 F of the Act, it now remains to be determined as to whether the ingredients contained under Section 25-F(a) has been complied so as to attract the same to be worked out in favour of the applicants. In this connection, Section 25-B of the said Act which defines ' continuous service' should be stated. It runs thus :

" 25-B. Definition of continuous service.-For the purposes of this Chapter.-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman ;
- (2) where a workman is not in continuous service within the meaning of clause(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -
- (a) for a period of one year, if the workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer

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for not less than -

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case ; xx "

Admittedly, none of the applicants have been employed below the ground in a mine. Therefore, the case of the applicants was sought to be brought within the ambit of Section 25-B(2)(a)(ii). Therefore, in the present case, we are to find out as to whether the applicants had actually worked for 240 days continuously. Mr. Pal, learned Senior Standing Counsel for the Railway Administration, on the basis of a chart furnished by him contended that none of the applicants had worked continuously for twelve calendar months to come within the provisions contained under section 25-B of the Act. Nothing could be pointed out to us on behalf of the applicants to substantiate their contention that the applicants had worked for 240 days continuously. In such circumstances, we are of opinion that the provisions contained under section 25-F of the Industrial Disputes Act, cannot be attracted ~~in the case of the applicants~~ in any circumstances and therefore, they cannot claim protection under section 25-F of the Industrial Disputes Act.

17. We would now deal with the contention of Mr. Ganeswar Rath relating to section 25-G of the Industrial Disputes Act which deals with procedure for retrenchment and it runs thus :

" 25-G. Procedure for retrenchment- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workman in that establishment in the absence of any agreement between the employer and the workman in this behalf, the employer shall

ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

This provision has been enacted on the well-known principle 'Last come first go'. Relying upon the provisions contained in Section 25-G, Mr. Ganeswar Rath contended that admittedly Railway is an industrial establishment and therefore, the applicants and the respondents are governed under the Industrial Disputes Act. This was rightly and fairly not disputed by Mr. Pal, learned Senior Standing Counsel for the Railway Administration. But, in this connection, necessary relief could be given to the applicants if there would have been any agreement between the applicants on one side and their employer on the other side. Before we express our opinion on this vital issue of agreement it is worthwhile to note that along with this contention Mr. Rath relying upon Rule 77 of the Industrial Disputes (Central) Rules, 1957 contended that retrenchment of the applicants from service is illegal, unjust and improper. Rule 77 of the Rules runs thus:

" 77. Maintenance of seniority list of workmen.- The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment."

Mr. Ganeswar Rath further contended that no seniority list having been prepared upto the year 1987 in respect of the particular unit, the question of publication of the same in a conspicuous place does not arise and therefore, according to Mr. Rath the provisions contained under section 25-G is clearly attracted entitling the applicants to have a declaration from

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this Bench that the order of retrenchment contained in Annexure-4 series is bound to be quashed. In reply thereto, Mr. Pal, learned Senior Standing Counsel for the Railway Administration submitted that the seniority list of the particular unit (so far as the applicants are concerned) has been drawn up till the year 1987 though it was not required to be so pasted, and the case of the applicants does not at all come within the four corners of Section 25-G read with Rule 77 of the Industrial Disputes (Central) Rules, 1957. Mr. Pal submitted that on a perusal of Annexure-4 series and C series (O.A.284 of 1987) it would be apparently clear that the applicants in both the cases had been appointed for a particular period and in the said order of appointment it was also mentioned that the services of the individual appointees would automatically stand terminated without any further notice. The contents of one such order of appointment constituting Annexure-4 and C series need be quoted. It runs thus :

" You will continue as a Casual labourer on CPC scale rate of pay upto 20.10.87 and your service will stand terminated with effect from 21.10.87 F.N. without any further notice."

(Emphasis is ours)

This order is dated 24.6.1987. It is needless to state that this is a contractual obligation between the employer and the employee. The contractual obligation between the parties is that the employee would serve the employer from 24.6.1987 upto 20.10.1987 and automatically the services of the particular incumbent would stand terminated on 21st October, 1987 without any further notice. This agreement between the parties i.e. the ^{of} employer and employee has been completed by the act/offer and acceptance of the parties (which is noticed from each of the ^{law}

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annexures by virtue of the fact that each of the applicants has affixed his left thumb impression to this agreement which has been attested by the competent officer. We think there is considerable force in the contention of Mr. Pal that Section 25-G would be attracted when retrenchment takes place in the absence of any agreement between the employer and the employee. In the present case, we have already found that there has been an agreement for termination of service on a particular date. We would also hold that there is substantial force in the contention of Mr. Pal that it cannot be construed that the applicants have been retrenched from service because the whole division in open line has been completely wound up for the season as stated in paragraph 6 of the counter to which there appears to be a bare denial without any proof of real work ^{being} in existence. In such circumstances, we cannot accept the contention of learned counsel appearing for the applicants in both the cases mentioned above and we further find that the work in question having come to an end there was no other option left for the competent authority but to mention in Annexures 4 and C series that the services of the applicants would not be required after the defined date i.e. 20.10.1987. In view of the discussions made above we would find that there is no merit in the contention of Mr. Rath that the applicants are entitled to any relief under the provisions of Section 25-F and 25-G of the Industrial Disputes Act.

18. In view of the aforesaid discussions made in regard to Section 25-F and 25-G of the Industrial Disputes Act we would hold that these reasonings and findings would apply mutatis
ver

mutandis to the case of the applicants in O.A.284 of 1987 specially in regard to their prayer for quashing of Annexure-C series. To this extent we find no merit in the case of the applicants in both the cases in regard to quashing of Annexure-C series and Annexure-4 series and therefore their prayer to the above effect stands dismissed.

19. Before concluding we think it advisable and profitable to sum up our conclusions in regard to these cases:

- a) Annexures-4 series and C series are not liable to be quashed and hence those are sustained.
- b) The competent authority is directed to draw up a seniority list of all casual labours upto 1987 according to Rules and after fixation of seniority of the casual labours by preparing a list, as and when vacancy occurs subject to suitability and other requirements under the Rules, appointments be given to those persons from the list including the present applicants according to seniority.

20. Thus, the applications forming subject matter of O.A.284 and 285 of 1987 are accordingly disposed of leaving the parties to bear their own costs. With disposal of both the cases, stay order passed by this Bench in both the cases on 19.10.1987 stands automatically vacated.

21. Before we part with this case we would fail in our duty if we do not place on record the submission which was made on behalf of the applicants in both the cases. Our attention was invited to the observations of the Hon'ble Supreme Court made in paragraph 22 of a case reported in AIR 1982 SC 854 (L.

which runs thus :

" We would be guilty of turning a blind eye to a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily rated servant, is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway administration brings this part of the provision of the Manual and antediluvian, inconformity with the Directive Principles of State Policy as enunciated in Part IV of the Constitution. It may be necessary for a big employer like the railway to employ daily rated workmen but even here it is made distinctly clear that in case of casual labour, the daily wage is fixed by dividing monthly minimum wage by 26 so as to provide a paid holiday. May be, for seasonal employment, or for other inter-mittent work daily rated workmen may have to be employed. It may as well be that on projects workcharged staff may have to be employed because on the completion of the projects the staff may become surplus. That was at a time when planning and projects were foreign to the Indian economy. Today, Railways have perspective plans spreading over decades. If one project is complete another has to be taken over. Railway administration has miles to go and promises to keep and this becomes clear from the fact that the appellant, a daily rated workman, continued to render continuous service for twenty years which would imply that there was work for a daily rated workman everyday for twenty years at a stretch without break and yet his status did not improve and continued to be treated as daily rated casual labour whose service can be terminated at the whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice and fairplay to the lowest and the lowliest in Railway administration. "

We hope and trust the competent authority in these cases would devote his serious attention to the observations of Their Lordships of the Supreme Court and take necessary
by

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action according to Rules as soon as possible.

to add on
14.1.88

Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree.

Mr Patel
14.1.88

Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 14, 1988/S.Sarangi.



All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name.
Telegraphic address :—
“SUPREMECO”

Sup. C.—75

5. No. 524/88/SC/XI.A.

**SUPREME COURT
INDIA**

FROM The Assistant Registrar,
Supreme Court of India,
New Delhi.

To The Registrar,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Dated New Delhi, the 21st Sept., 1988. 198

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 19297 of 1963

WITH

CIVIL MISCELLANEOUS PETITION NO. 20424 of 1988.
(Application for Stay)

Aparty v. Aparti Senapati and Ors.

... Petitioners

— 12 —

Union of India and Ors.

... Respondents -

Sir,

I am directed to forward herewith for your information and necessary action a certified copy of Order dated the 19th September, 1968 of this Court made in the above matter.

Please acknowledge receipt.

Yours faithfully,

Staende

ASSISTANT REGISTRAR

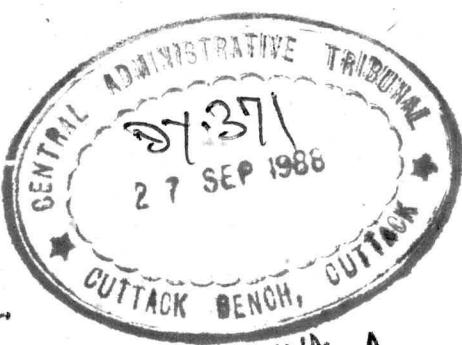
Dy No 354
27.9.88

immediate

Pl. supply a copy of
this letter with its
enclosure to Sir K. M.
Mubepabba and
put up on relevant
file.

10/Supreme Court/82

1/82 bike. 1/10/88
in Shirley 1/10/88
out on relevant 2/29/88
area to H.M. 2/29/88
and 3/10/88



39

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9297 of 1988.
 (Petition under Article 136(1) of the Constitution of India for Special Leave to appeal from the Judgment and Order dated the 14th day of January, 1988, of the Central Administrative Tribunal, Cuttack Bench, Cuttack in Original Application No. 284 of 1987). No. of

WITH

CIVIL MISCELLANEOUS PETITION NO. 20428 of 1988.
 (Application for Stay with a prayer for an ex parte Order).

1. Aparty @ Aparti Senapati son of Hallu @ Halu Senapati,
2. Madhaba @ Madhab Chhatoi son of Rama Rama Chhatoi,
3. Kelu @ Kelu Rautray son of Nabina @ Nabin Rautray.
4. Nitai @ Nityananda Barik son of Banchha Barik.
5. Benu @ Banu Baral son of Balia @ Balia Baral.
6. Bauria @ Baubibandhu Nayak son of Aparty @ Aparti Nayak.
7. Brundaban @ Brundaban Das son of Siba @ Siba Das.
8. Jamboo @ Jamboo Swain son of Natha @ Natha Swain.
9. Krushna @ Krushna Das son of Jagara @ Jagara Das.
10. Gobinda @ Gobinda Swain son of Natabar @ Natabar Swain.
11. Murali @ Murali Chhatoi son of Fagu @ Fagu Chhatoi.
12. Biswanath @ Biswanath Parida @ Narayan @ Narayan Parida.
13. Basoo @ Basudeb Baral son of Ananda @ Ananda Baral.
14. Saratha @ Saratha Jena son of Mani @ Mani Jena.
15. Surata @ Surata Mohapatra son of Radhu @ Radhu Mohapatra.
16. Ligaraj @ Lingaraj Jena son of Ramachandra @ Ramchandra Jena.

Certified to be true copy

Assistant Registrar (Judi)
 22-9-1988
 Supreme Court of India

17. Dija @ Dijaraj Majhi son of Kanduri @ Kanduri Majhi.
18. Nanda @ Nanda Behera son of Raghu @ Raghu Behera.
19. Anadi @ Anadi Majhi, son of Kumar @ Kumar Majhi.
20. Gaji @ Gaji Swain son of Luka @ Luka Swain.
21. Sadhu @ Sadhu Majhi son of Kellu @ Kellu Majhi.
22. Manguli @ Manguli Parida son of Fakira @ Fakira Parida.
23. Bharata @ Bharata Parida son of Uchhab @ Uchhab Parida.
24. ~~Udayanatha~~ @ Udayanath Majhi son of ~~Aparti~~ @ Aparti Majhi.
25. Bauribandhu @ Bouribandhu Majhi son of Kumara @ Kumar Majhi.
26. Abhimanyu @ Abhimanyu Raut son of Mina @ Mina Raut.
27. Okil @ Okil Khan son of Madhu @ Madhu Khan.
28. Kulamani @ Kulamani Sahoo son of Uchhab @ Uchhab Sahoo.
29. Gobinda @ Gobinda Sahoo son of Brundaban @ Brundaban Sahoo.
30. Krushna @ Krushna Nayak son of Narayan @ Narayan Nayak.
31. Sudarsan @ Sudarsan Parida son of Udayanath @ Udayanath Parida.
32. Bhamara @ Bhamara Swain son of Loka @ Loka Swain.
33. Prafulla Kumar Nayak son of Krushna Ch. Nayak.
34. Gobinda @ Gobinda Parida son of Fakira @ Fakira Parida.
35. Alekha @ Alekh Nisanka son of Bhikari @ Bhikari Nisanka.
36. Bharata @ Bharata Raut son of Abhina @ Abhina Raut.
37. Charana @ Charan Jena son of Maria @ Maria Jena.
38. Fakira @ Fakira Pradhan son of Krushna @ Krushna Pradhan.

39. Nalu @ Nallu Jena son of Sama
@ Sama Jena.
40. Jogi @ Jogi Swain son of Loka
@ Loka Swain.
41. Alia @ Alia Swain son of Loka
@ Loka Swain.
42. Laxmidhar @ Laxmidhar Maharana
son of Benu @ Benu Maharana.
43. Madhu @ Madhu Raut son of
Bisuni @ Bisuni Raut.
44. Paramananda @ Paramananda Parida
son of Lokanath @ Lokanath Parida.
45. Ghana @ Ghanashyam Mohanty
son of Bainsi @ Bainsi Mohanty
46. Kailash @ Kailash Guru son of
Kumara @ Kumara Guru.

All are casual labour u/Chief Permanent
Way Inspector, Khurda Road, South Eastern,
Railway, Khurda Road Division,
Distt. Puri.

...Petitioners

-versus-

1. Union of India represented
through General Manager, South
Eastern Railway, Garden Reach,
Calcutta-700043.
2. Divisional Railway Manager, South
Eastern Railway, Khurda Road,
Jatni, District-Puri.
3. Assistant Engineer, South Eastern
Railway, Khurda Road, Jatni,
District Puri.

...Respondents

DATED THE 19TH SEPTEMBER 1988.

CORAM:

HON'BLE MR. JUSTICE E. S. VENKATARAMIAH
HON'BLE MR. JUSTICE N. D. OJHA

For the Petitioners: Mr. G. S. Chatterjee, Advocate.

THE PETITION FOR SPECIAL LEAVE TO APPEAL AND
THE APPLICATION FOR EX PARTE STAY above-mentioned being
called on for hearing before this Court on the 19th day
of ~~September~~ ¹⁹⁸⁸, of ~~January~~, 1988, UPON hearing Counsel for the Petitioners
herein, THIS COURT, while adjourning the matter to 13th
October, 1988 and directing issue of Notice returnable

WZ

...4/-

on 13th October, 1988 to the Respondents herein to show cause why special leave be not granted to the Petitioners herein to appeal to this Court from the judgment and Order of the aforesaid High Court, DOTH ORDER, that pending the hearing and final disposal by this Court of the aforesaid Application for Stay after notice, the services of the petitioners herein who are employed as casual labour under the Railway Administration should not be terminated until further orders;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Raghunandan Svarup Pathak,
Chief Justice of India, at the Supreme Court, New Delhi,
dated this the 19th day of September, 1988.

Sd/-

(H.S. KAPOOR)
DEPUTY REGISTRAR

S. Sharma*

Key

RECEIVED
19 SEP 1988
SUPREME COURT OF INDIA

RECEIVED

19 SEP 1988

CB
SUPREME COURT

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9297 of 1988.

WITH

CIVIL MISC. PETITION No. 20424 of 1988.

(Application for Stay with a prayer for
an ex-parte Order).

Appellant
Applicant

Aparty & Aparty Senapati
and Ors.

Versus

...Petitioners.

Respondent

-VERSUS-

Union of India and Ors.

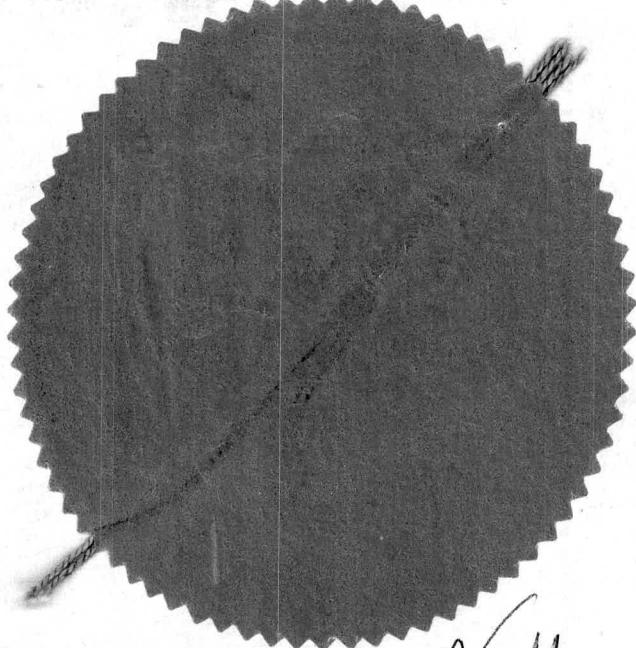
...Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.
(Ref. C.A. No. 264 of 1987)

ORDER DIRECTING ISSUE OF SHOW CAUSE NOTICE
AND STAYING THE TERMINATION OF THE SERVICES
OF THE PETITIONERS HEREIN.

Dated this the 19th day of September, 1988.

Dated the 19th day of September, 1988.



N.S.
27/9/88

SEALED IN MY PRESENCE

OB/MS

SHRI G.S. Chatterjee, Advocate on record
for the Petitioners.

Engrossed by SPS*

Advocate for

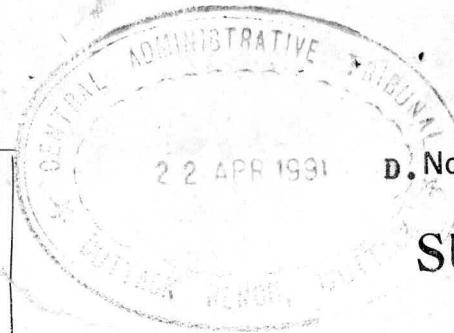
Examined by

SHRI

Compared with

Advocate for

No of folios



D. No. 524/88/XI A

communications should be addressed to the Registrar, Supreme Court, by de-
tion, NOT by name.
Telegraphic address:-
"SUPREMECO"

SUPREME COURT INDIA

44

FROM

N.K. Chawla,
Assistant Registrar.

To

The Registrar,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Dated New Delhi, the.....13th.....April.....1991.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9297 OF 1988.

WITH

CIVIL MISCELLANEOUS PETITION NO. 20424 OF 1988.
(Application for Stay)

A party @ Aparni Senapati & Ors.

... Petitioners

Versus

Union of India & Ors.

... Respondents

Sir,

In continuation of this Registry's letter of even number dated the 21st September, 1988, I am directed to forward herewith for your information and necessary action a certified copy of the Formal Order dated the 27th March, 1991 of this Court, passed in the matter above-mentioned, dismissing of the Petition for Special Leave to appeal and vacating stay.

Please acknowledge receipt.

Yours faithfully,

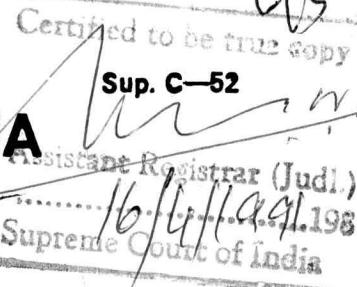
ASSISTANT REGISTRAR

Please inform
the relevant parties
of the result to
the respondents
from a. Dr
Reh
22/4/91
30(A)

Reh
22/4/91
30(A)

Sh. H.M.
22/4/91

306912



IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9297 OF 1988.
(Petition under Article 136 of the Constitution of India for
Special Leave to appeal from the judgment and order dated
the 14th January, 1988 of the Central Administrative Tribunal,
Cuttack Bench at Cuttack in O.A.No. 284 of 1987)

No. of

WITH

CIVIL MISCELLANEOUS PETITION NO. 20424 OF 1988.
(Application for Stay with a prayer for an ex parte Order)

A party @ Aparni Senapati & Ors.

... Petitioners

Versus

Union of India & Ors.

... Respondents

(FOR FULL CAUSE-TITLE, PLEASE SEE SCHEDULE 'A' ATTACHED HEREWITH)

DATED THE 27th March, 1991

CORAM:

HON'BLE MR. JUSTICE S. RANGANATHAN
HON'BLE MS. JUSTICE M. FATHIMA BEEVI
HON'BLE MR. JUSTICE N.D. OJHA

For the Petitioners : Mr. Harish N. Salve and
Mr. G.S. Chatterjee, Advocates.

For the Respondents Nos. 1 & 2 : Mr. V.C. Mahajan, Senior
Advocate.
(Ms. Sushma Suri and
Mr. Hemant Sharma, Advocates
with him)

For Respondent No. 3 : Mr. B. Krishna Prasad, Advocate.

For the Intervenor : Mr. D.P. Mukharjee, Advocate.

THE PETITION FOR SPECIAL LEAVE TO APPEAL along with
THE APPLICATION FOR STAY above-mentioned being called on for
hearing before this Court on the 27th day of March, 1991,
UPON hearing counsel for the parties herein above-mentioned,
THIS COURT DOETH ORDER that the Special Leave Petition above-
mentioned be and is hereby dismissed and consequent upon the

dismissal of the aforesaid Special Leave Petition this Court's Order dated 19th day of September, 1988 passed in Civil Misc. Petition No. 20424 of 1988 be and is hereby vacated;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Ranganath Misra, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 27th day of March, 1991.

Sd/-
(S.D. SHARDA)
DEPUTY REGISTRAR (JUDICIAL)

(S.D. SHARDA)
16.4.91

(40-60)

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IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. 4294 OF 1988.

IN THE MATTER OF :

A petition under Article 136 of the
Constitution of India for Special
Leave to appeal to the Supreme
Court of India;

AND

IN THE MATTER OF :

1. Aparty @ Aparti Senapati son of
Hallu @ Halu Senapati
2. Madhaba @ Madhab Chhatoi son of
Rama Rama Chhatoi
3. Kalu @ Kalu Rautray son of Nabina @
Nabin Rautray.
4. Nitai @ Nityananda Barik son of
Banchha Barik.
5. Benu @ Benu Baral son of Balia @
Balia Baral.
6. Bauria @ Bauribandhu Nayak son of
Aparty @ Aparti Nayak.
7. Brundaban @ Brundaban Das son of
Siba @ Siba Das.
8. Jamboo @ Jamboo Swain son of Natha
@ Natha Swain.

9. Krushna @ Krushna Das son of Jagara @ Jagara Das.
10. Gobinda @ Gobinda Swain son of Natabar @ Natabar Swain.
11. Murali @ Murali Chhatoi son of Fagu @ Fagu Chhatoi.
12. Biswanath @ Biswanath Parida @ Narayan @ Narayan Parida.
13. Basoo @ Basudeb Baral son of Ananda @ Ananda Baral.
14. Saratha @ Saratha Jena son of Mani @ Mani Jena.
15. Surata @ Surata Mohapatra son of Radhu @ Radhu Mohapatra.
16. Ligaraj @ Lingaraj Jena son of Ramchandra @ Ramchandra Jena.
17. Dija @ Dijeraj Majhi son of Kanduri @ Kanduri Majhi.
18. Nanda @ Nanda Behera son of Raghu @ Raghu Behera.
19. Anadi @ Anadi Majhi, son of Kumar @ Kumar Majhi.
20. Gaji @ Gaji Swain son of Luka @ Luka Swain.
21. Sadhu @ Sadhu Majhi son of Kellu @ Kellu Majhi.
22. Manguli @ Manguli Parida son of Fakira @ Fakira Parida.
23. Bharata @ Bharata Parida son of Uchhab @ Uchhab Parida.

24. Udayanatha @ Udayanath Majhi
son of Aparti @ Aparti Majhi.
25. Bauribandhu @ Bouribandhu Majhi
son of Kumara @ Kumar Majhi.
26. Abhimanyu @ Abhimanuy Raut son
Mina @ Mina Raut.
27. Okil @ Okil Khan son of Madhu @
Madhu Khan.
28. Kulamani @ Kulamani Sahoo
son of Uchhab @ Uchhab Sahoo.
29. Gobinda @ Gobinda Sahoo son
of Brundaban @ Brundaban Sahoo.
30. Krushna @ Krushna Nayak son of
Narayan @ Narayan Nayak.
31. Sudarsan @ Sudarsan Parida
son of Udayanath @ Udayanath Parida.
32. Bhamara @ Bhamara Swain son of
Loka @ Loka Swain.
33. Prafulla Kumar Nayak son of
Krushna Ch. Nayak.
34. Gobinda @ Gobinda Parida son of
Fakira @ Fakira Parida.
35. Alekha @ Alekh Nisanka son of
Bhikari @ Bhikari Nisanka.
36. Bharata @ Bharata Raut son of
Abhina @ Abhina Raut.
37. Charana @ Charan Jena son of
Haria @ Haria Jena.

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38. Fakira @ Fakira Pradhan son of Krushna @ Krushna Pradhan.
39. Nalu @ Nallu Jena son of Sama @ Sama Jena.
40. Jogi @ Jogi Swain son of Loka @ Loka Swain.
41. Alia @ Alia Swain son of Loka @ Loka Swain.
42. Laxmidhar @ Laxmidhar Maharana son of Bonu @ Bonu Maharana.
43. Madhu @ Madhu Raut son of Bisuni @ Bisuni Raut.
44. Paramananda @ Paramananda Parida son of Lakanath @ Lakanath Parida.
45. Ghana @ Ghanashyam Mohanty son of Bainsi @ Bainsi Mohanty
46. Kailash @ Kailash Guru son of Kumara @ Kumara Guru.

A-11 are casual labour u/Chief Permanent Way Inspector, Khurda Road, South Eastern Railway, Khurda Road Division, Dist - Puri. PETITIONERS.

-Versus-

1. Union of India represented through General Manager, South Eastern Railway, Garden Reach, Calcutta - 700043.

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2. Divisional Railway Manager, South Eastern Railway, Khurda Road, Jatni, District - Puri.
3. Assistant Engineer, South Eastern Railway, Khurda Road, Jatni, District - Puri.

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RESPONDENTS.

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SUPREME COURT

CRIMINAL/CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 9297, OF 1988

WITH

CIVIL MISCELLANEOUS PETITION NO. 20424 OF 1988,
(Application for Stay) No.

of 19

Aparty & Aparty Senapati & Ors.

Appellant
Petitioner

Versus

Union of India & Ors.

Respondent

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH AT CUTTACK
(Ref: O.A. No. 284 of 1987)

ORDER DISMISsing THE SPECIAL LEAVE
PETITION AND VACATING STAY

Dated the 27th day of March, 1991.

W.P. 16746/

Engrossed by
Examined by

GD*

SEALED IN MY PRESENCE
SRI G.C. Chatterjee,
Date on Record for the Petitioners.

Compared with
No. of folios

*to Ms. Sushma Suri,
Date on Record for Respondent No. 1 & 2.*

*to Mr. Prasad,
Date on record for Respondent No. 3.*