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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 446 of 1988

Date of Decision: 12.2.1992

Sambhu Kisan & Others Applicant(s)

Versus

Union of India & Others Respondents

For the Applicant

Mr.N.Prusty,
Advocate

For the respondents

Mr.L.Mohapatra,
Standing Counsel
(Rly.Administration)

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C O R A M

HON'BLE MR. K.P.ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MISS.USHA SAVARA, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

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MISS. USHA SAVARA, MEMBER (A), The petitioners - 34 in number have filed this original application with the prayer that respondents 1 to 4 be directed to transfer Respondents No. 5 to 11 to their parent Department, and that the applicants be treated as senior to the Respondents 5 to 11. They have also prayed that they be treated as permanent from the year 1970, when they completed 240 days from the day of their appointment, or from 1971-72, when the screening test was conducted for confirmation, but the Railway Administration had not called them to appear in the test, though they were eligible.

2. The applicants have been working as daily rated casual labourers in Flash Butt Welding Plant (in short F.B.W.P.), Jharsuguda since 1970. They got their respective C.P.C. scale and attained temporary status on different dates in the year 1970, 1971, 1972 and 1973. The respondents No. 5 to 11 were initially appointed in the Mechanical Department in the years 74 to 78 as indicated in Annexure-1, and were made permanent in their Department in the year 1977 and 1982 respectively. The Respondents No. 5 to 11 were transferred to the Department of the applicants and were made senior to them, as indicated in Annexure-1, which is the list of Khalasi/Chowkidar/Safaiwala/(Store Khalasi) as on 1.7.1986 in order of seniority of F.B.W.P., Jharsuguda for future promotions to next higher grade.

3. It is pleaded by the applicants that the transfer of the Respondents No. 5 to 11 was mala fide, as there was no necessity for such a transfer. Since the Respondents

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No. 5 to 11 have been placed above them in the seniority list (Annexure-1), the applicants have **lost** their right to promotion to the next higher post in time. Mr. N. Prusty, learned counsel for the applicants **argued** the case at length, and pointed out that the applicants had been in service since 1970, whereas the Respondents had been appointed in 1974, and Respondent No. 11 had been appointed as late as 1978, yet the Respondents No. 5 to 11 had been shown senior to the applicants in Annexure-1. It is further submitted that before making Class IV casual employees permanent the Railway administration holds a selection test and this was not held in F.B.W.P. till 1985, even though the applicants had been in service since 1970. The selection test was held in the Mechanical Department, i.e. the parent Department of the Respondent No.s. 5 to 11 in 1977 and 1982, thereby making the Respondents Nos. 5 to 11 permanent, whereas the applicants who had been in service since 1970 were not given an opportunity to appear in the selection test till 1985. Had the selection test been held earlier in F.B.W.P. the applicants would have been **far** senior to the Respondents No. 5 to 11. The Respondents Nos. 5 to 11 had been brought on transfer to the F.B.W.P. by Respondent No. 1 to 4, and placed above the applicants. It would be just and proper to return them to their parent Department, and restore the seniority of the applicants. In the alternative, it was suggested by Shri Prusty that the applicants be treated as permanent from 1971-72, when

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a selection test was held in F.B.W.P., though they had not been called to appear in it.

4. Shri L.Mohapatra, learned Standing Counsel appeared for the Respondents No.s.1 to 4. He submitted that the transfer of Respondent Nos. 5 to 11 had been made in administrative interest, and according to the relevant rules, when such a transfer is made, the transferee retains his seniority in the Department. The respondents No. 5 to 11 ~~were~~ absorbed on regular basis in the years 1977 and 1982, whereas the applicants were absorbed on regular basis only in 1985. In view of this, the applicants can only be treated as junior to Resp.No.5 to 11 since they were made permanent much after Resp.No.5 to 11. He further pointed out that though the transfer had been labelled as mala fide, yet the allegation has not been substantiated, nor have the applicants produced any evidence against any of the respondents to uphold this allegation. Such vague allegations cannot be accepted, according to the pronouncements of the Hon'ble Supreme Court. The learned Counsel went on to explain that the Respondent Nos. 5 to 11 were surplus staff, who were absorbed against available vacancies in the Mechanical Department after a screening test as provided under the Rules, whereas the applicants were only working, by their own admission, in C.P.C. scale as casual labourer and were regularly absorbed in 1985 only. It was clarified by the learned counsel that no vacancies

were available in F.B.W.P. till 1985, and in absence of any regular vacancy, the applicant's cases could not be considered. There is no prescribed period for conducting the selection test, which can only be held when regular vacancies are available. In the circumstances, the application should be dismissed, as it has no merit.

5. Having heard the learned counsel for the opposite parties, ~~we are~~ of the view that the prayers of the applicants cannot be granted. It is, no doubt, true that the applicants have been working as casual Khalasis since 1970 and the Respondent Nos. 5 to 11 have been appointed only in 1974, but it is also not disputed that the respondents No. 5 to 11 were made permanent after a selection test in the year 1977 and 1982, that is, much earlier than the applicants, who were only made permanent in 1985. Though mala fide has been alleged, it has not been proved ^{l.f.} nor any specific officer has been named. Such an allegation has to be rejected. The respondents on their transfer to F.B.W.P. have retained their seniority in their parent department, according to the Rules, and because the transfer has been made for administrative reasons. If the transfer had been made on request they would not have retained their seniority in their parent department.

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6. In view of the above discussion, we are constrained to reject the application as being devoid of any merit. Accordingly, we dismiss the application with no order as to cost.

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12.2.92
VICE-CHAIRMAN

h. K. Sahoo
12.2.92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 1992/ Sahoo

