

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.18 of 1989.

Date of decision : December 8, 1989.

Pitambar Nanda, son of Bhagaban Nanda,
village-Rampei, P.S.Dharmasala, Dist-Cuttack.

... Applicant.

Versus

1. Divisional Engineer, Telegraph,
Rourkela Division, Sector-6,
Rourkela, Dist-Sundargarh.
2. Sub-Divisional Officer, Telegraph
Sundargarh, At/P.O./P.S./Dist-Sundargarh.
3. Junior Engineer, Telegraph, Kuchinda,
At/P.O./P.S.Kuchinda, Dist-Sambalpur.
4. Union of India, represented through its
Secretary, Ministry of Communication,
New Delhi.

... Respondents.

For the applicant ... M/s. J.M. Mohanty,
S.K. Sahoo, N.K. Mohapatra,
A. Swain, P. Das, A.K. Mohanty,
Advocates.

For the respondents ... Mr. Tahali Dalai,
Additional Standing Counsel (Central)

C O R A M :

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

A N D

THE HON'BLE MR. N. SENGUPTA, 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

N.SENGUPTA, MEMBER (J)

In this application the relief claimed by the applicant is for a direction to the respondents to absorb him in the Department and to regularise his services by allowing him to continue in his post and to order that the applicant be deemed to be in service and is entitled for the pay after 1.5.1987.

2. The facts alleged in the application are that the applicant is a Matriculate and was employed as Daily Rated Mazdoor (D.R.M.) under Respondent No. 3 (Junior Engineer, Telegraph, Kuchinda) on 7.11.1985 and continued to work as such till 30.4.1987. During the period he was employed he had discharged his work satisfactorily i.e. digging holes, fixing the poles and insulators on the poles. After 1.5.1987 the Respondent No. 3 terminated his services and did not allow him to do any further work. After that he requested the authorities by his representations dated 5.6.1987, 8.9.1987 and 15.3.1988 to take him back in service and allow him to do his work but this request did not evoke any response. After being unsuccessful with those representations ultimately another representation was sent to the District Telecommunication Engineer along with a copy of the Muster roll and ~~thus~~ the District Telecommunication Engineer by his letter dated 16.7.1988 intimated the applicant that it was not possible to employ him due to ban order on employment of Daily Rated Mazdoor. It has further been alleged that the applicant had worked in all for 503 days during the spell he had been employed. Therefore, he had worked for more than 240 days and as such was not liable to be discharged from employment.

*Alenat
9/1/82*

Mainly on these allegations, the applicant has prayed for the aforesaid relief. The applicant has annexed a copy of his representation, xerox copy of the muster roll and the reply of the District Telecommunication Engineer, Rourkela and a copy of the office memorandum with regard to regularisation of casual employees in Group D posts.

3. The respondents in their counter have contended that 19 casual mazdoors including the applicant were taken from the open market purely on temporary basis for completing the targetted work within the time schedule and as the work had been completed, there was no further necessity of employing casual mazdoors including the applicant. Respondent No.2 had authority to remove them as he felt that there was no necessity for their retention. They have further referred to a decision of this Tribunal dated 19.1.1989 in O.A.303 of 1988 where it was held that employment of casual mazdoors depends on administrative needs. It is their further case that from 30.3.1985 the Government of India completely banned the employment of casual Mazdoors. Therefore, the applicant cannot have any grievance. They have further contended that the appointment of the applicant was not regular as he was not sponsored by the local Employment Exchange. The last of the grounds is that the applicant had not put in 503 days of service as alleged by him but only 371 days out of which only in 1986-87 the applicant had put in more than 240 days. In these circumstances, according to the respondents, the applicant is not entitled to any relief.

Placed on 17/1/89

4. We have heard Mr. A. Swain, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents at length and have perused the annexures to the application and the counter. There is no dispute that infact the applicant was employed as a casual mazdoor and was attached to the Office of Respondent No. 3 at Kuchinda and that he continued to work till 30.4.1987. From Annexure-2 it would be found that infact the Junior Engineer, Telegraph, Kuchinda, under whom the applicant was working, certified that the applicant worked for a total period of 503 days and as such we are unable to accept the averments made in paragraph 6 of the counter that the applicant worked only for 371 days. Whatever may it be, since it is not disputed that the applicant worked for more than 240 days during at least one year and worked for 140 days in another year, by applying the principles enunciated by the Hon'ble Supreme Court in the case of Daily Rated Casual Labour employed under P & T Department through Bharatiya Dak Tar Mazdoor Manch, v. Union of India and others reported in AIR 1987 SC 2342 we have no hesitation in our mind that the applicant is entitled to be considered for being absorbed after ~~taking up~~ ^{joining} the scheme for the purpose. However, we are unable to grant the other relief that the applicant should be deemed to be continuing in service.

5. This case is accordingly disposed of leaving the

15

parties to bear their own costs.

Meenapathy
..... 8.12.89.
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



B.R.Patel
..... 8.12.89.
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 8, 1989/Sarangi.