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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 375 of 1989

DATE OF DECISION : April, 19, 1991.

Premod Chandra Upadhyaya & others .. Applicants
Versus
Union of India & others .. Respondents
...
M/s. Devanand Mishra
Deepak Mishra .. For Applicant
R. N. Naik, A. Deo,
B. S. Tripathy &
US Agarwal, Advocates
M/s. A. B. Mishra & .. For Respondent
A. K. Swain
...

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)

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1. Whether reporters of local papers may be allowed to see the judgement ? Yes
 2. To be referred to the Reporters or not ? No.
 3. Whether Their Lordships wish to see the copy of the Judgement ? Yes
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J U D G M E N T

N. SENGUPTA, MEMBER (J), The material facts are that applications were invited for appointment as Store Keepers in the Office of the Interim Test Range (ITR), Chandipur. The present two applicants were two of the candidates who applied for the post of Store Keepers. For being appointed as Store Keepers

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the candidates were required to appear at a Written Test and thereafter at an interview. The two applicants appeared at the tests and on 30.6.88 letters intimating them of their selection for being appointed as Store Keeper on Casual Basis of 89 days were issued. The applicants in pursuance to those letters (Vide Annexures - 3 & 4 to the Application) joined their respective posts on 7.7.1988. The case of the applicants is that their services were extended further in spells of 89 days ^{on} casual ^{basis} ~~time~~. They have averred that Respondent No. 4 on 20.9.1989 passed an order to terminate their services. In the orders of appointment the applicants were given to understand that they are entitled to a consolidated pay of Rs.950/- per month. The applicants have asked for a direction to the respondents to regularise their services as Store Keepers, not to terminate their services and to pay them the Pay, DA, ADA etc. as admissible to a person working as Store Keeper.

2. The respondents in their counter affidavit have maintained that the two applicants belong to the un-reserved category, the number of posts of Storekeepers available for an un-reserved category was only one, so the person who stood first in the test was appointed. But however, as there was ^{- of staff -} dearth ^a in connection with the launching of the Agni, the two applicants were kept in the waiting list and were given appointments on adhoc basis against posts reserved for Scheduled Tribe Candidates. As subsequently, Scheduled Tribe candidates became available, there can be

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no question of continuance of the applicants in services.

3. After filing of the reply by the respondents, the applicants filed a rejoinder and a petition for amendment of the application though there has been no order allowing the petition for amendment, yet we have considered the amendment for a complete and effective adjudication of the matter in dispute. ^{- In -} The application for the amendment, the applicants have stated that ^{- one -} (1) Sri P. Sankhua, who belongs to the un-reserved category has been regularised. Therefore, the plea of the respondents that no post for un-reserved category is available is untenable.

4. We have heard Mr. Deepak Mishra for the applicants and Mr. A. B. Mishra, the learned Senior Counsel (Central) for the Central Government and perused the different annexures. From annexures 3 & 4 it can be found that the applicants were given appointment on casual basis for a period of 89 days on a consolidated pay of Rs. 950/-. Mr. A. B. Mishra has contended that as no post was available for a candidate of the un-reserved category, of necessity, the appointment was to be for short spell and accordingly at the outset it was for 89 days and subsequently further temporary appointments were given having regard to the load of work. Mr. Deepak Mishra has contended that from Annexure A to the Counter, it would be found that there were six posts of Store Keepers, Therefore the applicants should have been appointed regularly against the available posts. He has also drawn our attention to Para - 6 of the

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counter filed by the respondents wherein it has been stated that 3 Scheduled Castes vacancies got adjusted against other posts ⁱⁿ to the same scale of pay as per 100 point roster.

Mr. Mishra has contended that the posts should not have been adjusted but this contention ^{of} Mr. Mishra can ^{- not -} be accepted in view of the fact that it is permissible under the provisions in the Brochure on Reservation for Scheduled Castes & Scheduled Tribes Services to Group comparable posts carrying almost the same scale for determining the number of vacancies ^{- to be reserved for scheduled caste and scheduled tribe candidates -}. In Para - 6 of the counter it has been stated that posts in respect of which adjustment was made, carried the same scale of pay as that of the Store Keepers.

5. Mr. Deepak Mishra has urged that when the applicants had worked for more than 240 days in a year, may be ~~that~~ on casual basis, and their period of services was more than one year, they should not be un-ceremoniously kicked out and in support of this contention Mr. Deepak Mishra has sought reliance on a decision of the Ernakulam Bench of this Tribunal in case of K.G.Suhagan Versus The Administrator, U.T. of Lakshadweep & Another reported in 11(1990)/88 (CAT) 96 and also a decision of the Supreme Court reported in AIR-1987 Supreme Court 2342. So far as the Supreme Court Case is concerned it deals with casual workers and the Hon'ble Supreme Court gave directions for absorption of such workers against vacancy available in Group 'D' posts, if really no post is available, no question of regularisation can arise. Admittedly both the applicants

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are neither Scheduled Castes nor Scheduled Tribes persons and according~~y~~ to Annexure-A, initially there was one post available for un-reserved category. Undoubtedly the two applicants were below ~~the~~ Bhakti Lata Devi who was appointed against that post and ^{- also -} below Shri P.C. Sankhua in merit. From Paragraph-7 of Annexure-A it can be found that for meeting the pressing requirements, one Scheduled Tribe post was to be filled up by un-reserved category persons out of the selected candidates on merit basis. In view of that decision of the Selection Committee, Mr. P.C. Sankhua was appointed against the post reserved for Scheduled Tribe Candidates and this can not be challenged by the applicants as they, in order of merit, were below Mr. Sankhua. So far as the question of ^{employment} ~~regularisation~~ is concerned, the applicants definitely have a good case. Mr. Deepak Mishra has cited the case of Dharwa District PWD and LDW Associations Versus State of Karnataka reported in AIR 1990 Supreme Court ³⁸² ~~1988-83~~ to contend that the applicants are entitled to the same pay as a regular employee of that grade. There has been a catena of decisions that there must be equal pay for equal work. There is no case, nor could there be any, ~~case~~ that the applicants were not discharging the same duties as a regular Store Keeper did. Therefore, they were entitled to pay at the minimum pay scale prescribed for Store Keeper ~~along~~ with all other allowances such as DA, ADA as admissible to

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them and the ^{payment} ~~appointment~~ is to be made on ^{pro rata} ~~pre-regular~~ basis for the days applicants worked as Storekeeper.

The application is accordingly disposed of and the parties to bear their respective costs.

B.R. Patel 19.4.91
B.R. PATEL
VICE-CHAIRMAN



N. Sengupta 19.4.91
N. SENGUPTA
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

April

1991/ B.K. Sahoo