

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Cuttack Bench
NEW DELHI 94

O.A. No. 397/1989

Tax No.

199

DATE OF DECISION 7. 8. 1991

Shri Chaitanya Charan Mahapatra PetitionerM/s. Devenand Mishra, Deepak Mishra, P.N. Naik,
A. Deo, S.S. Tripathy, U.S. Agarwala, Advocates. Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentM/s. A.K. Mishra, Sr. S.C. Advocate for the Respondent(s)
S.K. Das, counsel

CORAM

The Hon'ble Mr. AMITAV BANERJI, CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. ~~Whether their Lordships wish to see the fair copy of the Judgement?~~
4. ~~Whether it needs to be circulated to other Benches of the Tribunal?~~

I. P. Gupta
(I.P. GUPTA)
MEMBER (A)

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

O.A. No. 397 of 1989. Date of decision:

7.8.91

Shri Chaitanya Charan Mahapatra ... Applicant.

Vs.

Union of India & Others ... Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.P. GUPTA, MEMBER (A).

For the applicant ... M/S. Devanand Mishra,
Deepak Mishra,
R.N. Naik, A. Deo,
B.S. Tripathy, U.S.
Agarwala, Advocates.

For the respondents ... M/S. A.K. Mishra, Sr. S.C.
S.K. Das, counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. I.P. Gupta, Member (A))

This is an Application under Section 19
of the Administrative Tribunals Act, 1985. The
applicant was appointed as a Dresser on casual basis
from 1.10.1985 in post and Telegraph Dispensary at
Cuttack and has been continued in that post ever since.
The applicant filed O.A. No. 92/1989 before the Cuttack
Bench of the Tribunal for a direction to the respondents
to regularise his services.

2. The Hon'ble Tribunal in its judgment dated
22.8.1989 directed the respondents "to prepare a scheme
if it has not yet been done and include the applicant
in the scheme for regularisation of his services as he
has been working for more than six months continuously."

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3. Subsequently the applicant apprehending the termination of his service, filed a petition requesting for restraining the respondents from issuing any order terminating the applicant's service. The Hon'ble Tribunal in M.A. 277/1989 by its order dated 1.9.1989, after considering the fact that the applicant would be out of employment, directed that the earlier judgment should be modified as under:

"The applicant should be allowed to continue as Casual dresser in the Postal Telegraph Dispensary in Cuttack till regular appointment is made."

4. The reliefs now sought in the present O.A. are:

- (a) To pass appropriate orders directing the respondents not to fill up the post of Dresser against which the applicant is working by calling for names from the Employment Exchange or by any other manner of selection except as per the direction of the Tribunal in their order dated 22.8.1989 (Annexure-1).
- (b) To pass any other appropriate order giving relief to which the applicant is entitled to in the facts and circumstances of the case and allow this application.

5. In the counter affidavit filed on behalf of the respondents it has been mentioned that the applicant, an out-sider was engaged in work as dresser on daily wage basis keeping in view the emergent need of the Dispensary. The applicant was not engaged as casual labour in accordance with the departmental instructions (O.M.No.49014/2/86-Ests (C) dated 7.6.1988 of Ministry of Personnel, Public Grievances and Pensions). It has also been mentioned in the counter that in the instant case the post of Dresser

is a regular vacant post against which engagement of casual worker is opposed.

6. The fact, however, remains that the applicant has been continuing as Dresser on daily wage basis for over 5 years.

7. The learned counsel Shri Deepak Misra for the applicant has cited the following cases:

In BHAGWATI PRASAD Vs. DELHI STATE MINERAL DEVELOPMENT CORPORATION (AIR 1990 SC 371), the Supreme Court had observed inter alia that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability and three years experience would be sufficient for confirmation. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications.

In DHARWAD DISTRICT P.W.D. LITERATE DAILY WAGE EMPLOYEES' ASSOCIATION AND OTHERS Vs. STATE OF KARNATAKA AND ANOTHER (AIR 1990 SC 883) the Supreme Court stated inter alia that managements and the governmental agencies in particular should not allow workers to remain as

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casual labourers or temporary employees for an unreasonably long period of time. The Supreme Court directed that from amongst the casual and daily rated employees who had completed 10 years of service, a prescribed number should immediately be regularised on the basis of seniority cum-suitability. There should be no examination but physical infirmity should mainly be the test of suitability.

In SUMATI . P. SHERE Vs. UNION OF INDIA

(AIR 1989 SC 1431), it was observed that if the services of an ad-hoc employee is to be discontinued on ground of unsuitability it is proper and necessary that he should be told in advance that his work and performance are not upto the mark. In the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give and take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence, and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability. That however would not mean that there should be a regular enquiry in such cases.

In K.G. SUGUNAN Vs. THE ADMINISTRATOR, UNION

TERRITORY LAKSHWADEEP (1990(2)ATLT (CAT) 100), it has

been observed that even casual labour appointed irregularly have been allowed temporary status by efflux of time.

In PANAMA TANTI AND OTHERS V. UNION OF INDIA AND OTHERS (ATR 1987 (1)CAT 466), the Calcutta Bench of the Tribunal held that even if there was some mistake or irregularity in the recruitment of casual labour even then they attained temporary status on completion of more than 120 days of work.

8. On behalf of the respondents Shri S.K.Das urged that although the applicant has a right to be considered for regularisation, yet he does not have a right to be regularised as of right. The applicant must go through a test/selection along with others and he cannot be regularised straightaway. He urged that the decision in DHARWAD DISTT. P.W.D. LITERATE DAILY WAGE EMPLOYEES' ASSOCIATION & ORS. (supra) was a case of its own facts and the principles laid down therein would not be applicable to the facts of the present case.

9. We have heard learned counsel for the parties and have also gone through the various cases cited at the Bar.

10. The following facts are undisputed in this case under consideration:-

- i) The applicant was rendering the same kind of service which was rendered by the regular employees doing the same type of work.
- ii) The post is regular.
- iii) The applicant has been working for more than five years and gained sufficient experience in the actual discharge of duties attached to the post.
- iv) Any deficiency in his work has nowhere been pointed out by the respondents, nor is there any indication that he has been told in advance that his work and performance are not upto the mark.

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11. The order of the Bench dated 1.9.1989 in M.A. 277/1989 that the applicant should be allowed to continue as Casual dresser in the Postal Telegraph Dispensary in Cuttack till regular appointment is made has to be read in the context of its earlier judgment dated 22.8.1989 wherein the judgment of the Supreme Court in the case of SURINDER SINGH AND ANOTHER Vs. THE ENGINEER-IN-CHIEF CPWD AND OTHERS (AIR 1986 SC 584) was quoted as follows:-

"We also record our regret that many employees are kept in service on a temporary daily-wage basis without their services being regularised. We hope that the Government will take appropriate action to regularise the services of all those who have been in continuous employment for more than six months."

12. A perusal of the various decisions cited above leads us to the conclusion that their Lordships were of the view that the daily rated workers or casual labourers were also doing service and were entitled to equal pay as that of the regular workers and that they were entitled to regularisation when they have worked continuously for a longer period. In this respect their Lordships in the case of DHARWAD DISTT. P.W.D. LITERATE DAILY WAGE EMPLOYEES' ASSOCIATION AND OTHERS (supra) referred to the cases of BHARTIYA DAK TAR MAZDOOR MANCH V. UNION OF INDIA & ORS (1988(1) SCC 122), RANDHIR SINGH V. U.O.I. & ORS (1982 (1) SCC 618), DHIRENDRA CHAMOLI & ANOTHER V. STATE OF U.P. (ATR 1986 (1) SC 172), SURINDER SINGH & ANOTHER (supra), D.S. NAKARA V. U.O.I. (1983(2) SCR 165), DAILY RATED CASUAL LABOUR EMPLOYED UNDER P&T DEPARTMENT THROUGH BHARTIYA DAK TAR MAZDOOR MANCH V. U.O.I. & ORS (1987) Suppl.

SCC 668), STATE OF U.P. & ORS. V. J.P. CHAURASIA & OTHERS ((1989) 1 SCC 121) and KESAVANANDA BHARATI V. STATE OF KERALA ((1973) (4) SCC 225) etc. and observed in paragraph 14 as under:

"We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the Court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-Second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood."

13. In the operative part of the judgment in DHARWAD DISTT. PWD LIT. D. WAGE EMPLOYEES' ASSOCIATION

(supra) their Lordships held that all those casual/daily rated employees appointed on or before 1.7.1984 shall be treated as monthly rated establishment employees at the fixed pay of Rs.780/- per month without any allowances with effect from 1.1.1990. They would be entitled to an annual increment of Rs.15/- till their services are regularised. Those casual and daily rated employees who have completed ten years of service by 31.12.1989, 18,600 shall immediately be regularised with effect from 1.1.1990 on the basis of seniority-cum-suitability.

There shall be no examination but physical infirmity shall mainly be the test of suitability. Others who have completed ten years of service as on 31.12.1989, shall be regularised before 31.12.1990 in a phased manner

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on the basis of seniority-cum-suitability. The balance of casual or daily rated employees who become entitled to absorption on the basis of completing ten years of service shall be absorbed/regularised in a phased manner on the same principle as above on or before December 31, 1977.

14. It is, therefore, seen that all those who had completed ten years service by a particular date were regularised. This scheme was made for the reason that the State of Karnataka represented that if all of them were to be regularised, the State Government would have no funds to pay for it. Consequently, their Lordships evolved a scheme, as mentioned above, for absorption of the casual/daily rated employees

15. It is note-worthy that their Lordships did not prescribe a test except those who suffered physical infirmity.

16. In the present case we are concerned with an employee who has worked continuously for five years. It is true that he has approached the Tribunal earlier and orders had been passed that he should be continued unless an incumbent is chosen for the vacant post. There is no indication anywhere that a person has been chosen for filling up the vacant post although it is stated that steps have been taken to call for names for consideration and selection for filling up the post. The applicant's contention is that he has served the department ably for more than five years and there is a regular vacancy, he is entitled to be absorbed in the post in view of the law laid down by the Supreme Court. It is true that no person

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has a right to be given a particular post or appointed to a particular post unless he comes through a process of selection and also fulfils the requisite qualifications. The position would have been different had a person been selected for the vacant post then, in that event, the position of the applicant would be tenuous. Since we do not find that anyone has been chosen to fill up the post, the absorption of the applicant in the post which remained vacant for five years and where the applicant has gained valuable experience for the last five years, no harm would be done to anyone if he is appointed. We may state here that instances like the present one are rare but are indications of malaise that prevails in the offices of the Government, viz., delay in taking steps in filling up posts on their becoming vacant. If a stop-gap arrangement is made and the posts are filled in the course of reasonable time, the situation as in the present case would not arise. The entire question of engaging casual labour/daily rated employees arises since no adequate arrangement is made for meeting a particular situation. If this is visualised or assessed in good time and appointments are made accordingly, a situation like the present may not arise. It is true that when a post is vacant, it should be filled up according to rules. It may be by promotion or by direct recruitment but what is important is that it should not be kept pending for years together.

17. Taking a conspectus of all the facts and

circumstances and the law laid down by the Supreme Court, we come to the conclusion, that the applicant may be absorbed in the post of Dresser which he is occupying as a casual labour or daily rated for the last more than five years and the only test he is required to pass is that of physical fitness. We order accordingly. We further direct the respondents not to fill up the post by any other manner. This order is to be implemented within a period of one month from the date of receipt of a copy of the same. We leave the parties to bear their own costs.


(I.P. GUPTA)
MEMBER (A)

 29.7.91
(AMITAV BANERJI)
CHAIRMAN