

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Applications 452 and 502 of 1989.

Date of decision : February 21, 1990.

In O.A.452 of 1989:

B.Laxminarayana & others ... Applicants.

Versus

Union of India and others ... Respondents.

In O.A.501 of 1989.:

Sukanta Prusty ... Applicant

Versus

Union of India and others ... Respondents.

In O.A.452 of 1989 & 502 of 1989:

For the applicants ... M/s.Ashok Mohanty,
P.K.Parida, Advocates.

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

C O R A M:

THE HON'BLE MR.P.S.HABEEB MOHD., MEMBER (ADMN.)

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 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.
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J U D G M E N T

N.SENGUPTA, MEMBER (J)

Since the questions of law and fact involved in these two cases are almost identical, they are being disposed of by this common judgment.

2. In O.A.452 of 1989 there are four applicants and in O.A.501 of 1989, one applicant. The case of the applicants in both the cases is that in the Military Telephone Exchange at Gopalpur they were appointed as Civilian Switch Board Operators. The names of some of them were sponsored by the Employment Exchange as they were ex-servicemen and the name of applicant No.4 in O.A.452 of 1989 i.e. Miss Asha Laxmi Mohanty was also sponsored by the Ganjam District Employment Exchange for appointment. After a test they were appointed as such Switch Board Operators on a temporary basis for different spells and none of them being more than 89 days. Their first appointment was on 31.8.1988 and they were continuing as such Switch Board Operators till notices of termination were served on them in September, 1989 vide Annexure-3. After that, representations were made, copies are Annexure-4 in both the applications whereafter they were again appointed with effect from 29.9.1989 for a period of 89 days. After these, appointment orders, which are Annexure-5 to both the applications, were issued on 28.9.1989, from the Headquarters of Naval Command, Lucknow, instructions were received not to continue the applicants in appointment further and to appoint fresh candidates.

Miss Singh
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The grievance of the applicants in each of the cases is that they were appointed for more than 300 days during the year 1988-89 and further when work is available, their services should not be terminated. After the filing of O.A. 452 of 1989, applications were invited and some persons have been interviewed. So the applicants asked for interim orders staying appointment of persons other than the applicants to the posts.

3. The respondents in their counter have taken the pleas that as the posts are temporary and the applicants were appointed for ~~short~~ short spells, for periods of 89 days, they are not entitled to the relief of regularisation or any other relief asked for by them. They have not denied the allegations of the applicants that a requisition was issued to the Employment Exchange, Berhampur for sponsoring fresh candidates to be appointed as Switch Board Operators and that the Employment Exchange had sponsored some of the candidates.

4. We have heard Mr. Ashok Mohanty, learned Counsel for the applicants and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents. As would be evident from the narration of facts above, there is no dispute that each of the applicants was appointed for different spells varying from 79 days to 89 days leaving small ~~xxx~~ gaps in between the two spells. Mr. Mohanty has contended that, and is also found from the counter of the respondents, these gaps between the two spells were deliberate, with a view to deprive the applicants

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of the right of continuous officiation against the posts. This contention of Mr. Mohanty is well founded. Mr. Dalai while being asked whether such posts are still continuing to exist or not ~~as such~~, has stated that the posts were sanctioned for a temporary period and there have been extensions from time to time and he has argued that in such circumstances no relief to regularise the services of the applicants could be granted. From the counter and from the submissions of Mr. Dalai one thing is clear that since the time the applicants were appointed as Switch Board Operators, such posts continued to exist and at no point of time was any of the posts abolished. Thus, it would be clear that though posts have not yet been declared to be permanent yet they are likely to continue for indefinite period. There is no allegation against any of the applicants that his/her work was not satisfactory or that he/she was a person unfit to continue in the post. It is also pertinent to note that all the applicants were selected by the employing organisation. In such circumstances, it is not understood how the applicants could be thrown out of employment. In this regard learned counsel for the applicants has drawn our attention to the case of Rattanlal and others v. State of Haryana and others, reported in AIR 1987 SC 478. The facts of the reported case were that teachers were ^{being} appointed on ad hoc basis on the commencement of every year and their services were being terminated before Summer Vacation. Such a policy of the State Government was held by the Hon'ble Supreme Court to be

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violative of Articles 14 and 16 of the Constitution of India. The principle decided in that case would apply with all force to the facts of the present case. The next case to which learned counsel for the applicants has drawn our attention is the case of Surinder Singh and another v. The Engineer in Chief, C.P.W.D. and others reported in AIR 1986 SC 584 in which the Hon'ble Supreme Court observed that the Government should be a model employer. There can be no doubt that a model employer cannot be one which makes a choice at his whim or caprice or works with an intention to deprive a person of a right. In the facts and circumstances, we have absolutely no hesitation in our mind to come to the conclusion that the services of the applicants should not be terminated so long as the posts would continue to exist and the applicants do not otherwise disqualify themselves for continuance in the post.

5. With regard to the prayer of the applicants for payment of arrear dues, it may be stated that the respondents have averred that they have already been sanctioned and in the meantime been paid to the applicants. Therefore, no specific orders need be passed.

6. These applications are disposed of accordingly but however there would be no order as to costs.

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Member (Administrative)



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Member (Judicial)