

16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 513 of 1989

Original Application No. 514 of 1989

Original Application No. 515 of 1989

Date of Decision: 14.2.1992

In O.A. No. 513 of 1989

Balaram Parida

Applicant

Versus

Union of India & Others

Respondents

In O.A. No. 514 of 1989

Pandaba Ch. Sahoo

Applicant

Versus

Union of India & Others

Respondents

In O.A. No. 515 of 1989

Prafulla Kr. Dehury

Applicant

Versus

Union of India & Others

Respondents

...

For the applicant:

Mr. A. K. Bose, &
P. K. Giri,
Advocates

...

For the respondents

Mr. P. N. Mohapatra,
Sr. Standing Counsel
(Central Government)

...

C O R A M

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

AND

HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

...

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

...

JUDGMENT

MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

17

As the cause of action, and the relief prayed for in these three original applications are the same, they are being disposed of by a Single order.

2. The applicants were sponsored by the Employment Exchange, and engaged as Casual Mazdoors from 16.8.1977, 9.2.1979 and 1.1.1978 respectively by the Sub-Divisional Officer, Telecommunication, at PO:Dhenkanal. After the decision of the Hon'ble Supreme Court in case of Bharatiya Dak Tar Mazdoor Monch Vs. Union of India, the departmental authorities prepared a scheme for absorption of casual mazdoors in Gr. D posts. This pleaded that a seniority-cum-eligibility list was prepared by Respondent No.2 of the casual mazdoors as on 31.3.1987. The applicants had applied in prescribed proforma for the purpose of absorption in Gr-D Post. They were called for an interview by the Selection Committee, and answered all the questions, but the Respondent No.2, issued order dated 10.3.1989 giving appointments to 34 casual mazdoors to Gr.D posts (Annexure-2). Though many of their juniors were selected, the claims of the 3 applicants were ignored. The applications Under Section 19 have been filed against the impugned order dated 30.3.1980.

3. Mr. A.K. Bose, learned counsel for the applicants submits that the applicants, along with others, had made legitimate demands before the authorities concerning the basic problems of the mazdoors. In November, 1986, 'Dharana' was carried out peacefully, and at different times, unjust actions of the authorities relating to wrong payments were

challenged by the applicants as leaders of the Union. It was for this reason that their names did not find place in the Annexure-2. It is contended by Shri Bose that selection to Grade-D post is required to be made on the basis of seniority only, and the Selection Committee is not empowered to play any arbitrary rule ignoring the claims of those who have worked for several years, and if the applicants are found eligible in all other aspects, they have a right to be absorbed in Gr.D posts on the basis of their length of service. By ignoring their rightful claims, the respondents have gone against the spirit of the judgments given by the Hon'ble Supreme Court. Therefore, it is prayed that the applicants be absorbed in Gr.D posts in Dhenkanal Telecom Department for the year 1988 and their seniority be fixed above their juniors, who were appointed in pursuance of Annexure-2.

4. Shri P.N.Mohapatra, learned counsel appeared for the respondents. He strongly denied the claims of the applicants. He informed us that there were Statutory recruitment rules, according to which recruitment is made to Gr.D posts. The D.P.C. comprising of Telecom District Engineer, Dhenkanal, as Chairman, and 2 members from Group B Cadre, one of whom belonging either to Scheduled Caste or Scheduled Tribe, conducted the test/selection, and these mazdoors, who were found suitable for the posts of Gr.D, on the basis of their performance in the test and interview, were selected. After selection, seniority of the selected casual mazdoors is determined in order of merit in the test/selection vide

item(iv) of Rule B of Appendix-12, Part-II of P. & T Manual Vo. IV. In view of this, there is no merit in the claims of the applicants that their seniority be fixed according to their length of service.

further

5. The learned counsel submitted that whereas casual mazdoors are called to the test and interview on the basis of their length of service, but they are not selected on the basis of the number of days they have worked irrespective of the fact that their work and conduct are not satisfactory.

If this contention of the casual mazdoors were to be accepted, then there was no need for a D.P.C. or a Selection Committee. There would be no consideration for good conduct or hard work, no regard for reservation as per roster for the SC/ST candidates, who might have worked for less number of days, and no consideration for educational qualifications or age etc. as prescribed in recruitment rules. The D.P.C. is the final authority in selecting casual mazdoors and suitability is the main criteria. It is true that the conduct and work of the applicants have attracted adverse comments from the S.D.B., Dhenkanal, and he ~~had~~ warned them in writing about negligence in work and disobedience, but no representation has been made against the warning -

Refer R.1, R.2, R.3, R.4. Therefore, non-selection was not arbitrary, as the applicants' work and conduct are not satisfactory and they are indisciplined. For the above reasons, the D.P.C. found them unsuitable. The learned counsel further submitted that the Hon'ble Supreme Court

20

had never suggested that suitability be discarded and mazdoors be selected on the basis of length of service. Therefore, the reliefs sought by the applicants were misconceived, and liable to be rejected.

6. We have heard the learned counsel for the ~~both~~ ^{the} parties, and gone through the annexures filed by them. As per the directions of the Hon'ble Supreme Court, the respondents had prepared a scheme for absorption of casual mazdoors in Gr.D Posts. A graduation list was prepared showing the date of birth, the date of entry, and the community to which the casual mazdoors belonged. A properly ~~constituted~~ ^{constituted} D.P.C. was to be held from time to time, which held test/interview, and after going through the particulars of the candidate like educational qualifications, his work and conduct, held him to be suitable to be absorbed in the service. This exercise is being done in the spirit of the judgment delivered by the Hon'ble Supreme Court and we see no reason to interfere with this process. According to the submissions of the respondents, a domestic enquiry is pending against the applicants due to their misconduct and unsatisfactory work performance. While agreeing with the respondents that the applicants cannot be absorbed till the enquiry is finalized, we are constrained to hold that such an enquiry cannot be delayed so as to delay the ends of justice, and thereby hold the applicants guilty without a proper opportunity to explain their conduct.

7. In the circumstances, we direct the respondents

21

to complete the pending enquiry within a period of two months from the date of receipt of a copy of this order. Thereafter, the suitability of the applicants will be adjudicated, and if the allegations against them are not substantiated, the respondents will consider regularisation of their services within one month of completion of the enquiry.

8. In view of this order, the 2nd prayer of the applicants to give them seniority above the juniors, who have been selected by order dated 10.3.1989 is kept open till the enquiry is completed, and thereafter the appropriate authority may consider the matter and pass necessary orders. If the petitioners feel aggrieved by the order of the respondents, they are given liberty to reagitate the matter. In the circumstances, there is no order as to costs.

.....
14.2.92
VICE-CHAIRMAN

.....
14.2.92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
14.2.92 /Sahoo//

