

CENTRAL ADMINISTRATIVE TRIBUNAL
CUETACK BENCH: CUETACK

Original Application No.163 of 1990

Date of decision: 11th September, 1990

Sri B.N.Biswal, Peon
S/o Late Kulamani Biswal
At/P.O.Bidanasi, Dist.Cuttack & Others. Applicants

-VS-

1. Union of India represented through the Director General, Door Darshan, Mandi House, New Delhi.
2. Director, Cuttack Door Darsahn, Tulsipur, Cuttack.
3. Administrative Officer, Cuttack Door Darshan, Tulsipur, Cuttack.

RESPONDENTS

For the applicants Mr. L. Mohapatra, Advocate

For the respondents Mr. Ganeswar Rath, Std. 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 judgement ? Yes
2. To referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes.

(10)

:- J U D G E M E N T :-

N.SENGUPTA, MEMBER (J) Twenty persons have filed a joint application alleging that they are casual workers employed in Doorsashan Cuttack, some since 1986 and the others since 1988. The case of the applicants is that, as noted in Annexure-1 to the application, they have worked more than 240 days and as such have qualified to be absorbed in service in Group-D. The periods of their employment and the fact that ^{some} ~~some~~ others were during the periods they worked as casual workers, appointed would suggest that the work is really not of casual or temporary nature. They have information that 11 posts of helpers have fallen vacant and for that respondent 2 & 3 have called for application and the interview or test for appointment to these posts was to be made a few days after the filing of the application, to the said interview/test ^{none} ~~were~~ of them (applicants) has been called. Making these allegations they have prayed for a direction to regularise their services and not to appoint any outsider till all the casual workers are regularly employed.

2. The respondents in their reply have taken the plea that the applicants are not eligible to be appointed as helpers, helpers are technical persons who are required, as per the Recruitment Rules, to have a working knowledge about machines, electrical and mechanical, but the applicants were engaged to do routine work i.e. they were doing the work of peons, sweeper, Farash etc. However, such of the applicants as have the requisite qualification have been given opportunity to compete with the fresh candidates sponsored by the Employment Exchange and if any of them (applicants) is found

Mr. Sengupta
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suitable by the selection committee, he would be absorbed. The respondents have made a general denial of the applicants' allegation of having worked for more than 240 days without specifying in what particulars Annexure-1 is in-correct. The case of the respondents further is that move has been made for the sanction of some posts of peons, messengers & sweepers but as yet the necessary sanction for such posts has not been received, on the sanction being received, the applicants may be absorbed in suitable posts.

3. We have heard Mr. L. Mohapatra for the applicants and Mr. Ganeswar Rath, the learned Standing Counsel (Central) for the respondents and perused the papers. On going through the application and the counter it would be manifest ^{that} the applicants are working as casual workers, of course in Annexure-1 the names of applicant nos. 4 & 10 cannot be found, but that is not of much consequence. Mr. Rath has drawn our attention to the cause title of the application and has contended that it can be seen that the applicants are engaged to do the jobs of peons, malis or sweepers and none of them has been engaged to do any technical work, therefore, none of them can claim to be absorbed or appointed as a helper whose work is somewhat technical. Annexure-R/1 to the counter is a copy of the Recruitment Rules for helpers and the qualification prescribed is working knowledge of Electrical and Mechanical Machines and is Group-D service but having a pay scale slightly higher than the ones prescribed for Khalasis & Malis. Mr. Rath, the learned Central Govt. Counsel

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referring to these facts has gone on to contend that the prayer of the applicants for being absorbed against posts of helpers is misconceived. This argument of Mr. Rath is an ingenuous one. According to the decision of the Hon'ble Supreme Court, and followed by the different benches of this Tribunal, the casual workers are to be absorbed in Group-D posts, in order of their seniority and their suitability and deliberately the decisions have not specified the Group-D posts against which such casual workers are to be absorbed. The applicants, after the filing of the counter by respondents, have filed some documents testifying their familiarity with working of machines and have claimed that they have the required working knowledge about machines.

4. Mr. Rath has next contended that according to amended Recruitment Rules to be found at page 69 to 72 of record, 50% of the posts are to be filled by promotion of Khalasis having regular service of 3 years to their credit, therefore, the applicants cannot claim to be absorbed against all the vacant posts of helpers. There cannot be any doubt that the applicants cannot say any claim for posts to be filled up by promotion of Khalasis and their claim has to be confined to the number of vacant posts minus the quota for the Khalasis. Mr. Rath has urged that the applicants must compete with the candidates sponsored by the Employment Exchange and they cannot claim any preferential treatment as that would amount to discrimination. We are not satisfied with

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this argument. If every thing is equal, a person can claim a differential treatment. The idea of having a scheme for absorbing the casual workers first is that when the others i.e. the fresh candidates were no where in the picture, the casual workers rendered service at the time of need and as such they form a class by themselves essentially different from the fresh candidates, hence can claim a preferential treatment in view of their past service to the Organisation or the department of the Government.

5. For the reasons stated above we direct that such of the applicants as satisfy the selection committee to have working knowledge about Electrical and Mechanical Machines and have worked more than 240 days as casual workers should first be absorbed, in order of their seniority, as helpers and if there be any remaining vacancy, it may be filled up by selected candidates sponsored by the Employment Exchange or open market according to rules. The application is accordingly disposed of leaving the parties to bear their respective costs.

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Arun
VICE-CHAIRMAN

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M. S. Upadhyay
11/90
MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack
The 11th September, 1990/Mohapatra



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