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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.347/91

Cuttack, this the 7th day of April, 1995

V.V.Raman ^a Murty	Applicant
	Vrs.	
Union of India and others	Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

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[Handwritten Signature]
 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)
 07 APR 95

[Handwritten Signature] 31/4/95
 (D.P. HIREMATH)
 VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

...

V.V.Raman Murty, s/o V.S.Ramaiyana,
Works Supervisory Mistry, under
District Electrical Engineer,
(Construction), S.E.Railway,
Koraput, At/P.O./Dist.Koraput

.... Applicant

By the Advocates

....

M/s.G.A.R.Dora &
U.C.Mohanty.

Vrs.

1. Union of India, through
the General Manager, S.E.Railway,
Garden Reach,
Calcutta-43.

2. Chief Administrative Officer (Construction),
S.E.Railway,
Visakhapatnam (A.P.)

3. District Electrical Engineer (Construction),
S.E.Railway,
Koraput,
At/P.O./Dist-Koraput

....

Respondents.

By the Advocates

....

Mr R.C.Rath
(Respondent No.1)

M/s B.Pal &
O.N.Ghosh
(Respondent Nos.2
and 3).

....

O R D E R

D.P.HIREMATH, VICE-CHAIRMAN

The applicant, who is a diploma-holder in Civil Engineering having attended the course for three years, was recruited as a Casual Supervising Mistry in skilled category in pursuance of the notification issued by the District Engineer (RE) of S.E.Railway, Waltair, dated 16.9.1980. The total number of Casual Supervising Mistries required at Waltair-Kirandul Railway Electrification Project was intended to meet the project requirement. It was specified in the notification that the candidates so recruited would be governed by the terms and conditions applicable to project casual labour on railways. They were to work on daily rated pay based on the local rates fixed and notified from time to time by the said project Division. He received his appointment order dated 17.11.1980 (Annexure-A/2) purely on temporary basis on daily wages for a period of three months or completion of the works whichever is earlier. Though his initial appointment was only for a period of three months, by the very nature of work undertaken in the project he has continued to work in the same category in which he was recruited. He was given temporary status along with others by virtue of a

direction made by the Supreme Court on 11.8.1986 and while so granting the status, scale of pay fixed was also stated (Annexure-A/3 dated 27.10.1986). On 5.11.1990 the Deputy Chief Engineer (Construction) wrote to the S.P.O.(Construction), S.E.Railway, Visakhapatnam, that the present applicant Shri V.V.Ramana Murty and another were allotted the scale of Rs.330-480/RS-1200-1800 on attaining temporary status. Again in the second revised scale they were recommended to be allotted Rs.1400-2300/- which was being drawn at that time. Allotment of revised pay scale of Rs.1400-2300/- to all those who were drawing pre-revised scale of pay of Rs.380-560/- was given by the Railway Board on the recommendation of the Fourth Pay Commission (Annexure-A/9). These being the factual aspects with regard to the scale of pay which the applicant was drawing as on 4.7.1991, the question of absorption of some of the Engineers from the said project in the Open Line came to be considered and an order came to be passed on 4.7.1991 that the applicant and 43 others enumerated in that order were responsible for creation of the assets and were screened for absorption, their regular absorption against Group 'D' posts was made, and in order to enable them to join the Open Line a request was made to the Deputy Chief Engineer, Visakhapatnam, to release them.

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2. The applicant felt aggrieved by this order directing him to be absorbed in Group 'D' post in Open Line. He addressed his representation to the Chief Personnel Officer, S.E.Railway, on 26.7.1991 (Annexure-A/13) making his grievance that injustice had been done to him by absorbing him against Group 'D' category of post. He invited the attention of the said officer to the letter of the C.P.O., S.E.Railway, dated 6.11.1986 for confirmation of locally recruited Mistries against 40% construction reserved posts and calling for particulars of Work Mistries on the rolls in various construction units of the S.E.Railway. In reply to that letter, particulars of four employees were sent to the C.P.O. excluding his name. He requested to confirm him as Work Mistry in 40% reserved posts in construction or in Open Line early. It is sufficient to state at this stage that the reply of the C.P.O. was that such P.C.R. confirmed WM/PWM as and when absorbed in Open Line would be eligible to reckon their seniority in the Open Line. Perhaps not finding a favourable reply, the applicant has approached this Tribunal with a prayer to quash Annexure-A/12, direct his regularisation in the post of Supervising Mistry, and direct payment of unrevised scale of Rs.380-560/-

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from November 1981 or from 1.1.1984 and revised scale of Rs.1400-2300/- from 1.1.1986. According to him, as per letter Annexure-A/14 dated 6.11.1986 employee in his position is eligible for regular absorption in Open Line reckoning seniority for further avenue in Open Line cadre. That being so, his absorption against Group 'D' category post is illegal and arbitrary. The Work Supervising Mistries, whether in Construction or Open Line, possess the same qualification and discharge the same duties and shoulder the same responsibilities. Therefore, they are entitled to the pay scale that he is now seeking.

3. The respondents by their counter inter alia state that the applicant was granted temporary status on his completion of 360 days of continuous casual employment after 1.1.1981 as contemplated in the Railway Establishment Manual. The project casual labourers to which class the applicant belongs are eligible to be paid daily wages equivalent to scale rate of pay and though appointed in the skilled category as a casual labourer, the applicant was eligible to be paid daily rate of payment in the scale of Rs.260-400/- from 24.5.1981. But erroneously, the senior subordinate in charge has drawn daily rate of pay which is equivalent to the scale of Rs.330-480/-. The mistake was later on detected.

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thus to this extent they admit that the scale of pay made applicable to him was Rs.330-480/- and except stating in the counter that it is a mistake, we were not furnished with any material that this mistake was got rectified or that the officer responsible for this mistake was in any way made accountable.

4. As regards absorption of the casual labourers in the project, they maintain that it is done on definite percentage of such casual labourers in the Open Line in respect of the assets created by the Construction Branch handed over to the Open Line for maintenance. In that quota the applicant has been absorbed in Group 'D' category. The Survey and Construction Organisation came into existence from June, 1982. The organisation responsible for this construction project which recruited the applicant has since been wound up due to completion of work in 1987 and the residual staff have been absorbed in the Survey and Construction Organisation. The scheme for giving temporary status to the project casual labourers as prepared by the Railway Board has been accepted by the Supreme Court and the same is circulated in the Establishment and is being followed.

5. The casual labourers on their regular appointment in the Open Line or on P.C.R. Cadre

are only eligible to get half of the casual labour service counted for the purpose of pension. In order to afford pensionary benefits to the casual labourers, they are screened from time to time according to their length of service for absorption in the Open Line regular establishments against their requirement of posts. Seniormost among such screened and empanelled casual labourers are being appointed in the Open Line as a regular measure in batches and the applicant is one among them. They allege that in the order Annexure-A/3 to the application filed by the applicant, the original order has been tampered with inasmuch as the scale of pay in which temporary status was granted against item No.6 of the statement and the scale of Rs.260-400/- has been altered by overwriting to Rs.330-480/-. They have produced their own attested copy at Annexure-R/2. In terms of instructions contained in their Establishment Serial, all the Mistries in Civil Engineering Department both in the Open Line and Construction Projects, who supervise highly skilled Grade I workmen, or promoted from highly skilled Grade II workers were to be allotted the ^{pre-revised} scale of Rs.380-560/- which was later revised to Rs.1400-2300/- from 1.1.1986. Copy of endorsement of Additional C.E.E./R.E. dated 23.7.1981 is annexed as Annexure-R/5 to show

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the scale of pay that he was drawing. With regard to seniority they say that as the applicant was appointed in the year 1980 it is presumed that he was not in turn eligible as per seniority for absorption in the Open Line. However, after the applicant has been considered and absorbed in the Survey and Construction Organisation after the closing of the Waltair-Kirandul Railway Electrification Project, no asset pertaining to the Electrical Department has been handed over. As and when such assets are handed over against the 50% of the skilled posts, the case of the applicant would also be considered along with others according to the seniority.

It is for this reason that he is offered regular absorption in the Open Line in Group 'D' to the casual labourers of Construction Organisation irrespective of the fact of their working in higher grades. (Emphasis supplied). They also aver that it is for the applicant to reject the offer made to him to be absorbed in the Open Line as a regular Group 'D' staff and choose to remain in the Construction with all risks or benefits that are available for the time being in the present capacity of temporary casual labourer.

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6. It emerges from these contentions of the respective parties that the applicant was working in the Project Construction of Waltair-Kirandul Railway Electrification as a Casual Supervising Mistry though erroneously, as maintained by the respondents, he was being paid the scale of Rs.1400-2300/- on daily rated basis from 1.1.1986. Secondly it is only an offer from the Railway for absorption in Group 'D' category in the Open Line and it is for the applicant to accept or reject this offer. It was made clear during arguments even for the applicant that by regularisation or absorption, as the case may be, he would be getting pensionary benefits and hence his application. We have only to examine if the materials produced entitle him for being regularised against any post carrying the scale of pay that he is now drawing. Annexure-A/1 notification makes it amply clear that he was appointed as a Casual Supervising Mistry in the skilled category in the Waltair-Kirandul Railway Electrification Project. On 26.7.1991 the applicant gave his representation to the Chief Personnel Officer of the S.E.Railway inviting his attention to the O.M.No.P/R/17/TR/CR/III dated 6.11.1986 of the C.P.O.,S.E.Railway for confirmation of locally

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recruited Work Mistries against 40% construction reserved posts with the following instructions:

"Such WM/PWM recruited by the Construction Units are eligible for absorption in Open Line by positive act of screening by the Open Line and they will be eligible to be absorbed in Open Line cadre reckoning their seniority for further avenue in Open Line cadre. Unless a WM/PWM, recruited for the construction, is screened and found suitable for absorption, he is to continue in Construction Organisation..."

He invited the attention of the Personnel Officer to the fact that in reply to this O.M. the particulars of only four employees out of six existing Work Mistries on rolls of Construction Units at Visakhapatnam were furnished to the C.P.O. excluding his name though he was very much on the rolls of the said Unit through oversight as stated by the Office Superintendent of the Deputy C.E.E.(C), Visakhapatnam. He then requested to be confirmed as Work Mistry in 40% reserved posts in Construction or in Open Line. Annexure-A/9 makes it amply clear that allotment of revised scale of pay was made to the Mistries in pre-revised scale of Rs.380-560/-. This is equivalent to revised scale of Rs.1400-2300/-. Even the Deputy Chief Electrical Engineer (Construction) by his letter dated 5.11.1990 as per

Annexure-A/8 wrote to the S.P.O.(Construction), S.E.Railway that the applicant being a diploma-holder was allotted scale of Rs.330-480/- equivalent to Rs.1200-1800 and with reference to his qualification that he possessed, the scale of Rs.380-560/- equivalent to Rs.1400-2300/- as was being drawn may be allotted to him. The subject was fixation of pay of the applicant. Even Annexure-A/6 makes it amply clear that he was promoted as Casual Work Mistry in the scale of Rs.1400-2300/- with immediate effect, i.e. from 25.9.1989 though it was purely on adhoc measure. In the face of this material indicating that in fact he was allotted the pay scale of Rs.1400-2300/-, how in Annexure-R/2 dated 27.10.1986 the name of the applicant against the scale of Rs.260-400/- came to be shown becomes ununderstandable. It is only with regard to temporary status after his completion of 360 days of continuous service after 1.1.1981. In the face of Annexure-R/2 there is force in the contention of the learned counsel for the respondents that there is alteration of the scale in Annexure-A/3. In view of the clear order issued by the Assistant Personnel Officer (Construction) as per Annexure-A/6 dated 25.9.1989 that the applicant was promoted to Casual Work Mistry in the scale of Rs.1400-2300/-, this Annexure-R/2 becomes insignificant and Annexure-A/6 which is

beneficial to the applicant has to be accepted and acted upon. Thus we are to proceed with this established position that the respondents offered him absorption against Group 'D' post in the Open Line.

7. The respondents have clearly admitted that the absorption at this scale could be made when the assets are handed over against the 50% of the skilled posts. Undisputedly the scale of Group 'D' post would be much lower than the one that he is now drawing.

8. The applicant's counsel has urged that by the time the applicant approached this Tribunal in the year 1991 he had already served in the Survey and Construction Organisation for more than ten years and the appointment of Casual Supervising Mistries was intended to meet the project requirement. Without regularising him in any post, he was given promotion with effect from 25.9.1989 and if at all he was transferred to the Open Line, he should be assigned the same scale whatever may be the designation that he might be given. It is a clear indication that because for this length of time he has been serving as a casual labourer, there is need of the applicant under the Railway for the type of work that he has been doing. On the matter of regularisation, he

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strongly relied on the decision in the case of Inder Pal Yadav and others v. Union of India and others, (1985) 2 S.C.C. 648, in which the Supreme court clearly pointed out that casual labour employed on Railway projects in continuous service for more than a year should not be asked to go out on the ground of winding up of the projects. The following observations at the commencement of the judgment are quite apposite :

"No one is unaware of the fact that Railway Ministry has a perspective plan spreading over years nay decades and projects are waiting in queue for execution and yet these workmen were shunted out without any chance of being re-employed. Some of them rushed to the court and obtained interim relief. Some were not so fortunate."

Referring to the practice of employing casual labour by the Government in Railways, they also observed that casual labour employed on projects, also known as 'project casual labour' is one such segment of employment where one may serve for years and remain a daily rated worker without a weekly off, without any security of service, and without the protection of equal pay for equal work. This indeed appears to

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be the plight of the present applicant as well. Even in the case of State of Haryana v. Piara Singh, AIR 1992 S.C. 2130, relied upon by the respondents' counsel, the Supreme Court directed that efforts must be made to regularise the work-charged employees and casual labour as early as possible subject to their being qualified and subject to availability of work. When a casual labourer is employed for a particular work for two to three years, presumption as to regular need for his services arises. Though the respondents' counsel, relying on the decision of the Supreme Court in the case of State of Assam v. Kanak Chandra Dutta, AIR 1967 S.C.884, urged that casual labour is not holder of a 'post', that does not very much affect the requirement of casual labourer being regularised if he has put in continuous service for a length of time specified. Even in the case of Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka, AIR 1992 S.C.677, where the case of teachers appointed temporarily on ad hoc basis came up for consideration, the Supreme Court held that the services of such temporary

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teachers who have worked as such for three years including the break shall not be terminated, but they shall be absorbed as and when regular vacancies arise. In view of the decision in the case of Inder Pal (supra) the facts in the case of Jaswant Singh v. Union of India, AIR 1980 S.C. 115, relied on by the respondents, are not attracted to the facts of the instant case. A specific proviso to Section 79(4) of the Punjab Reorganisation Act of 1966 was applicable to the persons who were engaged in the construction work prior to the establishment of the Bhakra Management Board. Further, the facts in that case were that the workers were taken in employment on temporary posts for the purpose of completing the Beas Project. On completion of that Project or any other works for which they were employed, their employment would normally come to an end, especially since the statute from which their rights are said to flow did not protect such that employment. There is no ^{such} statutory bar in the instant case against the applicant.

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It now remains to be seen if the claim of the applicant for his regularisation in the post of Supervising Mistry and other ancillary

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-16-

reliefs deserves consideration. He further prays for quashing of Annexure-A/12 dated 4.7.1991 by which he was sought to be absorbed and his services regularised against Group 'D' post in the Electrical Department. The reply of the respondents to this part of the claim is that it is for the applicant to reject the offer made to him to be absorbed in the Open Line as a regular Group 'D' staff ^{or} and choose to remain in the Construction Organisation with all risks or benefits that are available for the time being by remaining in the Construction Organisation. The main contention of the respondents that he was never given the scale of Rs.380-560/- and consequently the revised scale of Rs.1400-2300/- has to be rejected as untenable in view of the orders passed from time to time in this behalf by the competent officers and the petitioner actually drawing his wages at that scale. If that be so, he is entitled to be absorbed against an equivalent post available in the Open Line. One of the averments made in paragraph 11



-17-

of the counter of the respondents is material and it is as follows :

"...Since the applicant was appointed in the year 1980, it is presumed that the applicant was not in turn as per seniority for absorption in Open Line. However, it is submitted that after the applicant has been considered and absorbed in Survey & Construction Organisation after closing of the WKRE, no asset pertaining to Electrical department has been handed over. As and when such assets are handed over, against the 50% of the skilled posts, the case of the applicant will also be considered along with others according to seniority. In absence of such skilled posts, it is but natural to offer regular absorption in Open Line in Group 'D' to the casual labourers of Construction Organisation irrespective of the fact of their working in higher grades."

This contention advanced only to support their case that he is offered a Group 'D' post substantially supports the contention of the applicant that he is entitled to be absorbed in one of the skilled posts even in the Open Line and if as a matter of ~~fact~~ convenience, a lower post is offered on absorption, the same need not be thrust on the applicant.

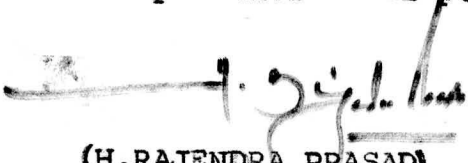
At one stage, the applicant's counsel, Shri Dora even made it clear that if he is not given an equivalent post in the Open Line, the applicant would be

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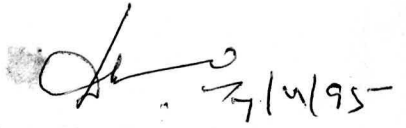
-18-

prepared to continue in the Construction Organisation itself as urged by the respondents. In our considered view, looking to the continuous service that the petitioner has put in and the orders made from time to time by the competent officers giving him certain higher scales, it would be unreasonable to direct him to accept the Group 'D' post now offered at much lower scale. He is entitled to be absorbed in an equivalent post carrying the revised scale of Rs.1400-2300/- in the Open Line immediately when the vacancy is available subject to his seniority in the grade in which he is now working and till then, there should be no impediment for him to continue in the post in which he is now working. Soon after the vacancy arises in an equivalent post in the Open Line subject to the conditions referred to above, the respondents shall absorb him in the Open Line. With this direction, the petition is disposed of.



(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

07 APR 95



(D.P. HIREMATH)
VICE - CHAIRMAN

A.Nayak, P.S.