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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.115 OF 1992
Cuttack, this the 4th day of January 1999

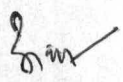
R.L.Sahoo and others Applicants

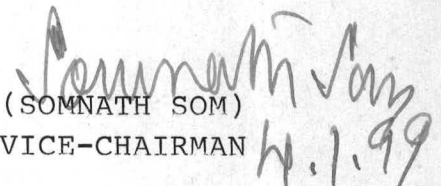
Vrs.

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?


(A.K.MISRA)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 4.1.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.115 OF 1992
Cuttack, this the 4th day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI A.K.MISRA, MEMBER(JUDICIAL)

.....

1. R.L.Sahoo, son of Raghunath Sahoo, Khalasi
 2. P.B.Ray, s/o Rabindranath Ray, Sr.Clerk
 3. K.C.Gaudo, s/o Banchhanidhi Gaudo, Record Keeper
 4. S.K.behera, s/o Arakhita Behera, Khalasi
 5. P.N.Dash, s/o Debabrata Dash, Sr.Clerk
 6. P.Nayak s/o Pitabath Nayak, Khalasi
 7. P.K.Swain, s/o Kunjabihari Swain, Jeep Helper
 8. R.Panchuati s/o Bhramarbara Panchuati, Khalasi
 9. U.K.Mohanty, s/o late Birakishore Mohanty, Record Sorter
- All are in the office of Chairman, Railway Recruitment Board, S.E.Railway, Orissa Forest Corporation Building, A-84, Kharvelanagar, Bhubaneswar, Dist.Puri

..... Applicants

By the Advocate - Mr.G.A.R.Dora

Vrs.

1. Union of India through the General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Director (Establishment), Railway Board, Railway Bhawan, New Delhi-110 001.
3. Chairman, Railway Recruitment Board, Orissa Forest Corporation Building, 2nd Floor, A-84, Kharvelanagar, P.O-Bhubaneswar, Dist.Puri ... Respondents

By the Advocate - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the nine applicants who have been permitted to file the application jointly, have

prayed for quashing the order dated 16.3.1992 at Annexure-A/9 terminating their services with one month's notice. There is also a prayer for a direction to the respondents to regularise the services of the applicants in accordance with the decisions of the Hon'ble Supreme Court, along with consequential financial benefits.

2. The short facts of this case, according to the petitioners, are that they were selected and appointed as Casual Khalasi, Casual Record Sorter, Casual Junior Clerk and Casual Jeep Driver in the office of Chairman, Railway Recruitment Board at Bhubaneswar on different dates between 18.2.1987 and 1.6.1989. Their qualifications vary from Class VIII to B.Sc. Applicant no.1 was promoted as Junior Clerk in order dated 16.6.1988 and he had been holding the post till the time of filing of the application. According to the petitioners, they are working continuously and satisfactorily from the date of their initial engagement. Only in case of applicant no.5 there was a break from 29.9.1987 to 29.2.1988. The applicants have further stated that compared to the heavy workload in the office of Chairman, Railway Recruitment Board, the staff under Chairman, Railway Recruitment Board (respondent no.3) are inadequate and therefore, respondent no.3 engaged the applicants as casual staff against Class III and Class IV posts. Their work was highly satisfactory which is borne out by the fact that applicant nos. 2 and 5 were awarded Rs.1000/- for outstanding work in 1987-88. Applicant nos. 1 to 5 were awarded Rs.1000/- each in 1988-89 and again in 1989-90. Applicant nos. 1 to 5 were given a Group Award of Rs.2000/- in 1990-91. Even though the work of the applicants was satisfactory, the Director (Establishment), Railway Board (respondent no.2) in his

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letter dated 21.11.1990 (Annexure-A/5) criticised respondent no.3 for employing the applicants. In this letter, age relaxation was given to the applicants for recruitment to Class III (Group C) posts through Railway Recruitment Board for those having Matriculation qualification. It was also indicated that persons who do not get selected through Railway Recruitment Board may be given an option to continue as casual labourers in Group D posts. In another letter of the same date 21.11.1990 (Annexure-A/6) respondent was instructed to transfer the surplus staff to the adjoining Division for regularisation. According to the applicants, applicant no.5 has been selected by Railway Recruitment Board as per Annexure A/5 and applicant nos. 2 and 9 are eligible for selection as per Annexure-A/5 and the rest of the applicants are entitled to continue in Class IV posts as per the same Annexure. The applicants along with others represented for regularisation and respondent no.2 in his letter dated 13.2.1992(Annexure-A/7) called for factual information from respondent no.3. Respondent no.3 in his letter dated 3.3.1992(Annexure-A/8) explained that due to inadequate staff and in order to cope with heavy work, the applicants were employed and because of their outstanding and sincere work, Railway Recruitment Board could achieve the target. After protracted correspondence, Railway Board had passed orders for regularisation of these applicants in the adjoining Divisions, but Khurda Road Division did not take any steps. Under these circumstances, the applicants submit that the Railway Board should have directed the Division for regularisation of their services. In the face of the above position, respondent no.3 in the impugned order dated 16.3.1992 has ordered

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to terminate the services of the applicants with effect from 16.4.1992. That is why the petitioners have come up with the prayers referred to earlier.

3. On the date of admission of this application on 26.3.1992 termination of services of the applicants was stayed as an interim measure. This order was made absolute in order dated 7.5.1992 and has been continuing till date.

4. Respondents in their counter have submitted that the applicants were employed on daily wage basis as Casual Khalasis. It is further submitted that workload in the Railway Recruitment Board was heavy at the time of their initial engagement. But there has been considerable change in the situation thereafter. Workstudy was conducted in respect of office of Railway Recruitment Board and it was found that the office was overstaffed by casual employees and as such the applicants were declared surplus. It is further stated that continuation of the petitioners beyond six months period was illegal and contrary to the statutory instructions. But in view of long continuance of the applicants, regularisation was recommended by the inspecting officer at Annexure-A/5. It is further stated that the workstudy done at the direction of the General Manager, S.E.Railway, found after a thorough study that the Railway Recruitment Board has justified to have 19 staff only. As such, nine persons were found to be surplus. Accordingly, nine juniormost persons, the present applicants had been served with notices for termination of services as there was no work for them. Names of these applicants have been borne in the Live Casual Register of Khurda Road Division and their services will be utilised as and when necessary. They will be entitled to absorption according to their

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13 seniority and in accordance with rules. It is further submitted that the applicants were offered appointment as Hot Weather Waterman/Substitute in Senior Divisional Personnel Officer's letter dated 28.5.1992 and were also directed for screening vide Railway Recruitment Board's office orders dated 28.5.1992 and 3.7.1992, but the applicants declined to attend the screening. In view of this, the respondents have stated that there is no workload available for the petitioners and notice of termination has been rightly issued to the juniormost persons. On the above grounds, they have opposed the prayer of the applicants.

5. The applicants in their rejoinder have stated that they were engaged on monthly payment basis and not on daily wage basis. It is further stated that as per Rule 2501(b)(i) of Railway Establishment Manual after four months of casual service an employee acquires temporary status according to the decision of the Apex Court. The respondents have admitted this position in paragraph 2 of their counter in OA No. 351 of 1992 filed by the Group D staff of this very Railway Recruitment Board. It is further stated that the workstudy report justified continuation of 19 staff, but Railway Recruitment Board acted arbitrarily in holding that only 9 staff could be retained. This position has also been admitted by respondent no.3 in Annexure-A/8. It is further stated that continuation of the applicants beyond six months and for more than five years shows that there is need for their services and the applicants are therefore entitled to be regularised in accordance with the decision of the Hon'ble Supreme Court in Piara Singh's case (AIR 1992 SC 2315). It is also stated that

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Live Casual Register is maintained for irregular casual staff who work for a few days in a year with long spells of break. It is further stated that according to the decision of the Railway Board communicated in their letter dated 30.9.1983 (Annexure-A/10) the applicants are entitled to regularisation. It is also stated that in a series of decisions referred to in the rejoinder, the Hon'ble Supreme Court have held that daily wage employees working for long period are entitled to regularisation. On the above grounds, the applicants in their rejoinder have reiterated their prayer made in the O.A.

6. We have heard Shri G.A.R.Dora, the learned lawyer for the petitioners and Shri Ashok Mohanty, the learned counsel appearing for the respondents, and have also perused the records.

7. It has been urged by the learned counsel for the petitioners that the power of Railway Board to frame Rules is derived from Rule 157 of Indian Railway Establishment Code, Volume I. It has been held by the Hon'ble Supreme Court in the case of The Railway Board and others v. P.R.Subramaniam and others, AIR 1978 SC 284, that Railway Board having framed rules in exercise of this power, ~~no~~ special procedure or method is prescribed for the making of such rules by the Railway Board. But these have been treated as rules having the force of rules framed under Article 309 of the Constitution pursuant to the delegated power to the Railway Board if such rules are of general application to non-gazetted railway servants or to a class of them. It has been further submitted by the learned counsel for the petitioners that according to Rule 2501 (b)(i) of Indian Railway Establishment Manual(Second Edition)

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after four months of casual service, an employee acquires temporary status. In 1990 Edition of Indian Railway Establishment Manual, Volume II, Rule 2501 has been recast and renumbered as Rule 2001. This is seen from the Concocordance Table at the end of Indian Railway Establishment Manual, Volume II (1990 Edition). This Rule 2001 is in Chapter XX dealing with casual labour. It has been submitted by the learned counsel for the petitioners and mentioned in the rejoinder filed by the applicants that as per Rule 2501(b)(i) after four months of casual service, an employee acquires temporary status. Under the revised Rule 2001 casual labour engaged on open line are entitled to temporary status if they have been engaged for more than 120 days without a break. For casual labour on projects it has been mentioned that grant of temporary status to them is regulated by separate instructions. Under these instructions casual labour engaged on projects acquire temporary status after completing 180 days of work. The case of the petitioners is that they have been engaged for more than ten years and are, therefore, entitled to temporary status and also regularisation of service. In the letter of Railway Board at Annexure-A/5 it has been mentioned that such casual labour available with the Railway Service Commissions (in this case, Railway Recruitment Board) should be regularised by transferring them to adjoining Divisions. The petitioners' case is that since they are entitled to be regularised, they should be given regular jobs in the adjoining Divisions equivalent to the posts they are now holding in Railway Recruitment Board. Learned counsel for the petitioners has stated that in the letter of Railway Board at Annexure-A/6, which is a letter from Director(Establishment), Railway Board to Chairman,

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Railway Recruitment Board, Bhubaneswar, it is clear that casual labourers are to be regularised by transferring them to the adjoining Division. In view of this, it is submitted that the action of the Member-Secretary, Railway Recruitment Board in issuing the impugned order dated 16.3.1992 giving the applicants one month's notice before termination is not in accordance with the instructions. It has been further submitted that the Hon'ble Supreme Court in the case of State of Haryana and others v. Piara Singh and others, etc., etc., AIR 1992 Supreme Court 2130, have held that a person should not be kept in a temporary or ad hoc status for long or where a temporary or ad hoc appointment is continued for long it is presumed that there is need and warrant for a regular post and accordingly, regularisation was directed by the Hon'ble Supreme Court in the above case. Relying on Dhirendra Chamole's case, 1986(1) SCC 637, it has been further argued that if posts are not there in the Railway Recruitment Board, in view of long continuation of the applicants as casual workers, the obvious conclusion would be that there is need for such posts and posts should be created for regularising the applicants. In support of his above contention for regularisation, the learned counsel for the petitioner has relied on the decision in the case of All Manipur Regular Posts Vacancies Substitute Teachers'

Association v. State of Manipur, AIR 1991 SC 2088

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where the appellants were working for several years as substitute/ad hoc teachers. On the State Government refusing to regularise them and taking steps for direct recruitment, Hon'ble Supreme Court directed the State Government to consider regularisation of the substitute/ad hoc teachers before making direct recruitment to any residual vacancies after the process of regularisation is complete. The learned counsel for

learned counsel for the petitioner has also referred to the case of Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka and others, AIR 1992 SC 677, in which the Hon'ble Supreme Court directed services of such teachers who have worked as such to be regularised as and when regular vacancies arise. The last decision relied upon by the learned counsel for the petitioners is Chief Conservator of Forests and another, etc., etc. v. Jagannath Maruti Kondhare, etc. etc., 1996(1) SLR 56, in which the Hon'ble Supreme Court held that where casual workers are in the employment of the State for five to six years, failure to regularise them and to deny them equal wages amounts to unfair labour practice. The applicants' case is that they have been engaged on different dates between 1987 and 1989. This contention has not been specifically denied in the counter. On the basis of the above decisions of the Hon'ble Supreme Court the learned counsel for the petitioners has prayed for regularisation. The learned counsel for the petitioners has also referred to two more cases Surinder Singh and another v. The Engineer in Chief, CPWD and others, AIR 1986 SC 584 and Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371. But these two cases relate to principle of equal pay for equal work and the question of having the requisite qualification and these two decisions are of no relevance for the present purpose.

8. The above contentions of the learned counsel for the petitioners are discussed below. The

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applicants in this case have not asked for conferment of temporary status and therefore, the provisions of old Rule 2501 and the present rule 2001 of Indian Railway Establishment Manual, Volume II need not be considered. On the question of their regularisation, the position of law is clear that casual worker can be regularised only against a vacant post. In the decisions relied upon by the learned counsel for the petitioners, Hon'ble Supreme Court have directed regularisation against posts which are vacant as in the case of **All Manipur Regular Posts Vacancies Substitute Teachers' Association (supra)**. In the Railway Recruitment Board, the sanctioned strength of the staff is only nine. It has been submitted by the respondents in their counter that initially the workload was heavy and casual workers were engaged. With the passage of time, the workload has gone down but casual workers have been retained even though there is no work for them. It has been further stated by the respondents that Railway Board's letter dated 26.8.1989 lays down that Chairman, Railway Service Commissions are empowered to engage staff upto 6 months only. In view of this engagement of casual workers for such long period, as in this case, is unauthorised. As regards requirement of staff, the Work Study Unit have examined the work of the Railway Recruitment Board, Bhubaneswar and have recommended staff strength of 19, but the Railway Board has agreed to the staff strength of nine and that is how the applicants have been given one month's notice. Admittedly, the Work Study Unit have recommended nineteen posts for the Railway Recruitment Board, Bhubaneswar, but it is for the Railway Board to take a view on the report of the Work Study Unit which is in the nature of a recommendation only. As the Railway Board have decided to have the staff strength of nine,

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there cannot be any question of retaining the applicants by creating additional posts in the Railway Recruitment Board even if there is no work for them. On the basis of the decisions relied upon by the learned counsel for the petitioners, it has been argued that the very fact that the applicants have continued for long years from 1987 and 1989 would show that there is need for work and posts should be created and the applicants should be regularised. The Tribunal cannot direct the Department to create posts. The question of regularisation of the applicants would come up only if vacant posts are there. As there are no vacant posts in the Railway Recruitment Board, their service cannot be regularised in the Railway Recruitment Board. The instructions of the Railway Board are that such staff should be transferred to the adjoining Division, should be screened in accordance with the instructions and would be regularised according to their seniority amongst such casual workers. From Annexure-A/5 given by the petitioners it appears that the decision is to transfer the casual labourers to the adjoining Divisions to be placed in the Live Casual Register for utilising their services in the Railway Recruitment Board or for some other work. It further appears from the letter of the Railway Recruitment Board at Annexure-A/8 given by the applicants themselves that out of 19 casual staff some have been regularised in the Division, some are working against certain transferred posts for last three to four years and some have been retrenched. From this it appears that some of the casual workers have already been regularised in the Division and therefore, the petitioners must await for their turn for

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regularisation. As there are no regular posts in the Railway Recruitment Board, their prayer for regularisation in Railway Recruitment Board is held to be without any merit and is rejected.

9. There is also another aspect of this matter which has to be taken into consideration. The applicants have not stated that they came to be engaged as casual workers through any process of selection and that they competed with other candidates and were engaged as casual workers after coming out through such selection. In view of this, their cases cannot also be considered for regularisation straightaway. Hon'ble Supreme Court in the case of Union of India and others v. Bishamber Dutt, Volume 15 Supreme Court Service Rulings 418, considered the case of persons who came to be appointed as Class IV employees in the office of Controller of Defence Accounts on part-time basis receiving consolidated pay of Rs.600/- per month. They were not appointed to any regular posts after selection according to the rules. They were appointed as part-time employees de hors the rules. The Hon'ble Supreme Court held in that case that as they were not appointed on regular basis according to the rules after consideration of the claim of others on merits, there is no question of regularisation of their services. In the case of State of Haryana v. Surinder Kumar and others, 1997(3) Supreme 406, it was held by the Apex Court that any appointment to service has to be in accordance with statutory rules and the respondents, who were working on daily wages on contract basis in the post of Clerks, cannot have any right to the posts until they are duly selected and appointed. Chandigarh Bench of the Tribunal also held in the case of Harmesh Kumar v. Union of

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India and others, (1997) 36 ATC 36 , that casual labourers engaged on daily wage basis without being sponsored by the Employment Exchange and without appointment letter and continuing as such by obtaining interim order from the Tribunal are not entitled to regularisation. In that case, the engagement was for a short period of four months and was without any appointment letter. In the instant case, the applicants have continued for many years though for the last six years they are continuing on the basis of stay order granted by the Tribunal and they were given letters of engagement as casual workers on daily wage basis according to the respondents and on monthly wages according to the applicants themselves. But their long engagement would not give them any right to get recruited to regular posts de hors the Recruitment Rules. In the case of Dr.Arundhati Ajit Pargaonkar v. State of Maharashtra and others, Vol.9 Supreme Court Service Rulings 86, the Hon'ble Supreme Court held that continuous working for long period would not be a ground for overreaching the law. Requirement of rules of selection cannot be substituted by humane consideration. In that case, the post concerned was a higher post to be recruited through Public Service Commission. But the point decided was that long continuance of persons who have come in irregularly cannot be a ground for regularising their services. The applicants have stated that applicant no.9 who was originally engaged as casual khalasi was promoted as Junior Clerk in order no.172 dated 16.6.1988. A casual worker is not entitled to any promotion. Applicant no.9 continued to work on casual basis even after his so called promotion to the post of Junior Clerk. As such, this promotion is not of any relevance to the question of regularisation. In the

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above view of the matter, the respondents cannot be found fault with for issuing the notice of termination because there are no posts against which the applicants can be retained even on daily wage basis and secondly, according to the respondents, there is no need for their engagement in the Railway Recruitment Board, Bhubaneswar. A person engaged on daily wage basis as casual worker can be disengaged when there is no need for his service. But while disengaging such a person, the employer must observe the principle of "last come first go". In this case, the respondents have stated that these applicants are the nine juniormost persons and therefore, the disengagement cannot be faulted on this ground also. In view of the above, the prayer of the applicants for quashing the order at Annexure-A/9 is held to be without any merit and is rejected.

10. The respondents have already indicated that the applicants have to be absorbed in Khurda Road Division and their services will be regularised in accordance with rules and in their turn. For such engagement in Khurda Road Division, they have to appear at the screening according to the rules. From the counter, it appears that once they were asked to appear for screening for being appointed as hot weather waterman/substitute, but they declined to attend the screening. In view of this, while we reject the prayer of the petitioners for regularisation, we direct that the cases of these applicants for screening and their inclusion in the Live Casual Register and their engagement as substitute in accordance with their turn should be considered by the departmental authorities. While considering the engagement of the applicants in the adjoining Division, they should be given age

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relaxation to the extent of their service as casual workers in the Railway Recruitment Board or to the extent permissible by relaxation of the recruitment rules whichever is higher.

11. With the above observation and direction, the Original Application is disposed of. There shall be no order as to costs.

A.K. Misra

(A.K.MISRA)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *4.1.99*

AN/PS