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(10)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.206 OF 1992
Cuttack this the 14th day of October, 1998

PRONOUNCED IN THE OPEN COURT

S.B. Panda & another

Applicants

-Versus-

Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes .
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No .

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.10.98

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(11)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.206 OF 1992
Cuttack this the 14th day of October, 1998

CORAM: THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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1. Shishir Baran Panda,
S/o.Bishnuprada Panda,
C/o.Nirmal Baran Panda
At-Qrs.No.Type-III, 19
Regional College of Education Campus,
Bhubaneswar, District: Puri
2. C.V.Narayan Rao,
S/o.Sri C.V.Ramachandra Rao
A resident of MIG 2/20
Chandrasekharpur, Bhubaneswar
District: Puri

Both were earlier working as
Contingent Clerks in the
Office of Accountant General(A.E.)
Orissa, Bhubaneswar

Applicants

By the Advocates:M/s.B.Mohanty
M.Mohapatra
S.Palit

-Versus-

1. Union of India
represented through
Comptroller & Auditor General of India
New Delhi
2. Accountant General
Orissa, Bhubaneswar

Respondents

By the Advocates:Mr.Ashok Mohanty
Sr.Standing Counsel
(Central)

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

1. In this application under Section 19 of Administrative Tribunals Act, 1985, the two applicants have prayed for a direction to the respondents to immediately engage them against the posts of Clerk that are lying vacant in the office of respondent no.2 and there is also a second prayer that the respondents should be directed to allow the applicants equal pay for equal work for the period they have worked as Contingent Clerks.

2. The facts of this case, according to the petitioners, are that petitioner no.1 was working as Contingent Clerk in the office of Accountant General, Orissa, in July 1984. Petitioner no.2 was engaged as Contingent Clerk on 27.5.1985. They worked as Contingent Clerks to the best of ability and to the satisfaction of official superiors. Petitioner No.2 continued upto June 1985 and again was re-engaged in April 1986 as Contingent Clerk. Petitioner no.1 continued uninterruptedly till 6th September 1987 by which date he completed 880 days of continuous service and petitioner no.2 had completed 368 days of continuous service. The details of number of days served by applicant nos.1 and 2 year-wise are at Annexure-A/1. According to the applicants, on 9th September, 1987, when they reported for duties they were intimated that they have been disengaged. The applicants state that similarly placed contingent staff in the office of respondent no.2 were, however, allowed to work. It is further submitted by the applicants that in the year 1984-85 there were difficulties in getting candidates nominated through Staff Selection Commission and a large number of vacancies were there in the office of the Accountant

S. Som.

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General, Orissa and that is how the work was managed by engaging contingent workers as Clerks. The applicants have further stated that they have the requisite qualification of Matriculation with proficiency in typewriting. After they were disengaged, applicant no.1 along with some others came up before the Tribunal in OA No.207 of 1988 which was disposed of in order dated 2.2.1989. The Tribunal observed that in case there are vacancies in the clerical cadre, the Accountant General would entrust work enjoined to the posts (if vacant) to the applicant considering the seniority of the applicant till the vacancies are filled up by regular candidates. Against the order dated 2.2.1989 in OA No. 207/88 the respondents filed Review Application No.9 of 1989 in which the respondents pointed out that the applicants including the present applicant no.1 never discharged the work of Clerk-cum-Typist. They were engaged in sorting out papers in the office of Accountant General and were doing other jobs of like nature. The Tribunal clarified that if there are vacancies, the petitioners including the present applicant no.1 be given the same nature of work as was given to them prior to filing of application forming subject-matter of OA No.207/88. Petitioner No.2 filed O.A.No.286 of 1988 where a similar order was passed. That order was sought to be reviewed in Review Application No.8 of 1989 which was disposed of in order dated 4.5.1989. Accountant General, Orissa, brought to the notice of the Tribunal that the petitioner in that case who is applicant no.2 before us never worked as Contingent Clerk. He worked as Contingent Mulia or Chaparasi and was allotted with the duty of sorting papers and was doing other jobs of similar nature. In consideration of that the Tribunal clarified their earlier order stating that against vacancies if existing the petitioner be given the same nature of work as was given to him prior to filing of application forming

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subject-matter of OA No286 /88. In the context of the above facts, the applicants have come up with the prayer referred to earlier.

3. The respondents have filed preliminary counter and a subsequent reply indicating that subject matter of the present application is similar to OA No.207/88 and O.A.No.286/88 and those applications having been disposed of the present application is barred under Order 2, Rule 2 of Civil Procedure Code. It has been further submitted by the respondents that on 26.8.1992, 85 posts were vacant of which 49 posts were to be filled up through Staff Selection Commission. It is further submitted that 10 non-Matriculate Group D incumbents are awaiting for promotion to the posts of Clerk on passing the Departmental Examination and another 20 Group D officials have appeared at the Departmental Examination held in the month of July 1992. Besides, the examination of Matriculate Group-D officials is scheduled to be held in September 1992 and qualified persons are to be promoted to the posts of Clerk. Moreover, five posts have been reserved for compassionate appointment and seven posts are pending because of unilateral transfer. There are also five posts to be filled up against sports quota and for the balance nine posts, offers of appointment have already been issued and the candidates are expected to join. In view of the above, it has been submitted by the respondents that there are no vacancies in the posts of Junior Clerk. In any case the stand of the respondents in Review Applications referred to earlier was that the petitioners had never worked as Contingent Clerks and were working as Mulia in the office of respondent no.2. It is submitted by the respondents that in accordance with recruitment rules, persons engaged on contingent basis cannot claim regularisation. On the above grounds, the respondents have opposed the prayer of the applicants.

4. We have heard Shri S.Palit, the learned counsel for the applicants and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents, and have also perused the records.

5. Posts of Clerk in the office of Accountant General have to be filled up in accordance with the Recruitment Rules and through the Staff Selection Commission. The Hon'ble Supreme Court have held that persons who have been recruited from open market and also who have come in without any selection procedure, cannot claim regularisation. It has been held that regularisation of such persons would mean backdoor entry circumventing the Recruitment Rule and would open the floodgate of corruption. Besides, in this case, the stand of the respondents is that the applicants had never worked as Contingent Clerks. Therefore, they cannot claim regular appointment to the posts of Clerk which have to be filled up strictly in accordance with the Recruitment Rules and through the Staff Selection Commission. As regards their assertion that their services have been terminated without notice, it is seen that they were engaged as workers on contingent basis and by their very nature of work, such persons are engaged as and when need for such work arises and when there is no need for casual workers the departmental authorities will have, ~~however~~, the liberty to disengage them following the principle of "first come last go". In consideration of this, we hold that the applicants have not been able to make out a case for any of the reliefs prayed for in this application. The Original Application is, therefore, rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN