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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.483 OF 1992
Cuttack, this the 6th day of August, 1997

Bhagirathi Prusti

Applicant.

Vrs.

Union of India and another ... Respondents.

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? *Yes*
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

6.8.97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 483 OF 1992
Cuttack, this the 6th day of August, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM , VICE-CHAIRMAN

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Bhagirathi Prusti,
Caretaker, Inspection Room,
Baripada Headquarters,
District-Mayurbhanj Applicant.

Vrs.

1. Union of India,
represented through
Chief Postmaster General,
Orissa Circle,
Bhubaneswar-751 001.

2. Superintendent of Post Offices,
Baripada Division,
Baripada ... Respondents.

Advocate for applicant - Mr.D.P.Dhalsamant.

Advocate for respondents - Ashok Misra,
Sr.Panel Counsel.

O R D E R

Somnath Som, Vice-Chairman

In this application under Section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed
for a direction to the respondents to bring him to the common
panel for appointment to Group-D post. There is also a prayer
for a direction to engage the applicant as a full time
casual labourer as and when occasion arises in preference to

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outsiders. At the time of admission of the O.A. on 23.9.1992, an interim direction was issued to the respondents for engaging the applicant as casual labourer as and when work is available.

2. The facts of this case, according to the application, are that the applicant has been working as part-time contingent paid caretaker of Inspection Room attached to Baripada Head Office from 10.7.1987 with occasional breaks. Even these breaks are during the period when he worked as casual labourer against vacancies in the rank of Postman and other Group-D posts. According to the applicant, Director-General, Posts, in his order dated 4.8.1970 (Annexure-1) has directed that part-time contingent minials, who are paid for specified hours of work, may be treated as part-time casual labourers for recruitment to Class IV posts in accordance with Home Ministry's Office Memo dated 5.7.1968. Accordingly, the applicant has claimed that he should be treated as a part-time casual labourer even though he is a contingent paid worker. It is further submitted that in Posts & Telegraphs Directorate's letter dated 20.10.1984 (Annexure-2) instructions have been issued to bring part-time casual labourers and full-time casual labourers to a common panel for the purpose of recruitment to Group-D posts if they have put in 240 days of service in the

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preceding two years for full-time casual workers and in the preceding four years in case of part-time casual workers. The case of the applicant is that he has put in 240 days of work in each of the preceding four years and has met the requirement and therefore, he is entitled to be brought to the common panel for recruitment to Group-D post even though he is continuing as a contingent paid worker. As regards assigning him priority for placement in the panel, the applicant has relied on Director-General, Posts' circular dated 17.5.1989 (Annexure-3). On the above basis, he has made the prayers referred to earlier.

3. The respondents in their counter have submitted that the applicant has been working as a contingent paid caretaker of the Inspection Room attached to Baripada Head Office since 1.7.1988 till date and during the period from 1.7.1988 and prior to that the applicant has worked as Postman and against other Group-D posts on daily wage basis in different spells. As his period of engagement exceeded 240 days in a year he represented for availing the benefits available to casual workers. The case of the applicant was taken up with higher authorities on 10.8.1991 and 24.9.1991 for necessary orders and decision is awaited. The respondents in their counter have stated that they have no comments to make with regard to averment in paragraph 4(iv) of the O.A. and they have submitted that the applicant has been allowed

Comments from 6.8.91

to work as and when work is available and action as required under the Rules has been taken and further action will also be taken after receipt of the decision from the higher authorities. When the matter came up for hearing on 10.7.1997 learned Senior Panel Counsel appearing on behalf of the respondents wanted ten days time to indicate if the case of the applicant for regularisation had been recommended to the higher authorities and if so, what has been the final orders thereon. At the time of final hearing, it was submitted by the learned Senior Panel Counsel that the applicant has been found ineligible to be appointed to a Group-D post because he had appeared at Postman Examination held on 30.12.1990 but he could not qualify in that Examination. On the above grounds, the respondents have opposed the prayer of the applicant.

4.I have heard the learned lawyer for the applicant and the learned Senior Panel Counsel appearing on behalf of the respondents and have also perused the material on record. At the time of admission of the O.A. on 23.9.1992, it was ordered that the question of limitation was kept open to be taken up at the time of hearing. It has been submitted by the learned lawyer for the applicant that even though the initial engagement of the applicant as part-time contingent paid caretaker has been from 10.7.1987, his grievance that he has not been brought into the common panel is a continual injury and therefore, the application must be taken to be

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within the period of limitation. In consideration of the above submission, I hold that the application is within the period of limitation.

5. In paragraph 4.4 of the application, it has been averred by the applicant that he has put in 240 days of work in each of the preceding four years. The respondents in paragraph 5 of their counter have submitted that they have no comments to make with regard to paragraph 4.4 of the O.A. From this, it is to be taken that the applicant's averment that he has put in 240 days of work in each of the preceding four years has been accepted by the respondents. In letter dated 10.8.1991 from Superintendent of Post Offices, Mayurbhanj Division, Baripada, to Post Master General, Orissa Circle, Bhubaneswar, the number of days the applicant had worked against the vacancy of Postman and other Group-D posts has been indicated monthwise from June 1986 to April 1991. It has been submitted by the learned lawyer for the applicant that besides these days when he has worked against casual vacancy at the level of Postman and other Group-D posts, he has been working as contingent paid caretaker of the Inspection Room and he has put in 240 days of work in the preceding four years and this has not been controverted by the respondents. From the circular dated 4.8.1970 at Annexure-1 which has also not been contested by the respondents in their counter, it is seen that part-time

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contingent menials are to be treated as part-time casual workers for the purpose of recruitment to Class IV posts. Similarly, in letter dated 20.10.1984 (Annexure-2), it has been mentioned specifically in sub-paragraph (c) of paragraph 2 that part-time casual labourers have to be brought into the common panel. The relevant portion of the circular is quoted below:

"(c) Part-time casual labour and full time casual labour may be brought on to a common panel for the purpose of recruitment to Group D posts. According to the present orders, full time casual labourers are eligible for recruitment to Group D posts, if they have put in 240 days of service in each of the preceding two years and part time workers are eligible if they have put in 240 days of service in each of the preceding four years. Subject to these orders, the service rendered by part-time casual workers may be divided by two and thereafter full time casual workers and part time casual workers may be listed out in the order of their length of service."

From the relevant portion of the circular quoted above, it is clear that the applicant who has to be treated as a part-time casual worker has a right to be brought into the common panel. This is also his prayer in this O.A. As regards his appointment to Class IV post, the applicant has not made any such prayer and in any case, that will have to be considered according to the priority fixed amongst different categories

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14 of staff which has been laid down in the circular dated 17.5.1989 (Annexure-3) and also the suitability of the applicant. His present prayer for being included in the common panel is strictly in accordance with the circular quoted above. The fact that he has been working as a contingent paid worker from July 1987 till date is also a fact which should be taken into consideration by the respondents. In consideration of the above, it is ordered that the respondents should include the name of the applicant in the common panel strictly in accordance with the circular dated 20.10.1984 within a period of 90 (ninety) days from the date of receipt of copy of this order.

6. In the result, the application is allowed, but without any order as to costs.

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