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(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

O.As 53/92,
60/92, 61/92
and 69/92

Cuttack this the 7th day of March, 97

HON'BLE SHRI SOMNATH SOM, VICE CHAIRMAN.

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J).

O.A. 53/92

1. Rabinarayan Mohanty,
S/o Purna Chandra Mohanty,
Vill - Bhattagram,
PO- Jhankad, PS Tirtol,
District - Cuttack.
2. S.K. Basiruddin,
son of Jalaluddin,
Vill - Purbakachha,
PO - Bhugram, PS-Jagatpur,
Distt. - Cuttack.
3. Satyabrat Patra,
S/o Jageshwar Patra,
Village - Mahajanpur,
PO - Bahugram,
PS - Jagatpur,
Distt. Cuttack.
4. Sukadev Sethy son of
Hari Sethy,
Village - Sabalpur,
PO - Bentakar,
PS - Sadar, Distt. Cuttack.
5. Basant Kumar Samal,
son of Dinabandhu Samal,
Vill- Arilo, PO-Pippalmadhab,
PS - Tirtol, Distt-Cuttack.
6. Babaji Charan Pradhan,
son of Nilambar Pradhan,
Vill - Reso, PO - Sansantal,
PS - Pattamundai, Distt.Cuttack.

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7. Kailash Chandra Swain,
 son of Purna Chandra Swain,
 Vill/PO - Panchapalli,
 PS - Ersama,
 Distt. Cuttack.

8. Bhagirathi Pati,
 son of late Bairagi Charan,
 Pati, Vill. Jalahari Sasan,
 PO - Malada, PS Bhandaripokhari,
 Distt. Balasore. ... Applicants.

By Advocate M/s S. Das, J.K. Mohanty, A. Mohanty and Y. Nayak.

Versus

1. Union of India, represented through the Secretary, Post Dak Bhawan, New Delhi.
2. Chief Postmaster General, at PO Bhubaneswar, District - Puri.
3. Senior Superintendent, R.M.S. (N) Division, Cuttack.
4. Head Record Officer, R.M.S. (N) Division, Cuttack.

By Advocate Shri Aswini Kumar Mishra.

O.A. 60/92

1. T. Danneya son of Tateya,
Village - Gandarpur,
PO - College Square,
PS - Chauliaganj, Dist. Cuttack.
2. Ramesh Chandra Nayak,
son of Duryodhan Nayak,
village - Kapileswar,
PO - Kantapara, PS-Govindpur,
Distt. Cuttack.

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3. Laman Francis,
son of Anthony Francis,
Vill - Chauliaganj,
PO - Nayabazar, PS - Chauliaganj,
Distt. Cuttack.
4. Manoj Kumar Nayak,
son of Aparti Nayak,
Village - Sikharpur,
(Nadikulasahi),
PO - Nayabaar, PS - Nayabazar,
PS - Chauliaganj, Distt. Cuttack.
5. Sudarsan Mallik (S.C.),
son of Dharma Mallik,
Vill/PO/PS Kandarpur,
Distt. Cuttack.
6. Dhirendra Kumar Sill,
son of Bhramarbar Sill,
Vill - Khatbinashi,
PO - Tulsipur, PS Lalbag,
Distt. Cuttack. ... Applicants.

By Advocate M/s S. Das, J.K. Mohanty, A. Mohanty and Y. Nayak.

Versus

1. Union of India, represented
through the Secretary,
Post Dak Bhaban, New Delhi.
2. Chief Postmaster General,
at PO - Bhubaneswar,
Distt. Puri.
3. Senior Superintendent,
R.M.S. (N) Division, Cuttack.
4. Head Record Officer,
R.M.S. (N.) Division,
Cuttack. ... Respondents.

By Advocate Shri Aswini Kumar Mishra.

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O.A. 61/92

1. Sk. Abtabuddin,
son of Sk. Amiruddin,
Village - Paschimakachha,
PO - Madhyakachha,
PS - Jagatpur, Distt. Cuttack.
2. Bhimsen Barik,
son of Bidyadhar Barik,
Vill - Sartol, PO - Nuabazar,
PS - Madhupatna,
Distt. Cuttack.
3. Nityananda Sahoo,
son of Jagannath Sahoo,
Village - Taliha, PO-Rambag,
PS - Jajpur,
Distt. Cuttack.
4. Satyabadi Biswal,
son of Narayan Biswal,
Vill - Balarampur, PO-Baijanga,
PS - Jagatsinghpur,
Distt. Cuttack.

By Advocate M/s S. Das, J.K. Mohanty, A. Mohanty and Y. Nayak.

Versus

1. Union of India, represented through the Secretary, Post Bak Bhaban, New Delhi.
2. Chief Postmaster General, at P.O. Bhubaneswar, Distt. Puri.
3. Senior Superintendent, R.M.S. (N) Division, Cuttack.
4. Head Record Officer, R.M.S. (N) Division, Cuttack.

By Advocate Shri Aswini Kumar Mishra.

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O.A. 69/92

1. Gurubari Biswal,
son of Bhubanananda Biswal,
Vill - Purusottampur,
PO - Sisua, PS - Salipur,
Distt. Cuttack.
2. Jayaram Sahu,
son of Duryodhan Sahu,
Vill - Balabhadrapur,
PO - Sisua, PS - Salipur,
Distt. Cuttack.
3. Biyathesh Tripathy,
son of Udayanath Tripathy,
Vill & PO - Alabol,
PS - Balikuda, Distt. Cuttack. ... Applicants.

By Advocate M/s S. Das, J.K. Mohanty, A. Mohanty and Y. Nayak.

Versus

1. Union of India, represented
through the Secretary,
Post Dak Bhaban, New Delhi.
2. Chief Postmaster General,
at P.O. Bhubaneswar,
Distt. Puri.
3. Senior Superintendent,
R.M.S. (N.) Division, Cuttack.
4. Head Record Officer,
R.M.S. (N) Division,
Cuttack. ... Respondents.

By Advocate Shri Aswini Kumar Mishra.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Heard the learned counsel for the parties.

2. With the consent of the learned counsel for both the parties, O.As 53/92, 60/92, 61/92 and 69/92 were taken up together as the same facts and issues are involved in all these cases.

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However, for the sake of convenience, the facts and issues in O.A. 53/92 (Rabinarayan Mohanty & Ors. Vs. Union of India & Ors.) have been referred to.

3. The learned counsel for the applicants in the above O.A.s has also submitted that out of the 21 applicants, he is pressing the case of only 12 applicants, namely, S/Shri Rabinarayan Mohanty, B.K. Samal, Bhagirathi Pati, T. Danneya, Laman Fracis, M.K. Nayak, Sudershan Mallik, D.K. Sill, Sk. Abtabuddin, Nityananda Sahoo, Satyabadi Biswal and Jayaram Sahu in the aforementioned O.A.s.

4. The main grievance of the applicants in this case(OA 53/92) is that although they have worked as Casual Labourers against the post of Extra Departmental Mail Man (E.D.M.M.) for long periods from 3 to 11 years, the respondents have failed to regularise their services in those posts. It is also noted that in pursuance of the interim order passed on 21.8.1996 the services of the applicants were ordered to be continued as before. It is not disputed by the respondents that the applicants have been engaged by them in various spells as Substitutes ^{to} E.D.M.M.s attached to HRO, RMS Division, North Division, Cuttack as and when the exigencies of the services required for such engagement. Further, the respondents have submitted that the E.D.M.M.s cannot be regularised in Group 'D' service as they are only working as Substitutes and not as Casual Labourers. The learned counsel for the applicants has, however, submitted that at the time of filing of these applications in 1992, there were six vacant posts of E.D.M.M for which they ought

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to have been considered. We note from the reply given by the respondents that HRO, RMS Division, Cuttack had called for the candidates from the Employment Exchange for filling up these six posts of E.D.M.M. which, according to them, was in accordance with the Rules and in the circumstances the question of considering the applicants, who have not been sponsored by the Employment Exchange, does not arise. This stand taken by the respondents cannot be accepted as admittedly the applicants have worked as E.D.M.Ms for various periods and they should also be considered for regular appointments in accordance with the Rules. The learned counsel for the applicants has also submitted that subsequently further seven posts of E.D.M.M. have arisen against which also the applicants should be considered for regularisation.

5. In a recent judgement of the Supreme Court in State of U.P. Vs. Suresh Kumar Verma (AIR 1996 SC 1565), it has been held as follows:

"4.....The vacancies require to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates.....Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists. One temporary employee cannot be replaced by another temporary employee.

5. Under these circumstances, the view of High Court is not correct. It is accordingly set aside. It is

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mentioned that the respondents have become overaged by now. If they apply for any regular appointment by which time if they become barred by age, the State is directed to consider necessary relaxation of their age to the extent of their period of service on daily wages and then to consider their cases according to rules, if they are otherwise eligible".

6. Having regard to the facts and circumstances of the case and the decision of the Supreme Court in the case of Suresh Kumar Verma (supra), we, therefore, direct the respondents to consider the suitability of the applicants for regularisation in the posts of E.D.M.M. in accordance with the rules, subject to giving them relaxation of age, if necessary to the extent of the service rendered by them in the Department previously, against the vacant posts which they propose to fill on regular basis.

7. With the above observations, O.As 53/92, 60/92, 61/92 and 69/92 are disposed of. No order as to costs.

8. A copy of this order shall be kept in each of the O.As mentioned hereinabove.

Sd/-

(Smt. Lakshmi Swaminathan)
Member (J)

Sd/-

(Somnath Somoy)
Vice Chairman

SRD