

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH :
C U T T A C K .

Original Application No.67 of 1992.

Cuttack this the 12th day of May , 1997.

Prasanna Kumar Moharana. ... Applicant.

Versus.

Union of India and others. Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? Yes.
2. Whether it be referred to the other Benches of the Central Administrative Tribunal or not ? No.

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VICE- CHAIRMAN 5.92

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.67 OF 1992.

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CORAM :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

A N D

THE HONOURABLE MRS. LAKSHMI SWAMINATHAN, MEMBER (JUDICIAL).

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Prasanna Kumar Moharana, aged about 26 years,
Son of Maguni Moharana, at present working
as L.D.C. under Naval Armament Inspectorate,
At/P.O. Sunabeda, District-Koraput.

..... Applicant.

By the Advocate : M/s. Devanand Mishra, A.Deo and B.S.Tripathy.

Versus.

1. Union of India, represented by the
Flag Officer, Commanding In-Chief,
Headquarters, Eastern Naval Command,
Visakhapatnam, Andhra Pradesh.

2. Chief Staff Officer (P. & A.)
Mukhyalaya, Purva Nousena Kaman,
Nousena Base, Visakhapatnam,
Andhra Pradesh.

3. Deputy General Manager,
Naval Armament Depot,
At/P.O. Sunabeda, Dist-Koraput,
Orissa.

... Respondents.

By the Advocate : Mr. Akhaya Kumar Mishra, Addl. Standing Counsel.

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O R D E R.

SOMNATH SOM, VICE-CHAIRMAN : This is a petition under Section 19 of the
Administrative Tribunals Act, 1985 filed by Prasanna Kumar Moharana
who was working as L.D.C. under the Naval Armament Inspectorate
At Sunabeda, District-Koraput. He has prayed for a direction

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to the respondents to regularise his services in the post of L.D.C. at Naval Armament Inspectorate, Sunabeda.

2. The case of the petitioner is that on 10th October, 1987 he was appointed in a regular vacancy of L.D.C. at Naval Armament Depot at Sunabeda vide Annexure-1. It appears from Annexure-1 that he was appointed in a temporary casual capacity from 10th October, 1987 to 30th December, 1987. He continued in the same post with technical break for one day after every spell of appointment and till the date of filing of this application, he has been working as L.D.C. with his appointment being extended from time to time with breaks for one day in each spell. In the circular dated 28.11.1986 at Annexure-2 it has been mentioned that the Naval Headquarters have intimated to regularise the services of the categories of personnel mentioned in para-1 of their letter dated 24th September, 1986. It has been stated further that such staff were appointed in various Establishments locally on continuous casual basis pending receipt of Government sanction and services of such staff could not be regularised because of want of Government sanction. In case such individuals were to be transferred to the Naval Armament Depot, Koraput on regularisation, the resultant vacancies elsewhere would have to be filled locally and services of such local persons were considered essential in the respective Establishments to meet the day to day requirements. On this ground transfer of staff

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on regularisation to Naval Armament Depot, Sunabeda was not recommended. Vide Annexure-3 the petitioner sent a representation on 4.4.1990 to respondent No.1 for regularisation of his service. But his services were not regularised and he was allowed to continue on casual basis till 4th June, 1990 when he was transferred vide Annexure-4 to Naval Armament Inspectorate at Sunabeda as L.D.C. where he joined. The petitioner continued in the Naval Armament Inspectorate at Sunabeda as casual L.D.C. till in order dated 4th February, 1992 one A. Raghupati was posted in his place on regularisation of the services of A. Raghupati and consequently the petitioner was transferred to Vizag in the same order where he joined on 2.3.1992. The petitioner made a representation dated 12.2.1992 against the transfer but no orders were passed. Against this background, the petitioner prays that his services be regularised at Sunabeda. The petitioner also submitted in M.A. No.103/97 that the matters identical to his prayer have been disposed of by a Division Bench of the Tribunal at Hyderabad in O.A.No.79/90 by order dated 26.3.1991 and also by a Division of this Bench in O.A.No.197/93 disposed of on 1.12.1993 and this case is covered by these decisions and accordingly his services should be regularised at Sunabeda.

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3. In the counter filed on behalf of respondents 1 to 3 it has been submitted that regularisation of casual workers against regular vacancies is done as

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per seniority as casual L.D.Cs. and in their turn. When a regular vacancy is available the seniormost casual L.D.C. working at some other station is asked for option to go as regular employee to the place where the vacancy exists and in case he is not willing and is prepared to forgo his regularisation, a declaration is obtained from him to that effect and circular is issued calling for volunteers who are willing to get transferred to that station to be absorbed in a regular vacancy and amongst such volunteers the seniormost casual employee is transferred and regularised. As regards the case of the petitioner, the respondents have stated that following the same procedure of transfer, one A. Raghupati working in Kalinga INS, whose turn came for regularisation, was transferred on regularisation to the Naval Armament Inspectorate at Sunabeda and the petitioner was transferred to Vizag against another casual vacancy to ensure that he was not rendered jobless. The respondents have asserted in the counter that regularisation of the casual employees cannot be done at the places of their choice but it is being done according to their seniority and when turn of the petitioner comes, he will be regularised in the place where there would be a vacancy.

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4. From the above recital of facts, it is clear that the petitioner's transfer from Naval Armament Inspectorate at Sunabeda to Vizag has been done on posting of one A. Raghupati who has joined in the post

of the petitioner at Naval Armament Inspectorate at Sunabeda as a regular incumbent. As such regularisation is being done on the basis of seniority amongst the casual L.D.Cs. obviously the petitioner cannot claim to be regularised out of turn and again in that vacancy at Sunabeda. He must wait for his turn and get regularised at the place and in the post which falls to his lot according to the seniority. Thus the prayer of the petitioner to get regularised at Sunabeda is without any merit.

5. There is another aspect of the matter which would govern the case for regularisation of the services of the petitioner. It seems that persons have been engaged in such casual vacancies at different Naval Establishments for short periods and have been continued from time to time with break for one day in each spell. A group of such persons went to the Hon'ble High Court of Andhra Pradesh in W.P.No.239 of 1980 in which the learned Single Judge ordered for regularisation of the services of the writ petitioners ignoring the break of service for one day inflicted on them from time to time even though they have continued for 5 to 10 years. This issue also came before the Division Bench of the Tribunal at Hyderabad in O.A.No.79/90 in the case of G.V.K.Raju and 40 others where the Flag Officer, Commanding-in-chief, Headquarters, Eastern Naval Command, Visakhapatnam was respondent No.3. In that order, the Division Bench took note of the decision of the Hon'ble High Court of Andhra Pradesh

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and directed regularisation of the services of the applicants in that O.A. in the following terms :

" 7. For the reasons given above, the application is allowed. The respondents are directed to regularise the services of the applicants herein as L.D.Cs. from the dates of their initial appointments ignoring the breaks in service. The applicants will be entitled to all consequential benefits of difference in pay, seniority and other service benefits as a result of such regularisation. These benefits will be worked out and any arrears due to the applicants will be paid within a period of four months from the date of receipt of this order."

6. From the above discussion, it would be clear that in the cases before the Hon'ble High Court of Andhra Pradesh and the Division Bench of the Tribunal at Hyderabad in O.A.No.79/90 referred to above, the deemed date for consideration of regularisation was taken to be the initial date of appointment ignoring the one-day breaks where the petitioners in those cases were continued in service all along except for one day breaks.

7. In the present case, the petitioner has continued in service from 10th October, 1987 with breaks for one day in each spell, and following the principle laid down by the Division Bench at Hyderabad, it is held that the case of regularisation of the petitioner should be taken up taking his seniority as casual L.D.C. from the date of initial appointment as L.D.C. and ignoring the one-day breaks in his service from his initial appointment till he is finally regularised.

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On this basis, his seniority should be worked out and he should be regularised in his turn according to this mode of determination of seniority.

8. In the result, therefore, the petition is disposed of with the above observation. The O.A. is partly allowed. There shall be no order as to costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (JUDICIAL).

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(SOMNATH SOM) 12.5.97
VICE- CHAIRMAN.

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