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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 296 OF 1993

Cuttack, this the 15th day of September, 1999

Harihar Mohapatra

Applicant

Vrs.

Union of India and others

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.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.9.99
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

Harihar Mohapatra, son of Ramachandra Mohapatra,
At/PO-Railway Colony, District-Puri ...Applicant

Advocate for applicant - Mr.R.K.Bose.

Vrs.

1. Union of India, represented through General Manager,
South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, SE Railway, Khurda Road,
District-Khurda.
3. Divisional Personnel Officer, SE Railway, Khurda Road,
Dist.Khurda.
4. Divisional Commercial Superintendent, SE Railway,
Khurda Road, Dist.Khurda.
5. Station Superintendent, SE Railway, Puri,
At/PO/Dist.Puri..... ..Respondents

Advocate for respondents - Mr.S.Ray.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a declaration that non-consideration of the
candidature of the applicant is illegal. He has also prayed
for a direction to the respondents to regularise his
services from 31.7.1987 or from the date his juniors got
appointment as regular substitutes. He has also asked for
quashing regular appointment given to his juniors. The last
prayer is for payment of arrears and bonus from 26.1.1989
and House Rent Allowance as admissible to casual labourers.

2. The case of the applicant is that he joined as a casual labourer under South eastern Railway in 1978 at Sakhigopal and worked at different Railway Stations from time to time. He worked as such from 1978 to 1983. From 1984 till 1989 he worked as Casual Labourer for a period of three months in a year continuously. From 1978 to 1983 he got his wages daily. During the period of his engagement for three months in a year, from 1984 to 1990 he got his payment on monthly basis by signing the pay sheet like other temporary casual labourers. At present he is getting his wages on the basis of actual days of work but as per a fixed amount of Rs.750/-. He is engaged for about 15 days in a month even though there is sufficient work to engage him throughout the month. The applicant has been working in the post of Waterman for more than 120 days. The documents in support of his engagement since 1978 are at Annexure-2 series. The applicant has stated that in accordance with the circular dated 20.10.1980 of the Railway Board circulated by South Eastern Railway in letter dated 1.11.1980 (Annexure-3) he should have been conferred temporary status on completion of 120 days of work. He has stated that his engagement from 1.4.1987 to 31.7.1987 comes to 122 days but he has not been conferred temporary status. Again from July 1992 to March 1993 he has worked continuously as per dates given in the Original Application, but temporary status was not given to him. He has however stated that instead of giving him temporary status and regularising him, employees who had joined as casual labourers much after him have been engaged continuously in a manner so as to enable them to complete 120 days after which their services would be regularised. He has mentioned the names of seven such persons who were working as Electrical Khalasi under Electrical Foreman, Puri. While the applicant is continuing to work in the

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Commercial Department, the respondents issued a notice inviting applications for Class IV posts in Gr.A" and Gr."B" of Electrical Department. The qualifications were Class VIII pass and B-1 certificate from Medical Department of Railways. The applicant had those qualifications and his application was forwarded in letter dated 4.9.1987 to the Divisional Personnel Officer but no action was taken on that. The applicant has stated that had his application been considered at that time then he would have become much senior. It is stated that while no action was taken on his application by the office against those posts, on his enquiry he was assured that he would be regularised but without any result. The applicant has, however, stated that he came to know in September 1992 through a departmental notice that some posts of Class IV regular substitute Khalasis were lying vacant in Electrical Train Lighting Department. The applicant had necessary qualification for the post and he therefore again applied for the same post. Enquiry was made about his working particulars and these were supplied. The Divisional Personnel Officer in his letter dated 22.10.1992 (Annexure-5) had asked for the working particulars of the applicant. But without considering the candidature of the applicant, seven persons, whose names have been mentioned by the applicant in the OA, have been given regular appointment as substitutes. The applicant has stated that out of those seven persons, six persons have never worked in Railways. One person Dasarathi Jena had worked for about 10 to 15 days as Waterman in the office of Railway Recruitment Board. Therefore these seven persons got the opportunity to work continuously for 120 days and got temporary status whereas the applicant after having served for 14 years did not get an opportunity of being considered for such appointment. The applicant therefore filed representation

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on 5.2.1993 (Annexure-7) but without any result. That is how he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayers of the applicant. They have stated that the applicant was engaged as a casual Hot Weather Waterman during 1984 for 39 days and in 1985 for 75 days at Sakhigopal. During 1986 and 1987 he was engaged at Puri for 76 and 113 days respectively. In 1988 he was engaged as Hot Weather Waterman from 2.6.1986 to 30.6.1986 for 28 days. During 1989 he had been engaged at Puri for three months from 1.4.1989 to 30.6.1989 and during 1990 from 1.4.1990 to 30.6.1990. In 1991 he was engaged for three months. Thus right from 1989 to 1991, he was engaged as casual labourer in some stations only for a period of three months. Thereafter the applicant was attached to Superintendent, Puri for utilisation against day to day casualties and he is presently working as such. They have further stated that during 1979, 1980 and 1981 the applicant had worked only for 14 days as per Annexure-2 of the OA. The respondents have also stated that the contention of the applicant that he worked from 1.4.1987 to 31.7.1987 is not correct. He worked from 1.4.1987 to 30.6.1987 which is only 92 days and not 122 days as claimed by the applicant. It is further stated that question of regularisation of applicant does not arise at present as many substitutes senior to the applicant are working in the Commercial Department without getting regularised including 64 screened and empanelled commercial substitutes. The applicant could be considered for regularisation only after he is screened by a Screening Committee and empanelled for regular absorption in Group-D post in his turn. No commercial casual labourer/substitute junior to the applicant has been regularised in the Commercial Department. The respondents have stated that the seven

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persons mentioned by the applicant were retrenched casual labourers of Railway Recruitment Board and they were engaged as substitutes in Electrical Department. Their cases are not related to the applicant as they do not belong to Commercial Department. It is further stated that on 3.9.1992 the applicant submitted a representation requesting for change of his Department from Commercial to Electrical. This representation is under consideration. On the above grounds, the respondents have opposed the prayers of the applicant.

4. In an additional counter filed by the respondents it has been stated that out of 64 screened and empanelled substitutes in Commercial Department 12 are still awaiting regularisation. It is further submitted that after taking into consideration the representation and option given by the applicant, he has been transferred to Operating Department as a substitute in order dated 14.8.1996. In this order at Annexure-R/1 it has been mentioned that he will rank junior to the existing substitutes in the Operating Department on his joining there. On the basis of the above facts, the respondents have opposed the prayers of the applicant.

5. We have heard Shri R.K. Bose, the learned counsel for the petitioner and Shri Ray, the learned counsel for the Railways and have also perused the records.

6. The learned counsel for the Railways has produced the Attendance ^{Register} /for substitutes in Commercial Department and also the Pay Register from May 1987 to July 1987. On verification of the Attendance Register we find that the name of the applicant appears against serial nos. 13, 17, 17 and 17 for the period from 26.4.1987 to 25.5.1987, from 26.5.1987 to 25.6.1987, from 26.6.1987 to 25.7.1987, and from 26.7.1987 to 25.8.1987. From the

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attendance sheets it is seen that for the first period of one month he has worked for all the days, for the second period he was absent on 12th and 13th June 1987, for the third period he was absent on 1st, 2nd, 8th and 9th July 1987, and for the fourth period his engagement ended on 31.7.1987. From this it is clear that the applicant has not worked for 120 days as a substitute and therefore could not have been conferred with temporary status. The other register indicating payments covers the period of attendance as indicated by us. The prayer of the applicant is for a direction that his service should be regularised from 31.7.1987. A casual labourer cannot be regularised straightaway. First on completion of 120 days in the Open Line he has to be conferred with temporary status. Thereafter on the basis of his seniority he has to be screened and empanelled for regularisation against regular Group-D post, on such post being available. Such regularisation of the screened and empanelled casual labourers and substitutes can be done only in their turn. Therefore even before the applicant has got temporary status he cannot be regularised. So far as granting of temporary status is concerned, as he has not completed 120 days of continuous engagement by 31.7.1987 he could not have been conferred with temporary status. Therefore, his prayer for getting regularised from 31.7.1987 is held to be without any merit.

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7. The applicant has stated that some of his juniors have been regularised and he has mentioned their names also. The respondents have pointed out that those persons were retrenched casual labourers of the Railway Recruitment Board and they have been engaged in the Electrical Department whereas the applicant's Department at that time was Commercial Department. Therefore, engagement of those persons in Electrical Department as substitutes does not affect the rights of the applicant in any way.


Moreover, the applicant has given option and has come over to the Operating Department. In the process he has become junior to all the existing substitutes in the Operating Department and question of his empanelment and regularisation will have to be considered in his turn.

8. In consideration of all the above, the Original Application is disposed of with a direction to the departmental authorities that the case of the applicant should be taken up for conferring temporary status on him immediately on his completing 120 days of work on continuous basis. It is also directed that the case of the applicant should be considered strictly in his turn on the basis of his seniority in his present Department for screening and empanelment. Before any of the juniors of the applicant is considered for regularisation, the applicant's case must be considered.

9. The Original Application is disposed of accordingly. No costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
15.9.99
VICE-CHAIRMAN