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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.466 OF 1993

Cuttack, this the 16th day of July, 1997

KRISHNA RAO AND OTHERS

.....

APPLICANTS.

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*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *16.7.97*

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.466 OF 1993
Cuttack, this the 16th day of July, 1997

CORAM:

HON'BLE SRI SOMNATH SOM, VICE-CHAIRMAN

1. Krishna Rao,
son of Karamanna,
At-Kharada, PO-Kasinagar,
Via-Parlakhemundi,
District-Gajapati.
2. Chandrasekhar, son of B.Narayana, At/-Sanjoy Colony,
P.O-Parlakhemundi, District-Gajapati.
3. Krishna, son of Gundu, At-Harizan Street, Kasinagar,
PO-Parlakhemundi, District-Gajapati.
4. Narasimhulu, son of Appallaswamy, At/PO-Tamburu,
Dist.Srikakulam,
presently resident of Railway Colony,
At/PO-Parlakhemundi, District-Gajapati
5. Laxmayya, son of Karreyya, At-Parlajaggilo Street,
PO-Parlakhemundi, District-Gajapati.
6. Krishna Murty, son of Akunna, Vill-Ganguvada, PO-Labaro
Patnapatnam, District-Srikakulam.
7. Dhanapati, son of Kisto, At/PO-KL.Sitapur,
Parlakhemundi District-Gajapati.
8. Pottenna, son of Appalaramayya, At/PO-Temburu Pathapatnam
Mandalam,
District-Srikakulam(AP),
presently resident of Railway Colony, At/PO-Parlakhemundi,
District-Gajapati.
9. Yerraiah, son of Gopi,
Village-Poluru, PO-Siddamadanga, Parlakhemundi,
District-Gajapati.

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10. Krishna Murty, son of Ramanna, Village-Polara, PO-Siddamadanga, Parlakhemundi, District-Ganjam.
11. Venkat Rao, son of Ramayya, At/PO-Temburu, Pathapatnam, Mandalam Srikakulam(AP)
12. Gurulu, son of Karreyya, Harijan Street, Kasinagar, PO-Parlakhemundi, Dist.Gajapati.
13. Chitteyya, son of Simmayya, village-Dwaraka Puram, PO-Temburu, Pathapatnam Mandalam (AP), presently resident of Railway Colony, PO/PS-Parlakhemundi, Dist.Gajapati.
14. Haribandhu Charoti, son of Ramachandra Charoti At/PO-K.Sitapur, Parlakhemundi, District-Gajapati.
15. Gopayya, son of Karreyya, Harijan Street, Kasinagar, PO-Parlakhemundi, District-Gajapati.
16. Mukhalingam, son of Ramulu, Harijan Street, Kasinagar, Parlakhemundi District-Gajapati.
17. Gavarayya, son of Pentayya, Harijan Street, At/PO-Kasinagar, Parlakhemundi, District-Gajapati.
18. Gokul, son of Narayana, At/PO-K.Sitapur, Parlakhemundi, District-Gajapati.
19. Ramulu, son of Narayana, Vill-Kurigam, PO-Dimili Kothuru Mandalam, Dist.Srikakulam(AP) presently resides at Railway Colony, Parlakhemundi, Dist.Gajapati.
20. Ramulu, son of Lachanna, Vill-Kurigam, PO-Damili Kothuru Mandalam, District-Srikakulam (AP), presently resides at Railway Colony, Parlakhemundi, District-Gajapati.
21. Nandi, son of Simhadri, At-Samuntia Street, Parlakhemundi, District-Gajapati. Applicants.

Semra Vm.
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-versus-

1. Union of India
represented through the General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43(W.B.)
2. Divisional Railway Manager, S.E.Railway,
Waltair Division, At/PO-Waltair(AP)
3. Senior Divisional Engineer,
South Eastern Railway, Waltair,
Waltair(AP)
4. Permanent Way Inspector, Railways,
South Eastern Railway, Parlakhemundi,
At/PO-Parlakhemundi,
District-Gajapati

Respondents.

Advocates for applicants -

M/s
J.Patnaik, H.M.Dhal
& S.K.Patnaik.

Advocate for respondents -

Mr.D.N.Misra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application, 21 petitioners have prayed for a direction to the respondents to appoint them in the existing vacancies and also for a direction to the respondents to appoint persons in future vacancies from the seniority list which is at Annexure-1.

2.The case of the applicants is that they were engaged on casual basis "prior to 1975 to 1986". They were frequently engaged by the respondents as Gangmen and a seniority list of Casual Gangmen, who were working from 1966 till 30.6.1975, was also prepared. This seniority list is at

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Annexure-1 and this indicates the number of days put in by each person mentioned in the seniority list. It is submitted by the applicants that for construction and repair/maintenance of railway track, a total number of 102 persons have been absorbed on permanent basis as Gangmen from out of the seniority list. But the applicants' whose names are included in the seniority list have not been considered for such absorption on permanent basis. It is further alleged that on 26.6.1993, 15 new posts of Casual Gangman have been created under the scheme "Mansoon Patrolling" and even though the applicants are to be considered for filling up of these 15 posts, the respondents are proposing to appoint freshers from Srikakulam District for filling up these posts. In view of this, the applicants have come up with the above prayers.

3. The respondents in their counter have submitted that on verification of the records available, it was seen that none of the applicants except five, applicant nos. 2, 3, 4, 10 and 16 had been working under the respondents from 1975 to 1986. It is further submitted that no seniority list ^{as} on 30.6.1975 was prepared and published by the respondents. The only seniority list was published on 21.12.1979 showing the position as on 31.3.1979 and this list has been enclosed at Annexure-R/VI. The respondents have also stated that respondent no. 4, i.e., the P.W.I., Parlakhemundi, did not make any appointment of casual labourer from 1979 to 1985 and only after 1985, some of the

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casual labourers were re-engaged. The respondents have further stated that the names of the five applicants mentioned earlier have been noted in the seniority list at Annexure-R/VI. As regards the fifteen posts of Gangman under Mansoon Patrolling duty, the respondents have submitted that the applicants were not considered for appointment against these posts because they did not submit their application in response to the notification dated 23.3.1987 which is at Annexure-R/VII. The respondents have stated that in terms of the decision of the Hon'ble Supreme Court in the case of Inder Pal Yadav v. Union of India, (1985) 2 SCC 648, the Railways had framed a Scheme for enrolment of casual workers in a Live Casual Register for their future engagement and ultimate absorption and accordingly, in 1987 notification was issued asking all such persons to apply for their enrolment in the Supplementary Live Casual Register for their future engagement. This notification is at Annexure-R/VII. In this, it was specifically mentioned that representations made after 31.3.1987 would not be considered. It is submitted by the respondents that none of the applicants applied in pursuance of the notice and as such their names were not put in the Live Casual Register. The respondents have also said that by their inaction, whatever rights the applicant may have, have been extinguished and to this effect, they have relied on the decision of the Hon'ble Supreme Court in the case

*Samman Jm
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of Ratan Chandra Samanta and others v. Union of India and others, AIR 1993 SC 2276.

4.I have considered the submissions made by the learned lawyer for the applicants and Sri D.N.Misra, the learned counsel appearing on behalf of the respondents and have also looked into the record. The respondents have taken the stand that of the 21 applicants, only five, i.e., applicant nos. 2, 3,4 , 10 and 16 have worked under them and accordingly their names have been included in the seniority list as on 31.3.1979. As against this, the other sixteen applicants have submitted no document indicating their engagement under the Railways during the period, as alleged by them. The seniority list at Annexure-1 to the application has not been admitted by the respondents and they have indicated that no such seniority list has ever been prepared. This finds support from Annexure-R/VI to the counter, in which the seniority list has been circulated and where names of the said five applicants appear. So far as these five applicants are concerned, their case for regularisation will come up in their turn according to their position in the seniority list and it not possible to issue a direction straightaway to regularise the services of these applicants.

5.As regards the other sixteen applicants, they had not applied in response to the notice at Annexure-R/VII, according to which they were due to apply by 31.3.1987 for their enrolment in the Supplementary Live Casual Register. They have

*Downing Jms.
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worked, according to them, sometime during 1975 to 1986. After a long lapse of time, their cases cannot be taken up once again for consideration. In the case of Dakshin Railway Employees' Union v. General Manager, South Eastern Railway and others, AIR 1987 SC 1153, the learned counsel for the Railways brought to the notice of their Lordships of the Hon'ble Supreme Court the difficulties which will be experienced by the Railway administration if without any limitation persons claiming to have been employed as casual labour prior to 1.1.1981 come forward to claim the benefit of the Scheme approved by the Hon'ble Supreme Court in Inder Pal Yadav's case (supra). In consideration of the difficulties of the Railways, their Lordships of the Hon'ble Supreme Court ^{ordered} in Dakshin Railway Employees' Union's case (supra) that all persons who desire to claim the benefit of the Scheme on the ground that they have been retrenched before 1.1.1981 should submit their claim before 31.3.1987. It is in compliance of this direction that the notification at Annexure-R/VII was issued calling for representations by 31.3.1987. The other sixteen applicants not having applied by 31.3.1987 cannot claim the benefit of the Scheme through this Original Application. Besides, the Hon'ble Supreme Court have clearly laid down in the case of Ratan Chandra Samanta (supra) that delay itself deprives a person of

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his remedy available in law. In that particular case, the Hon'ble Supreme Court rejected the prayer of the counsel for the applicants to enable the persons claiming as old casual workers to present their documents, etc., before the Railway authorities on the ground that this will lead to a roving enquiry and the applicants cannot agitate their claims after such long delay. On this ground also, the claim of the remaining sixteen petitioners is liable to be rejected.

6. In view of the above, I hold that the application is without any merit and the same is rejected. There shall be no order as to costs.

Somnath Som
(SOMNATH SOM) 16.7.97
VICE-CHAIRMAN

AN/PS