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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.534 OF 1993

Cuttack, this the 11th day of May, 1999

Gobardhan Pradhan 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*

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
11.5.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.534 OF 1993
Cuttack, this the 11th day of May 1993

CORAM:

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

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Gobardhan Pradhan,
aged about 38 years, son of late Narayan
Pradhan, village Gunthala, PO-Singh Berhampur,
P.S-Delang, District-Puri ... Applicant

Advocates for applicant - M/s D.R.Pattanayak
C.R.Kar
R.n.Nayak
K.C.Pradhan,
B.K.Mishra
S.Mallik

Vrs.

1. Union of India, represented by General Manager,
S.E.Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager (P),
S.E.Railway, Khurda Road, Jatni,
At/PO-Jatni, District-Khurda.
3. Senior Divisional Engineer,
S.E.Railway, Khurda Road, Jatni, At/PO-Jatni,
District-Khurda.
4. D.P.O,S.E.Railway, Khurda Road, Jatni,
At/PO-Jatni, District-Khurda.....Respondents

Advocate for respondents - Mr.D.N.Misra
Standing Counsel

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to appoint him
against a post of casual labourer and to regularise his
services with all service benefits.

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2. Facts of this case, according to the applicant, are that he had worked as casual labourer under I.O.W., Khurda Road, from 1963 to 1966. In a provisional seniority list published on 11.1.1982 his serial was 20. The applicant had completed more than 1256 working days. He was not given further appointment as casual worker, but persons who had put in only 65 working days and were junior to the applicant, were engaged as casual labourers with effect from 23.7.1985. It is more specifically urged that a casual labourer whose name appears at serial no. 250 has been engaged as a casual worker, but the applicant's case has been ignored. The applicant submitted representation on 13.5.1985 (Annexure-1). The service certificate issued in his favour on 29.7.1985 by I.O.W., Khurda Road, is at Annexure-1/1. In the seniority list published by Assistant Engineer, Khurda Road, the applicant's name appears against serial no. 113. Extract of this list is at Annexure-2. Representation of the applicant seeking engagement as casual labourer submitted on 22.7.1985 is at Annexure-3. The applicant had also submitted proformas at Annexures 4 and 5 seeking employment as a Token Porter. He had filed a further representation on 7.6.1993 (Annexure-6) but no consideration has been shown to his prayers. The applicant has stated that he has worked between 1962 to 1985 as casual labourer, but his case has not been considered for further engagement and absorption in regular post. That is why he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that the application is hopelessly barred by limitation. The cause of action, if any, arose in 1966 when the applicant was disengaged and not in 1993 after expiry of twenty-eight years. The respondents have stated that the applicant was appointed in 1963 as a casual labourer on daily rated basis under I.O.W., Khurda Road. He was disengaged in 1966 after expiry of the work and also because he did not further turn up for any other engagement when there was necessity of

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work. Accordingly, he was not given any engagement. As per the seniority list published by Inspector of Works, Khurda Road, in 1982 he was placed at serial no.20. The respondents have denied that persons having 65 working days have been regularised with effect from 23.7.1985 and the applicant having 1256 working days has not been regularised. The respondents have also pointed out that the seniority list published in 1982 contains only 230 persons and therefore, the allegation that the person whose name appears at serial no.250 has been engaged is false. The respondents have denied that any representation as at Annexure-1 was received by them. They have also stated that in the seniority list of casual labourers published in 1979 the applicant was placed at serial no.113. The respondents have also stated that they have never received any representation from the applicant as at Annexures-3 and 6 nor any proforma as under Annexures 4 and 5. The respondents have also denied that the applicant worked upto 1985. They have stated that he was engaged only from 1963 to 1966 and he had never worked after 1966 and he had never appeared for any work. It is further stated that in 1986 and 1987 ex-casual labourers were called for screening by prior notice to all units to prepare a fresh live casual register. But the applicant opted not to attend the screening and thereby he has foregone his claim for further engagement. The respondents have also stated that as per Establishment Serial Nos.244/84 and 20/87 which are at Annexure-R/1, the name of casual labourer who had been earlier discharged on completion of work and who had not worked in Railways again in the preceding two complete calendar years should be struck off the live casual register. Further where a casual labourer was discharged prior to 1.1.1981 and has not been re-engaged thereafter for

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any reason, his name will continue to stand deleted from the live casual register. The respondents have stated that priority of engagement can be given to a retrenched casual labourer provided he turns up when work is available. Instead of doing that and instead of applying to the Railway authorities, he has come up before the Tribunal with the prayers which have been opposed by the respondents.

4. We have heard Shri D.R.Patnaik, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel appearing for the respondents. The learned Standing Counsel for the respondents indicated on the date of hearing on 12.4.1999 that he would file a memo of citations, but no such memo of citations has been filed.

5. It has been submitted by the learned counsel for the petitioner that he relies on the decision of the Tribunal in OA No. 481/96 and he prays for issuing of similar orders as in that case. Before considering the order issued in OA No. 481/96, the facts of this case have to be taken note of. The respondents have admitted that the applicant worked as a casual labourer from 1963 to 1966. They have denied the averment of the applicant that he has worked upto 1985. The applicant has not produced any document in support of his contention that he had worked till 1985. On the contrary, the service certificate produced by the applicant himself at Annexure-1/1 shows that he worked from 1963 to 1966. In view of this it is not possible to hold that the applicant worked till 1985. It must be held that he had worked as a casual labourer from 1963 to 1966 and thereafter he was retrenched because of absence of sanction, as has been mentioned in the certificate at Annexure-1/1. The respondents have admitted that in the seniority list drawn up by Assistant Engineer, Khurda Road, in 1979, the applicant's name was against serial no.113. They have also admitted that in the seniority list published

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by Assistant Engineer, Khurda Road, in 1982 the applicant's name was against serial 20. In other words, till 1982 or immediately thereafter if the applicant had turned up, he would have been given casual engagement. The learned counsel for the petitioner submitted, in course of hearing, that his prayer is not for regularisation of services of the applicant straightforward. The applicant only wants to be given casual engagement as and when work is available in accordance with his seniority. In the case of Dakshin Railway Employees Union, Trivandrum Division v. General Manager, Southern Railway and others, AIR 1987 SC 1153, the Railway Administration brought to the notice of the Hon'ble Supreme Court the difficulty which would be experienced by them if without any limitation persons claiming to have been employed as casual labourers prior to 1.1.1981 keep coming forward to claim the benefits of the Scheme for re-engagement and regularisation drawn up by the Railways on the direction of the Hon'ble Supreme Court. Considering the difficulty of the Railway Administration, the Hon'ble Supreme Court directed that all persons who desire to claim the benefits of the Scheme on the ground that they have been retrenched before 1.1.1981 should submit their claims to the Administration before 31.1.1987 and beyond that date, if some retrenched labourers come up claiming re-engagement on the basis of their earlier engagement and retrenchment, their cases will not be considered. In the order on OA No. 481/96, a batch of fifteen O.As. were disposed of with a direction to the Railway authorities that amongst the applicants in those cases, those who have filed representations prior to 31.1.1987 for being engaged as casual labourers once again should be considered and their service records should be verified and their names should be included in the live casual register. In this case, the

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 applicant has stated that he has been representing off and on ever since 1966 to the Railway authorities for his re-engagement. The respondents have stated that no such representations from the applicant have ever been received by them. This is a factual aspect of the matter which cannot be gone into by us while adjudicating this O.A. In view of this, the prayer of the applicant for his re-engagement as a casual labourer is disposed of with a direction to the respondents that in case the applicant had applied prior to 31.1.1987, the date fixed by the Hon'ble Supreme Court in Dakshin Railway Employees Union (supra), then the respondents should include his name in the live casual register and give him engagement as and when there is need for engaging casual labourers.

6. We also note that in this case the applicant has come up before the Tribunal after 27 years. Admittedly, he was first engaged under the Railways in 1963. If he had been aged 18 years in 1963, the applicant would be around 54 by this time. In case at the time of his initial engagement in 1963, he was older than 18 years, then his present age may be even higher and he may be nearing 58 or 60 years of age. In view of this, after the applicant files a representation to the Railway authorities within 30(thirty) days from the date of receipt of copy of this order giving adequate proof of his having applied for re-engagement prior to 31.1.1987 and in case the Railway authorities decide to re-engage him, the present age and physical fitness of the applicant should also be checked up by the respondents before giving him further engagement as casual labourer. The first prayer of the applicant is disposed of in terms of the observation and direction given above.

7. The second prayer of the applicant is for regularisation under the Railways. This prayer was not pressed by the learned counsel for the petitioner. It is

also not possible to order regularisation of services of the applicant straightaway. It is, therefore, not necessary to pass any order on the second prayer of the applicant.

8. In the result, the Original Application is disposed of in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN

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