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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 554 OF 1993

Cuttack, this the 22nd day of February, 1999

Rabinarayan Panigrahi and another

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*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
22.2.99

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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1. Rabinarayan Panigrahi, s/o Narendranath Panigrahi
2. Jagamohan Das, s/o Upendranath Das, at present both are working as Sr.Khalasi in the office of Sr.Divisional Commercial Manager (Stores), S.E.Railway, Khurda Road At/PO-Jatni, Dist-Khurda

.....Applicants.

Advocates for applicants - M/s S.K.Nayak-1
R.K.Kar, J.K.Khuntia &
Sumanta Ku.Nayak.

Vrs.

1. Union of India, represented through the Secretary, Ministry of Railway, Railway Bhawan, New Delhi-1
2. Chief Personal Officer, Garden Reach, South Eastern Railway, Calcutta-34.
3. Divisional Railway Manager, S.E.Railway, Khurda Road, At/PO-Jatni, Dist.Khurda.
4. Senior Divisional Personal Officer, Khurda Road, S.E.Railway, At/PO-Jatni, Dist.Khurda.
5. Senior Divisional Commercial Manager, S.E.Railway, Khurda Road, At/PO-Jatni, Dist.KhurdaRespondents

Advocate for respondents- Mr.D.N.Misra,
Standing Counsel(Railway)

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the two petitioners have

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prayed for a direction to the respondents to treat them as Class IV Khalasi in the Electrical Department with effect from 30.5.1988 as per order at Annexure-3. There is also a prayer for a direction to extend all service benefits of Class IV Khalasi to them from 30.5.1988. The alternative prayer is for a direction to the respondents to allow the petitioners to serve as Khalasi on regular basis and to extend all service benefits to them from 9.9.1980 as per Annexure-2. Lastly it is prayed that the respondents should be permanently restrained to continue the services of the applicants on three months extension basis and for a direction to the respondents to allow the applicants to continue in their service on permanent basis after regularising their services with effect from 9.9.1980.

2. The case of the applicants is that after passing High School Certificate Examination they were initially engaged as substitutes T.T.Porter/F.C.C.A. under the Train Travelling Examiner "A" in 1977. Annexure-1 is the order of such engagement. They continued as such till 1980 and in order dated 28.5.1982 (Annexure-2) it was noted that they had worked as Casual Store Khalasi from 12.5.1980 to 8.9.1980 and accordingly they were conferred with temporary status with effect from 9.9.1980. Under this order at Annexure-2 the applicants got regular scale of pay of Rs.196-232/- with admissible D.A. They also got the arrears of salary from 9.9.1980. The case of the applicants is that even though they were appointed as Khalasi and temporary status was given to them with effect from 9.9.1980 they were directed to perform Clerical jobs in the Commercial Department because

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of their higher qualification and efficiency. Subsequently, they were redesignated as "Literate Store Khalasi". Like regular employees they got all facilities like increments, house rent, provident fund deduction, etc. In the year 1987 the applicants were considered for being absorbed in the Electrical Department in Class IV vacancies. They were found suitable and in order dated 20.5.1988 (Annexure-3) they were posted as Khalasi in Electrical Department with the scale of pay of Rs.750-940/- . In this order it was indicated that they should report to their respective stations within ten days from the date of the order at Annexure-3 and in case they fail to join the Electrical Branch in time, their claim will lapse. The applicants have stated that they were not allowed to join in the Electrical Department because they were not relieved. Senior Divisional Personnel Officer (respondent no.4) in his letter dated 18.7.1989 (Annexure-4) requested Divisional Commercial Superintendent, Khurda Road, to release the two petitioners to join their new places of posting at Berhampur and Talcher within ten days and it was indicated that in case they do not join, their claim for absorption in the Electrical Department will lapse and no further correspondence will be entertained. It is stated that in spite of this letter of Divisional Personnel Officer, the applicants were not released to join their new posts in the Electrical Department. In the letter at Annexure-4/1 (date not given) Divisional Commercial Superintendent was addressed to say that three posts of Casual Labourer (Literate Khalasi) were in operation in Store Section to cope up with the work. The two applicants who are empanelled candidates are working in Store Section as Casual Khalasi against temporary sanction. Both the applicants have been selected as Electrical Khalasi and posted in Electrical Department on regular measure in posting order dated 20.5.1988, but they have not joined so far.

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It is further stated that due to shortage of staff in Store Section, important works have been entrusted to these two Casual Khalasis and they are well conversant with the work. It is further stated that as the Store Section is running short of hands and proposal for creation of additional posts has been turned down, instructions were sought in the letter at Annexure-4/1 if the two applicants should be relieved to join their new posts. It is further stated that Divisional Commercial Superintendent wrote to Divisional Personnel Officer, Khurda Road, on 2.1.1992 (Annexure-5) stating that three posts of Commercial Khalasis were utilised in the Store Section to pull up the additional workload since 28.4.1980 and the posts have been operated since then after obtaining sanction from Divisional Railway Manager from time to time. It is also stated that since operation of the three posts of Casual Khalasi from 28.4.1980 these two applicants, both empanelled candidates are working till then. At Annexure-6 is a letter dated 16.7.1993 in which sanction of Divisional Railway Manager, Khurda Road, for creation of two posts of Khalasi for a period of three months was communicated. The applicants state that they were continuing as Khalasi with temporary status from 1980 and they understood that after the period of extension would be over on 16.10.1993 no further extension will be allowed and that is why they have come up in this application with the prayers referred to above.

3. By way of interim relief, it was prayed that the respondents should be restrained from disengaging them. On the date of admission of the application on 14.10.1993 the respondents were directed not to disengage the applicants from their present duties until further orders. This interim order has continued over all these years.

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4. The respondents in their counter have admitted that the applicants joined the Railway service as substitutes in 1977 and were engaged as Casual Labour Khalasi with effect from 12.5.1980 on the basis of additional sanction of Divisional Railway Manager, Khurda Road, communicated in order dated 9.5.1980. They have also admitted that the applicants have been conferred with temporary status and they are getting facilities like other staff of Casual Khalasis with temporary status. The respondents have denied the averments of the applicants that they have been designated as Literate Store Khalasis. It is stated that the applicants have been engaged as Casual Store Khalasis. The respondents have stated that under Indian Railways Establishment Manual "casual labour" refers to a labourer whose employment is seasonal, intermittent and sporadic in nature. They are not engaged against any regular post or in work of regular nature. It is stated that the applicants have continued from 12.5.1980 as casual labourers and validity of their sanction expired on the afternoon of 16.4.1994, but the applicants have not been disengaged. It is further stated that the applicants have been screened and empanelled in order dated 14.8.1989 for their posting against Class IV posts according to their panel seniority subject to availability of regular posts. The applicants will be regularised and posted in their turn and their seniority shall be taken into account from the date they hold the regular posts, but for other purposes their earlier date of appointment shall be taken into consideration. The respondents have also stated that as per order at Annexure-3 the applicants were selected as Electrical Khalasi and posted at Talcher and Berhampur, but they did not join the Electrical Branch. It is also stated

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authorities for their release to join as Electrical Khalasis.
Thus, the cause of action arose in 1987 and after passage of
six years, in the present application they cannot claim the posts
of Electrical Khalasis in the scale of pay of Rs.750-940/-. It is
also pointed out by the respondents that no order was passed
to retain the applicants in Commercial Branch. In view of the above,
the respondents have opposed the prayers of the applicants.

5. In order dated 14.10.1998 this matter was posted to
23.11.1998 for peremptory hearing on which date at the request
of the learned counsel for the applicant the matter was posted to
18.1.1999. On that day the learned counsel for the applicant
was absent nor was any request made on his behalf seeking
adjournment. As this is a 1993 matter, where interim order
has been continuing from 1993 and the pleadings have been completed
long ago, the matter was taken up and we have heard the
learned Standing Counsel, Shri D.N.Misra and the records were
perused.

6. The admitted position is that the applicants are
working as Casual Khalasi from 12.5.1980 and they have been
conferred with temporary status. It is also admitted by the
respondents that they have already been empanelled for posting
against regular posts and they will be so posted against regular
posts when such posts are available and the applicants' cases
come up in their turn according to their panel seniority and
thereafter they will be regularised, i.e., absorbed in regular
establishment under the respondents. It is also stated that
even though in the regular establishment their seniority will
count from the date of their joining in the regular establishment,
for other purposes their previous service will be taken into
account in accordance with rules. As the applicants have been

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conferred with temporary status more than eighteen years ago the respondents cannot disengage them without drawing up proceedings against them and on account of proved misconduct. Thus the prayer of the applicants for a direction to the respondents not to disengage them stands allowed.

7. As regards treating them as regular Khalasi in Electrical Department from 20.5.1988, the date of the order at Annexure-3, the case of the applicants is that they were not relieved by their superior officers to join their new places of posting. The respondents on the other hand have stated that the applicants never filed a representation seeking their relief to join their new places of posting. In any case, this offer was made sometimes in 1988 and it was clearly mentioned in that order that the applicants should join their new places of posting in the Electrical Branch at Talcher and Berhampur within ten days from the offer, otherwise the offer will lapse. In spite of the averment in the counter of the respondents that the applicants never moved for their relief from Khurda Road to join their new places of posting in Electrical Divisions at Talcher and Berhampur, the applicants have not produced any document or any evidence in support of their claim that they were prepared and willing to go to their new places of posting at Talcher and Berhampur, but their superior officers did not release them. In any case this offer was made in 1988 and was valid for ten days. After a passage of more than five years they cannot claim posting in the Electrical Divisions moreso when at the relevant point of time they did not move higher authorities for their immediate relief. So far as their regularisation is concerned, the applicants have already been screened and empanelled for regularisation and the respondents have stated that they will be regularised in accordance with their panel seniority. It is not known if the applicants have in the meantime been absorbed in the regular establishment. In case it has not been done, the respondents are directed to absorb the applicants in regular establishment on availability of regular posts and strictly in accordance with their seniority amongst the empanelled candidates. On such regularisation, they will be entitled to service benefits strictly in accordance with rules. It is also made clear that till such regularisation, the respondents shall not disengage the applicants except on the ground of proved misconduct.

8. In the result, therefore, the O.A. is allowed in terms of the observations and directions given above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN