

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.643 of 1993
Cuttack this the ~~20th~~ day of April, 1998

Smt.Sukanti Devi

Applicant(s)

-VERSUS-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20.4.98

S.K. Agarwal
(S.K.AGARWAL)
MEMBER (JUDICIAL)
20/4/98

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

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Cuttack this the 20th day of April, 1998

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THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)
...

Smt.SukantiDevi,
aged about 39 years,
wife of Shri Kishore Chandra
Patra, at present residing
at MIG 18, Sidha Mahabir Patna
Town and District:Puri

...

Applicant

By the Advocate:

M/s.J.K.Mishra
B.S.Tripathy
N.Srinivas
M.K.Rath

-VERSUS-

1. Union of India
represented by the General Manager
South Eastern Railway,
Garden Reach,
Calcutta(West Bengal)
2. Senior Divisional Commercial Manager
South Eastern Railway, Khurda Road
PO:Jatni, District:Khurda
3. Senior Divisional Personnel Officer,
South Eastern Railway,
KhurdaRoad
PO:Jatni, District:Khurda

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Respondents

By the Advocate:

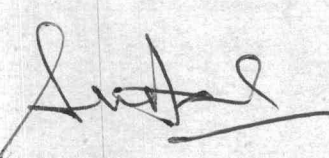
Mr.Ashok Mohanty
Standing Counsel

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ORDER

MR.S.K.AGARWAL, MEMBER(J): In this Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that a direction be issued to respondents quashing the order dated 1.10.1993 under Annexure-5, posting the applicant as Junior Khalasi and to regularise the services of the applicant in a Class-III post.

2. In brief, the facts of the case, as stated by the applicant are that the applicant was appointed as an Announcer on hourly basis at Puri Railway Station on 26th Jue, 1976 and later on she was empanelled as a casual labourer for the same job and continued to work in the said post till 25.1.1983 and by that time she had already attained temporary status in the concerned post. It is submitted that on 25.1.1983 she was absorbed as casual typist in the pay scale of Rs.950-1500/- and she continued to work on the said post. Thereafter, correspondence took place between Chief Personnel Officer and the Divisional Railway Manager for being regularised on the post of Typist, but the Divisional Personnel Officer offered the applicant an appointment in Class-IV post with effect from 6.2.1990. However, on consideration of applicant's representation, she was allowed to continue and at that juncture of time the applicant sought regularisation on the post of Typist, which is a Class-III post before this Tribunal in Original Application No.102 of 1990. This Tribunal vide



its judgment dated 9.7.1992 directed that the applicant may accept a Class-IV post, but she should work as Typist till a ~~regular~~ incumbent to the post of Typist comes. Thereafter by the circular issued by the Ministry of Railways, merger of the cadre of Typists with Clerical cadre was done. It is submitted that the applicant was working as T.L.R. Typist at Puri Railway Station from 1983 and on 10.2.1993 she was brought to Bhubaneswar Claims Office as T.L.R. Typist. But her case was not considered for regularisation on Class-III post for the reasons best known to the authorities. The applicant has submitted that she is the senior-most Typist having temporary status under the Railway Administration and there are other two Typists below her, who are functioning, but they are not being spared to work in Group-D post whereas the applicant has been spared. It is, therefore, requested that direction be issued to respondents quashing the order dated 1.10.1993 under Annexure-5 and to regularise the services of the applicant in Class-III post.

3. The respondents have filed their counter. It is submitted that this application is not maintainable either in fact or in law. It is further submitted that the matter has already been disposed of in O.A. No. 102/90. Therefore, the present applicant is hit by principles of res judicata. It was admitted that the applicant was working as Typist in Reservation Office at

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Puri and subsequently at Claims Office, Bhubaneswar. It is further stated that she was empanelled for Class-IV (Group-D) post for Commercial Department in Sl.No.19. According to her turn she was issued with a provisional appointment on 6.2.1990 and she accepted the offer which was forwarded to the Divisional Manager(P)'s office on 19.6.1993, after depositing Rs.8/- on 17.6.1993 towards the charges for medical examination and having passed the medical examination on 19.9.1993 she has been posted as Junior Store Khalalsi under Senior D.C.M.'s Store on regular measure on 17.8.1993. It is submitted that while the applicant was working as Announcer, she was found surplus and the Railway Administration, although was not obliged to absorb her, but on compassionate grounds, she was asked to work against a T.L.R. post for a period of three months only initially as Typist and since then she is working as T.L.R. Typist being extended from time to time. It is further submitted that the authorities having taken a sympathetic view in this matter, tried to empanel the applicant against direct recruit quota, but the approval of General Manager and Railway Board was not obtained. Therefore, she could not be empanelled against the self-same post of Typist. It is further submitted that on attaining temporary status as casual labourer she was employed in Class-IV (Group-D) post in view of the extant rules as the Group-D post is the entry point post for casual labourer and that is why she was offered the appointment against Group-D post on 6.2.1990. But instead of immediately accepting the same,

she approached the Tribunal and obtained a stay order and at the conclusion of the proceedings in O.A.102/90 before this Tribunal, she was posted as Junior Store Khalasi on 17.8.1993. It is submitted that the merger of the post does not cover the case of the applicant. The applicant was offered a regular appointment in Group-D post. However, in consonance of the order of this Tribunal, the applicant was not engaged in a job requiring manual work. It is, therefore, requested that the applicant has no case and this Original Application is to be dismissed with costs.

4. We have heard the learned counsel for the petitioner and learned Standing Counsel Shri Ashok Mohanty, appearing on behalf of the respondents. Learned counsel for the applicant has also submitted a date chart and written note of submissions. Learned Standing Counsel on behalf of the Respondents also filed a list of citations and written note of submissions.

5. Learned counsel for the petitioner submitted that the applicant is continuing on Class-III post (Junior Typist) since long and till now no regular incumbent has joined. Therefore, the applicant should be regularised in Class-III post and order issued to join Group-D post under ~~vide~~ Annexure-5 to the application be quashed. In support of his contentions, learned counsel for the petitioner has submitted a date chart along with written note of submissions and referred the following judgments:

1. AIR 1990 S.C. 371
(Bhagabati Prasad v. Delhi SMDC)
2. O.A.No.227 of 1988 disposed of on 8.5.91
(Miss.Snehalata Tripathy v. UOI)
3. Civil Appeal No.4541-42 of 1992 disposed of
on 21.10.1992 by the Hon'ble Supreme Court
(UOI V.Bighyan Mohapatra)
4. O.A.No.120 of 1989 disposed of by this
Tribunal(C.Hazra v. UOI)
5. O.A.403 of 1989 disposed of by this Tribunal
(Smt. B.Devi v. UOI)

6. On the other hand learned Standing Counsel appearing on behalf of the respondents also submitted written submissions and contended that originally the applicant was engaged as Casual Labourer on daily wage basis. Therefore, mere continuous adhoc service does not entitle the applicant for regularisation. He has referred the following decisions in support of his contentions.

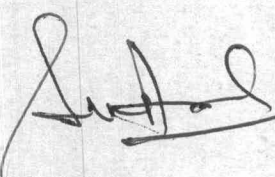
- 1.1997(7) S.T. 202
2. ATC 1996, Vol.32 Page-70
3. 1996(36) ATC 36
4. 1996 Supreme(8) 215
5. 1996 Supreme Vol.8 - 82
6. Vol.9 Supreme Court Service
Ruling(Page-86)
- 7.Vol.8,Supreme Court Service
Ruling - 48

He has further submitted that in the earlier Original Application filed by the applicant, this

Tribunal has considered the issue of regularisation and the same was denied by the Tribunal. Therefore, the judgment passed in the earlier O.A. operates as resjudicata. In support of his contention he has referred AIR 1925 P.C. 34(35) and AIR 1942 Oudh 354. It is further submitted by the learned Standing Counsel that the applicant was never appointed to the cadre of Typist rather she was appointed in Group-D post as per the directions of this Tribunal in O.A.102/90. Therefore, the applicant is not entitled to absorption in the clerical cadre being against the rules and principles.

7. We have given our thoughtful consideration to the rival contentions of both the parties and perused the whole record as well as the written note of submissions submitted by both the learned counsels.

8. Admittedly the applicant has been working as Typist on casual basis and she has been offered Class-IV post vide impugned order of appointment (Annexure-5). As per judgment passed in O.A.102/90, it appears that the applicant was prepared to accept the offer of Class-IV post, but she was only interested that department should engage her in typing work. Therefore, this Tribunal has given directions to the respondents accordingly till the regular incumbent comes to join the post of Typist. The judgment in O.A.12/90 clearly reveals that this Tribunal did not find the case of the applicant for regularisation. The question of regularisation of services



of casual worker(Daily Wage Workers) is no more res integra. The Hon'ble Supreme Court in the case of Ghazibad Development Authority v. Vikram Chaudhary(1995) 5 SCC 210:1995 SCC(L&S) 1226:(1995)31 ATC 129 has laid down the law that so long as the applicants are temporary daily-wage employees, and there is no regular post available for appointment, the daily-wager cannot be given regularisation of service, and can also not be paid at par with regular employees.

In another case, viz. State of U.P. v.Madhyamik Shiksha Parishad Shramik Sangh(1996) 7 SCC 34: 1996 SCC(L&S) 371, the Hon'ble Supreme Court has laid down the law that directions to consider regularisation of services on the basis of seniority and length of service can only be given if some posts are created. The creation of posts is a condition precedent for filling up posts on a permanent basis. The Hon'ble Supreme Court has further held in that case that administrative exigencies and the need for creation of a number of posts are matters of executive policy by the appropriate Government. The Hon'ble Supreme Court also held that the High Court was not empowered to direct regularisation of services without there being any post.

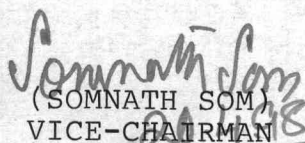
There has been a catena of judgments thereafter also which very clearly stipulates that there cannot be any regularisation without availability of a post on regular basis. A latest judgment on this issue


is H.P.Housing Board v. Om Pal(1997) 1 SCC 269, where the Hon'ble Supreme Court has held that the Tribunal without holding that the termination of service was invalid was in error in giving direction regarding their regularisation of services.

9. It is an admitted fact that the applicant was initially engaged on daily wage basis and continued to work as Typist. But the applicant was never given any appointment in the cadre of Typist. Even by the impugned order she was offered a Class IV post. But in the judgment delivered in O.A.102/90, the directions were given that as far as possible she should be adjusted on the work of Typist. Since the applicant has already been regularised on a Group D post, therefore, the applicant now becomes eligible for appearing in the interview and/or selection of Junior Typist against 1/3rd departmental quota of available vacancy.

10. In view of the facts and circumstances discussed above, the applicant has no case for regularisation and she is not entitled to any relief sought for in this application.

11. We, therefore, reject this application with no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(S.K. AGARWAL)
MEMBER (JUDICIAL)

B.K.Sahoo, C.M.