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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 672 OF 1993.

Cuttack this the 10th day of September, 1999.

Ashok Kumar Sahu.

...

Applicant.

- VRS. -

Union of India & 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)
VICE-CHAIRMAN
10.9.99

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C O R A M:

THE HONOURABLE MR. SOMNATH SGM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.).

SHRI ASHOK KUMAR SAHU, C/o. Batakrushna Sahu,
At/Po. Kaimalaxmi, District-Jajpur. ... APPLICANT.

By legal practitioner : M/s. A. B. Misra, C. R. Misra, G. Misra, Advocates.

- Versus -

1. Union of India represented through its Secretary, Deptt. of Telecom. Govt. of India, New Delhi.
2. Chief General Manager, Telecom. Orissa Circle, Department of Telecom., Govt. of India, At-Sachivalaya Marg, Po. Bhubaneswar, Dist. Khurda.
3. Telecom District Manager, Bhubaneswar Circle, At-Unit-IX, Behind IPICOL Building, BBSR.
4. Divisional Engineer, Telecom Microwave Project, Near Kalyani Mandap, Plot No. 11, Nayapali, BBSR.
5. Pratap Kumar Das, Driver, O/o the Telecom Dist. Manager, Bhubaneswar Circle, Unit-IX, Near IPICOL House, BBSR.
6. Ashok Kumar Behera, Driver, Office of Director, Microwave Project, Deptt. of Telecom. Bhubaneswar.
7. Gopal Chandra Mohanty, Driver, SDO(Phones), At/Po. Puri, Dist. Puri.
8. Pravakar Das, Driver, Office of TDM, Bhubaneswar, Circle, Unit-IX, Bhubaneswar.
9. L. N. Barad, Driver, Office of SDO(Phones), At/Po. Puri, Dist. Puri.
10. Udayanath Misra, Driver, DET (Microwave Project), Unit-VII, Nayapali, Bhubaneswar.

... Respondents.

By legal practitioner : Mr. S. B. Jena, Additional Standing
Counsel (Central)

S. S. Jena

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for quashing the selection dated 7-5-1993 in respect of the interview held on 3-5-1993 by the Telecom District Manager, Orissa Circle, Bhubaneswar, Respondent No. 3 for the post of Motor Driver. The second prayer is for a direction to the Departmental Respondents to regularise the services of applicant in the post of Motor Driver and to allow the petitioner to continue in service as Motor Driver as before. The prayer for interim relief was disposed of earlier with observation that the result of this Original Application will govern the future service benefits of the applicant.

2. The case of applicant is that he has been working as Casual Motor Vehicle Driver in the Office of the Respondent No. 4, Divisional Engineer, Telecom. Microwave Project, Bhubaneswar from 1990 and has been working continuously till the date of filing of this Original Application. The experience certificate is at Annexure-1, in support of his averments regarding the above engagement. In 1992, a notice was issued for recruitment of Motor Vehicle Driver and the applicant applied for the post but the interview was postponed in letter dated 21.4.1992. Again on 25.2.1993, notice was issued for filling up of the post of Motor Vehicle Driver and of the posts notified four posts were reserved for Departmental candidates. On the application of the petitioner for the post, he was called to appear

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the interview in letter issued in April, 1993 (Annexure-2). But subsequently, Respondent No. 3 again cancelled the interview and the same was intimated to the applicant. Applicant's case is that while his candidature has not been considered, Respondents 5 to 10 have been selected in the interview conducted in pursuance of the notice at J.S.M. Annexure-2 and they have been given regular appointment without giving an opportunity to the petitioner to compete in the interview. (Since five adjournments have been given to learned counsel for the applicant to remove the defects as pointed out by the Registry, but the same could not be removed by the learned counsel for the applicant, vide order dated 31.3.1994 of this Tribunal, it was ordered that the Original Application stands dismissed in respect of Opposite Parties 6 to 10). It is further stated that instead of regularising the service of applicant, Respondents 1 to 3 are trying to terminate his appointment and to fill up the present vacancy by contractual appointment. In the context of the above facts, the applicant has come up in this Original Application with the prayers referred to above.

3. Respondents in their counter have stated that in accordance with the Recruitment Rules, 50% posts of Driver are to be filled up under departmental quota and 50% by outsiders. Under the Departmental quota, Gr.C Lineman etc. and Gr.D employees with three years of regular service, in a scale of pay lower than the pay scale of Motor Driver are eligible to apply as Departmental candidates. Under the outsider quota, casual labourers with temporary status and casual Motor Vehicle Drivers, employed prior to 1.4.1985 are to be considered. Respondents have stated that as the

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applicant was engaged as casual driver w.e.f. 1990, according to the averments of applicant, himself, and he is only a casual driver and he is not a casual labourer with temporary status, his candidature could not be considered as has been laid down in para (i) of Department of Communications Circular dated 10.9.91, at Annexure-R/1. It is also submitted that the call letter at Annexure-2 was issued to the applicant wrongly and it was later on cancelled. Departmental Respondents have also stated that the private Respondents who have been selected and appointed were selected and appointed strictly in accordance with the recruitment rule. Out of the seven persons selected and appointed, six persons are the private Respondents 5 to 10. One Shri P.K. Das was working as a Daftry and he was selected and appointed under the Departmental quota. The other seven persons of which five are private Respondents 6 to 10 came under direct recruitment quota meant for temporary status mazdoors and casual motor drivers engaged prior to 1.4.1985. As the applicant had been engaged after 1.4.1985, it has been averred by the Departmental Respondents that his candidature could not be considered. On the above grounds, the Departmental Respondents have opposed the prayers of applicant.

4. We have heard Mr. T.K. Misra, learned counsel for the applicant and Mr. S.B. Jena, learned Additional Standing Counsel appearing for the Departmental Respondents and have perused the records. Learned counsel for the applicant has filed copy of the decision dated 23.6.1994 of this Tribunal disposing of a batch of OAs numbering 230/93 and others which have also been taken note of. It has been submitted by the

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learned Additional Standing Counsel Mr.Jena that as the applicant has been engaged as a casual Driver after 1.4.1985, his candidature could not be considered in terms of the Circular at Annexure-R/1. It is further explained on a query from the tribunal that the date of 1.4.1985 is relevant because w.e.f. 1.4.1985, engagement of casual labourers in the Department was strictly banned. The fact of the matter is that in the instant case applicant has been engaged as casual labourer after 1.4.1985 i.e. from 1990. It has been submitted by learned Additional Standing Counsel that the officer who has engaged the applicant as casual labourer after 1.4.1985 has done so without authority and the applicant can not claim any right on the basis of such irregular appointment. Fact of the matter is that even though the engagement of casual workers after 1.4.1985 was strictly banned, the applicant has been entertained and has been engaged for long periods as casual motor Driver. In that even his claim for consideration of his candidature can not be rejected merely on the logic that after 1.4.1985 no casual labourer could have been legally appointed more so when the applicant had in fact been so appointed after 1.4.1985 i.e. from 1990. In this petition applicant has prayed for his regularisation against the post of Motor Vehicle Driver in view of his engagement as a casual worker from 1990. Law is well settled that regularisation can be done only in accordance with the recruitment rule and adhoc appointment even though for long period can not permit the Departmental Authorities to give a regular appointment to any such adhoc appointee dehors

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the Recruitment Rules. In the instant case, applicant's case has to be considered under the 50% quota for outsider. For this purpose, he has to be tested both in heavy and light motor driving and in the absence of any such test, the claim for his regularisation can not be considered straightforward and therefore, this prayer is held to be without any merit and is rejected.

5. The second prayer is for quashing the selection and appointment of the private Respondents. One of them has come under the Departmental quota and was earlier working as Daftry. Petitioner's case comes under the outsider quota and therefore, he is now way concerned with the other 50% Departmental quota for appointment to the post of Motor Vehicle Driver. As regards the five private Respondents who have been appointed against the outsider quota, some of them are casual labourers with temporary status and some of them are casual motor drivers appointed prior to 1.4.1985. Therefore, the petitioner can not have any better claim than them and therefore, his prayer for quashing their selection and appointment is held to be without any merit and is rejected.

6. The one last point to be considered in this connection that the Departmental Authorities have actually entertained the applicant as a casual motor Driver from the year 1990 even though there was instruction that no casual labourer should be entertained after 1.4.1985. As the applicant has been engaged as casual labourer from 1990 he has a right to be considered for appointment as regular motor vehicle driver under the outsider quota

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strictly in order of seniority and in case he is found suitable in a future test to be conducted for recruitment for Motor Vehicle Driver in the outsider quota. It is also to be noted that in the case relied upon by the learned counsel for the petitioner, the Tribunal had earlier directed consideration of similarly placed individuals by the Departmental Authorities. Inconsideration of the above, the Original Application is disposed of by ordering a direction to the Departmental Respondents that in case of future vacancy in the post of Motor Vehicle Driver under the outsider quota, the candidature of applicant should be considered as per rules and in case he is found to be suitable in the selection, he should be given appointment against the outsider quota.

7. In the result, the Original Application is disposed of in terms of the directions given above but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN