

4
9
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 736 OF 1993

Cuttack, this the 7th day of May, 1997

CORAM:

HONOURABLE SRI S. SOM, VICE-CHAIRMAN

....

1. Shri Dinabandhu Mohakuda,
s/o Kanduru Mohakuda,
At/PO-Dhalpur,
District-Dhenkanal
 2. Maheswar Khilar,
s/o Arakhita Khilar,
Village-Naukiari,
PO-Rasol,
District-Dhenkanal
 3. Shri Kunja Bhutia,
S/o Mahuli Bhutia,
At-Nimidha,
P.O-Badalu, District-Dhenkanal
 4. Shri Bholeswar Khilar,
S/o Hari Khilar
Vill-Gopalpur, P.O-Badulu, District-Dhenkanal
 5. Shri Prafulla Kumar Naik,
son of Shri Charan Naik
Vill-Nimidha, PO-Badulu,
District-Dhenkanal
 6. Shri Madhusudan Khatua,
s/o Rama Chandra Khatua,
Vill-Sudhadihi Kateni, PO-Baulpur,
District-Dhenkanal
 7. Shri Purusotam Singh, S/o Bhagirathi Singh,
Vill-Nimidha, PO-Badalu, District-Dhenkanal
 8. Shri Kailash Chandra Mahakuda, S/o Pranabandhu Mohakhuda,
Vill-Gopalpur, PO-Badalu, District-Dhenkanal
 9. Shri Nanda Kishore Sahu, S/o Shri Pranabandhu Sahu,
At/PO-Gunadei, District-Dhenkanal
 10. Shri Biranchi Kumar Rout, S/o Shri Dushasan Rout,
Vill-Tilapada, PO-Nagena, District-Dhenkanal
- Convenor's Jm
1.5.97.*

-2-

All the petitioners are serving as daily wages labourer and are serving under the administrative control of the Sub-Divisional Officer, Telegraphs, Dhenkanal, At/PO/Dist. Dhenkanal

..... Applicants

-versus-

1. Union of India, represented through its Secretary, Ministry of Communication, Department of Telecommunication, Sancha Bhawan, New Delhi-1.
2. General Manager, Telecommunication, Bhubaneswar.
3. Divisional Engineer, Telegraphs, Dhenkanal.
4. S.D.O., Telegraphs, At/P.O./District-Dhenkanal..... Respondents

Advocates for applicants - M/s A.K.Misra,
S.K.Das, S.B.Jena, B.B.Acharya
and J.Sengupta.

Advocate for respondents - Mr.U.B.Mohapatra, ASC.

ORDER

SOM, VICE-CHAIRMAN In this application under Section 19 of the Administrative Tribunals Act, 1985, the ten applicants claim that they worked as daily rated labourers under the respondents in the years 1982, 1983, 1984 and 1985. They have annexed to this application certain papers regarding their engagement and record of employment. According to them, they were disengaged on 3.5.1985 (Annexure-1). It is further submitted by them that while disposing of M.A.No.65 of 1991, arising out of O.A.No.18 of 1989, this Tribunal has ordered in case of a similarly placed person, Pitambar Nanda, that pending framing of a Scheme by the Department, the applicant

*Somnath Jom
7.5.97*

in that case should be provided with employment by the departmental respondents as a casual labourer pending his regular absorption, if there was nothing adverse against him. On the same basis, the applicants claim that the respondents should be directed to regularise their services and pay them the regular scale of pay which is being given to the counterpart regular employees who are discharging same and similar duties as that of the petitioners.

2. From the counter filed by the respondents, it appears that the applicants were working as casual labourers under the respondents. On 30.3.1985 (Annexure-R-1), the Department of Posts and Telegraphs instructed all the Telecom Circles and Telephone Districts banning fresh recruitment and employment of casual labour for any type of work with immediate effect. The existing casual mazdoors were ordered to be reallocated and transferred for work of casual nature, all installation works of temporary nature, cable laying work, and line construction and dismantling work. In accordance with this circular, apparently the Sub-Divisional Officer, Telegraphs, Dhenkanal, under whom the applicants were working as casual labourers, disengaged them in order vide Annexure-1 to the application. According to the respondents, these applicants have worked without continuity for periods ranging from 28 days to 234 days till end of April, 1985. They cannot be re-engaged after a gap of more than ten years. Subsequent to the above order dated 30.3.1985, on 18.7.1985 it was ordered by the Department that in case of urgent work requiring engagement of casual workers, the work should be got done by engaging contractors so that the casual labourers would be contractors' employees. The respondents have submitted that

*Somnath Jm
7.5.92*

12
after a gap of more than twelve years, the services of these applicants cannot be regularised. They have also submitted that the order of the Tribunal in M.A.No.65 of 1991, referred to earlier, is not applicable to the cases of these applicants.

3. I have carefully considered the submissions of the learned lawyer for the applicants and the learned Additional Standing Counsel appearing on behalf of the respondents. I have also looked into the records. It is admitted by the applicants that they have been disengaged by the order dated 3.5.1985 and thereafter they have not been working under the Department. It is also the case of the respondents that after the ban order of 30.3.1985, they have been, by and large, getting the work done by engaging contractors. The applicants not having been in service of the respondents for more than twelve years, it is not possible to order for regularisation of their services after such a long gap. The applicants also have not been able to make out a case for regularisation because none of them, according to the respondents, has worked for more than 240 days in a year. The applicants have also not proved that posts are vacant in the Department against which their prayer for regularisation should be considered and that the respondents are in the process of filling up those posts. Hon'ble Supreme Court in the case of State of Haryana and others v. Piara Singh and others, AIR 1992 SC 2130, have clearly indicated that without there being any posts, orders of regularisation cannot be issued. In consideration of the above, the prayer of the applicants for regularising their services is found to be without any merit. As the applicants are not in the employment of the respondents, the question of allowing them wages on pro rata basis does not obviously arise.

4. In the result, therefore, I hold that the application is without any merit and the same is rejected, but under the circumstances, without any order as to costs.

Somnath Jha
(S.SOM)
VICE-CHAIRMAN
15-97