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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO.2 OF 1994
Cuttack, this the 29th day of January, 1998

Krishna 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

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
29/1/98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.2 OF 1994
Cuttack, this the *29th* day of *January*, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Krishna,
son of Kamulu
Fitter Gr.III, office of the
Electrical Foreman,
(Construction),
S.E.Railway, Koraput,
A/P Koraput, Dist.Koraput Applicant.

By the Advocates - M/s G.A.R.Dora &
V.Narasingh.

Vrs.

1. Union of India,
through the Chief Administrative Officer(Project),
(Survey & Construction),
S.E.Railway,
At/P-Chandrasekharapur,
District-Bhubaneswar.
2. Deputy Chief Electrical Engineer
(Construction),
S.E.Railway,
Visakhapatnam - A.P.
3. Electrical Foreman (OHE)/CON,
S.E.Railway, Koraput,
A/P-Koraput,
District-Koraput Respondents.

By the Advocate - Mr.D.N.Misra.

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 28.12.1993 (Annexure-A/3) and for a declaration that the petitioner is a regular Grade III Fitter

and is entitled to continue as such. At the time of admission of this Application on 5.1.1994, operation of Annexure-A/3 had been stayed.

2. Facts of this case, according to the applicant, are that he was appointed as a casual Khalasi on 1.11.1980. He was promoted as Basic Trademan (BTM) (Fitter) which is a semi-skilled post on 2.2.1985. He also appeared at a trade test for promotion to Fitter Grade-III. From order dated 26.12.1988 (Annexure-A/1) it is seen that he had passed the trade test for the post of Fitter. After such passing of the test, the petitioner was given ad hoc promotion to the post of Fitter Grade III in the order dated 14.2.1989 (Annexure-A/2). The petitioner further states that in paragraph 4 of Chief Project Manager's letter dated 11.10.1993, copy of which has not been annexed to the Application, it has been stated that in case any person refuses to avail this opportunity, he will forfeit his claim for absorption in Open Line, Waltair Division. The skilled staff working in higher grades involving drop in emolument, if they refuse to get absorption in Group-D, are required to give in writing to that effect, and they will forego their future claim for the absorption in Group-D and will have to face the consequences by their option to continue to remain as casual skilled labour as long as Construction Organisation needs their services. From this, it is submitted by the applicant that staff working in skilled grade may opt not to be

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absorbed in Group-D service carrying much less pay than skilled Grade III post. In spite of this, in order dated 28.12.1993 issued from the office of respondent no.3 and addressed to S.P.O., Con., S.E.Railway, Visakhapatnam, it has been mentioned that the applicant has been directed to appear before S.P.O (Construction) for screening with a view to his absorption in Open Line in Group-D post. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have submitted that the applicant was appointed as a casual Khalasi on daily rated basis on 1.11.1980 in Waltair-Kirandur Railway Electrification Project. After completion of the Project, the applicant instead of being retrenched was absorbed in Survey & Construction Organisation along with other casual labourers. The respondents have stated that casual labourers appointed on daily rates of pay are not eligible for promotion. But, however, in Construction Organisation, to complete certain specified work in targetted time casual labourers are appointed either in semi-skilled or skilled category subject to their passing the prescribed trade test. As the Project works are coming to a close, the applicant instead of being retrenched, has been directed to be absorbed regularly in Open Line Division in permanent vacancy within the geographical jurisdiction under which the Construction Unit is situated. Respondents have

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further stated that before absorbing casual labourers against permanent vacancies in Open Line, the casual skilled/semi-skilled workers are screened along with other casual labourers for absorption in unskilled category in Group-D. In such absorption, there is considerable drop in emoluments when semi-skilled or skilled casual workers are absorbed in unskilled Group-D posts in Open Line. In view of this, an opportunity is given to the casual skilled artisans to exercise option (i) either to continue in the said casual skilled post in the Construction Organisation and be prepared for retrenchment after the Project work is over in the event his turn does not come for absorption in Group-C skilled post in Open Line, (ii) or to be prepared for reversion to his former Group-D casual labour post in Construction Organisation, (iii) or to be absorbed in Group-D regular post in Open Line Division. This is clearly laid down in letter dated 27.11.1992 (Annexure-R/1). The respondents have further stated in paragraph 2 of their counter (page 3) that the applicant did appear before the Screening Committee for absorption in regular Group-D post and therefore, he cannot now claim that he has been forced to appear before the Screening Committee. According to the respondents, once he has exercised his option, he cannot go back from the same. Respondents have stated that in order to complete

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certain specified work, the applicant, who was originally a casual labourer, was engaged in skilled category, but this was not a case of promotion from Khalasi to Skilled Fitter Grade -III. The respondents have further stated that appearance before the Screening Committee is optional and not compulsory and this is done only to give an opportunity to the casual workers in the Construction Organisation to get absorbed in regular establishment of Open Line. The applicant appeared before the Screening Committee. He was cleared and his position in the panel was against serial No.179. Therefore, he cannot now claim not to come in a Group-D post. It is further stated that the applicant could have easily given an option in writing not to appear before the Screening Committee. But he did not do so and only after his empanelment for appointment in Group-D post, he had refused to join the Group-D post. On the above grounds, the respondents have opposed the prayers of the applicant.

4. I have heard the learned lawyer for the applicant and Shri D.N.Misra, the learned counsel appearing on behalf of the respondents and have also perused the records.

5. At the time of hearing of the petition on 11.7.1997, learned counsel appearing for the respondents wanted time to file the option given by the applicant for his screening with a view to his absorption in regular Group-D post in Open Line. Further time was allowed on 29.7.1997 and ultimately on 11.8.1997 it was submitted by the learned counsel appearing for

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the respondents that he did not intend to file any other document and the matter may be disposed of in the light of the pleadings and submissions. Learned lawyer for the petitioner has referred me to a large number of decisions of the Hon'ble Supreme Court and also two Division Bench decisions of the Tribunal of Cuttack Bench and Calcutta Bench. The decisions relied upon by the learned lawyer for the petitioner are Chief Conservator of Forests and another, etc., etc. v. Jagannath Maruti Kondhare, etc.etc., 1996(1) SLR 57, All Manipur Regular Posts Vacancies Substitute Teachers' Association v. State of Manipur, AIR 1991 SC 2088, Managing Director, Orissa Construction Corporation and others v. Shyam Sunder Jena and others (1992) 2 ATT (SC) 572, Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371, and Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka and others, AIR 1992 SC 677. Besides the above decisions of the Hon'ble Supreme Court, the learned lawyer for the petitioner has also relied on the decisions of the Division Bench decisions of the Tribunal in O.A.No.347/91 (disposed of on 7.4.1995) (V.V.Raman Murty v. Union of india and others) and O.A.No.1003/92 (disposed of on 23.8.1995) (V.A.Saradamba and others v. Union of India and others) (Calcutta Bench).

6. I have looked into the above cases. The factual position is that the applicant was appointed originally as a casual Khalasi (unskilled) in the Construction

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Organisation. He was later on appointed as Grade-III Fitter on ad hoc basis in order dated 14.2.1989. The applicant states that this is a case of promotion. The respondents have, on the other hand, stated that there cannot be any promotion from Khalasi to Fitter Grade-III. In order to complete some urgent type of work, the applicant has been appointed as Fitter Grade-III after passing the trade test. The respondents' contention cannot be accepted because the order dated 14.2.1989 at Annexure-A/2 clearly states that these are cases of ad hoc promotions. It has however been specifically mentioned in the promotion order that promotions have been ordered on purely ad hoc measure and the persons will have no claim for absorption against regular posts in the same Grade in the Open Line and are liable to be reverted at any time without notice. The other aspect of the matter is that in case the applicant is absorbed in a Group-D post in Open Line there will be substantial fall in his emoluments. On the other hand, absorption in Group-D post in Open Line would mean that his service in a Group-D post as a regular employee will count towards pension. Because of the advantage and disadvantage of such absorption in a Group-D post in Open Line, there is a provision for option. The respondents in their counter have submitted that the applicant appeared in the Screening Test and was selected and his position was at serial No.179 and thereafter he cannot opt not to get absorbed in a Group-D post in the Open Line. But the respondents have not produced any

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any document in spite of giving two adjournments showing the option exercised by the applicant for absorption in a Group-D post in Open Line. On the other hand, the letter dated 27.11.1992 filed by the respondents as Annexure-R/1 mentions as follows:

".....Though some of the casual skilled artisans who appeared in the screening have come in turn for regular absorption in Open Line and were offered appointments, they have not reported to this office nor given unwillingness as stated above. It is presumed that the casual skilled artisans who appeared in the screening and offered appointment in Group "D" regular service in the Open Line and such of the casual skilled artisans who have not appeared in the screening and are willing for their regular absorption in Group-D service in the Open Line might have submitted necessary options to that effect in your office. But this office has not received any such options so far.

You are, therefore, requested to confirm by submitting statements showing names of PCR staff and casual skilled artisans who did not appear at the screening and not reported to this office in spite of being offered regular absorption in Group-D service in Open Line, indicating whether written unwillingness have been obtained from such staff and necessary entries made in the SRs of the concerned staff. If the above action has not so far been taken, you are advised to take necessary action immediately and intimate to this office within 2 weeks."

From this, it appears that some of the casual skilled artisans appeared at the screening test but did not join the Group-D posts in spite of being selected and in this letter it has been ordered that their written options showing their unwillingness to join in Group-D posts in Open Line should be obtained and necessary entries should be made in their Service Books. From

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this it appears that even after appearing at the screening test, a person may choose to opt out of the appointment to a Group-D post. The petitioner's case is like that. He has apparently appeared in the screening test and has been selected and placed at serial No.179. Now if he does not want to join in a Group-D post, he has to specifically give in writing his unwillingness to join in a Group-D post in Open Line. He may even now do so and if he does that, the respondents will be bound to accept his option and there would be no need for quashing the order dated 28.12.1993 at Annexure-A/3. In any case, when the applicant has appeared at the screening test, there is no question of quashing the order at Annexure-A/3. In view of this, the first prayer of the applicant is held to be without any merit and is rejected.

7. The next prayer of the applicant is that he should be treated to be a regular Grade-III Fitter. The applicant has not specifically mentioned whether his prayer is for treating him as a Grade-III Fitter in Construction Line or Open Line. In any case, when he has not opted to join in a Group-D post in Open Line and he is continuing in Construction Organisation, he cannot be treated as a Grade-III Fitter in the Open Line. As regards his prayer that he should be treated as regular Grade-III Fitter in the Construction Organisation, I have already mentioned the rival submissions of the parties on this point. From the order of promotion itself it is clear that he is an ad hoc appointee to the post of Grade-III Fitter in

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Construction Organisation and in the order of appointment, it has been clearly mentioned that he will not have any claim for absorption against regular post in the same grade in Open Line and is liable to be reverted at any time without notice. It is well settled that ad hoc appointment can give no right to hold a post on regular basis. Moreover, Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Suresh Kumar Verma and another, AIR 1996 SC 1565, have observed as follows:

".....Only work-charged employees who perform the duties of transitory nature are appointed not to a post but are required to perform the work of transitory and urgent nature so long as the work exists....."

As such, the applicant would continue on ad hoc basis strictly in terms of his order of appointment at Annexure-A/2 and so long as work is there for him. But in this order of appointment, 24 persons have been promoted and there are three persons below the applicant in Fitter Grade-III post. Amongst these adhoc appointees, the petitioner is bound to be continued so long as the persons placed below him in this order are continued as Fitter Grade III but he cannot claim the post of a regular Fitter Grade III in the Construction Line. This prayer is also, therefore, held to be without any merit and is rejected.

8. In view of the factual position and my findings in the preceding paragraphs, it is really not necessary for me to go into the cases cited by the learned lawyer for the

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applicant. But even then it is noted that in case of **Chief Conservator of Forests and another, etc. etc., (supra)**, Hon'ble Supreme Court have held that when casual workers are in the employment of the State for five to six years, failure to regularise them would amount to unfair labour practice. This decision is not applicable in the present case because the applicant has not asked for regularisation in Open Line or in Construction Line. The decision in **All Manipur Regular Posts Vacancies Substitute Teachers' Association (supra)** is also one in which the Hon'ble Supreme Court directed regularisation of substitute teachers. In the case of **Managing Director, Orissa Construction Corporation and others (supra)**, Hon'ble Supreme Court held that NMR employees are entitled to regularisation after five years of continuous service. The applicant in the instant case is working in Construction Organisation which exists so long as the construction work is there. Originally he was engaged in Waltair and on that work being over, instead of being retrenched, he was absorbed in Survey & Construction Organisation. He cannot get permanently absorbed in Construction Organisation and therefore, his case is not similar to the case of NMR workers working under Orissa Construction Corporation. The decision of the Hon'ble Supreme Court in the case of **Karnataka State Private College Stop-Gap Lecturers Association (supra)** is also another decision for regularisation of services

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of stop-gap lecturers in private colleges. In **Bhagwati Prasad's** case (*supra*) the Hon'ble Supreme Court ordered absorption of daily rated labourers working under Delhi State Mineral Development Corporation. All these cases relate to regularisation of services which is not the prayer here. In the decision of the Division Bench in the case of **V.V.Raman Murty** (*supra*) , the case was one of giving option for absorption in Group-D post in Open Line. The Tribunal in their order dated 7.4.1995 held that if and when he is absorbed in the Open Line, he should be given the same scale of pay which he is getting in the Construction Line. In the instant case, the appointment of the petitioner to the post of Grade-III Fitter is on ad hoc basis and this cannot given him any claim to get absorbed in the same scale in Open Line and this has been specifically mentioned in the order of appointment referred to by me earlier. The decision of the Division Bench of the Tribunal at Calcutta in the case of **V.A.Saradamba and others** (*supra*) is one where the Tribunal had ordered for regularisation of applicants in their turn in Group-C posts. In that case, the prayer was for regularisation and the applicants had been conferred with temporary status. In this case, I have already mentioned that the applicant has not prayed for regularisation. In the Application also there is no statement that temporary status has been conferred on him. In

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view of this, the decision of the Calcutta Bench of this Tribunal in the above case is not applicable to the case of the applicant.

9. In consideration of the above, the Original Application is rejected but without any order as to costs.

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(SOMNATH SOM)
VICE-CHAIRMAN
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