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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.157 OF 1994
Cuttack, this the 20th day of February, 1998

Alekh Chandra Swain Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
20.2.98
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.157 OF 1994
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Alekh Chandra Swain,
s/o Daitari Swain,
Vill-Trutiyapada,
P.O-Retang,
District-Khurda

Applicant.

By the Advocate -

Mr.P.C.Mohapatra.

Vrs.

1. Union of India, represented through its General Manager, South Eastern Railway, 11,Garden Reach Road, Calcutta-700 043.
2. Chief Personnel Officer, S.E.Railway, Garden Reach Road, Calcutta-700 043.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, At/PO-Jatni, District-Khurda.
4. The Divisional Signal & Telecom Engineer (Dev), S.E.Railway, Khurda Road, At/PO/PS-Jatni, Dist. Khurda Respondents.

By the Advocates -

M/s B.Pal &
O.N.Ghosh.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this petition under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to implement the orders in T.A.No.194 of 1986 and O.A.No.330 of 1988 which were disposed of on 24.12.1986 and 11.4.1989. There is also a prayer to regularise the services of the applicant.

2. Facts of this case, according to the applicant, are that he was appointed as a casual labourer under Divisional Signal & Telecom Engineer (Dev.), S.E.Railway, Khurda Road (respondent no.4) from 5.1.1974 to 14.3.1982. He along with others filed O.J.C.No.2725 of 1981 before the Hon'ble High Court of Orissa praying for a direction to the departmental authorities to confer temporary status on them. The O.J.C. was transferred to the Tribunal and was renumbered as T.A.No.194 of 1986 which was disposed of in order dated 24.12.1986. In paragraph 6 of the counter to the T.A., the respondents admitted that the period of employment of the applicants in the T.A. varies from 7½ to 13½ years as on 1.1.1982. The Tribunal relied on the letter dated 11.9.1986 issued by the Railway Board and circulated by Chief Engineer(C), S.E.Railway, Garden Reach, Calcutta. in his letter dated 30.9.1986. Apparently these

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circulars were issued following the decision of the Hon'ble Supreme Court in the case of Inder Pal Yadav and others v. Union of India and others, (1985)2 SCC 648 and the Railway Board directed conferring of temporary status on those casual labourers on Project, who though not in service on 1.1.1981, had been in service of Railways earlier and had already completed 360 days of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

The Tribunal held that orders of the Railway Board might have been complied with by the respondents and temporary status conferred on the petitioners. The Tribunal directed that if it had not been done, then the same should be done within a month from the date of receipt of copy of the order. The applicant's case is that in spite of that order, he was not given temporary status and was also not given any further engagement. Several representations were filed by him, one of which is at Annexure-3 but without any result.

The applicant further submits that another batch of casual workers, 27 in number, working under respondent no.4 in the present O.A., filed O.A.No.330 of 1988 before the Tribunal. This O.A. was disposed of in order dated 11.4.1989. In this decision also, the Tribunal relied on the Railway Board's

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letter dated 11.9.1986 circulated in Chief Engineer (C)'s letter dated 30.9.1986 and directed that a fresh look be given by the respondents on the question of conferring of temporary status and regularisation of the applicants in that O.A. It was also ordered that a seniority list of casual workers should be prepared and as and when vacancy arises appointment should be given from that seniority list. The Tribunal also noted that there are 27 vacancies at the disposal of respondent no.3 in that O.A. and directed that if the vacancies are there, then appointment orders should be issued to these incumbents according to their seniority and after giving them temporary status provided that such incumbents are found suitable. It is to be noted that the present applicant was not a party to O.A.No.330 of 1988 but claims that in the light of the decision in O.A.No.330/88, his case should have been considered for granting of temporary status and regularisation, but no action was taken. In view of this, he has come up with the aforesaid prayers.

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3. Respondents in their counter have submitted that the applicant worked under respondent no.4 in a Project from 5.1.1974 to 14.3.1982 as a casual labourer on daily rated wages. After 14.3.1982 he left the casual employment on his own accord. The Railway Board in their circular dated

22.11.1984 indicated that casual labourers who were discharged from service on completion of work or for want of further productive work and who had not worked in the Railways in the preceding two calendar years should be struck off from the casual labour register. The respondents' case is that the applicant having left the engagement of the Railways on his own accord in 1982, his case comes under the circular dated 22.11.1984 and therefore, his name was struck off. The respondents have noted that in T.A.No.194/86 certain directions were given by the Tribunal with regard to the applicant and several other persons. It is also indicated that in O.A.No.330/88 certain other directions, referred to earlier, were given. It is stated that even though the applicant was not a petitioner in O.A.No.330/88, in order to honour the Tribunal's order in the aforesaid case, the applicant was called for screening along with others in O.A.No.330/88. The respondents have stated that they have implemented the circular dated 11.9.1986 of the Railway Board which was relied upon by the Tribunal in the earlier cases and casual employees who were retrenched prior to 1.1.1981 and were re-engaged after 1.1.1981 have been given temporary status. But retrenched casual labourers who were not engaged after 1.1.1981 had not been granted

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temporary status. The applicant is not a retrenched casual labourer, according to the respondents, because he left the service of the Railways on his own. It is further stated that the applicant was called for a screening test on 19.7.1989 by a properly constituted Screening Committee, but the applicant was not found suitable and therefore, he could not be conferred temporary status with a view to his regularisation in his turn. In view of the fact that the applicant has been found unsuitable in the screening test, the respondents have stated that he could not be conferred temporary status. On these grounds, the respondents have opposed the prayers of the applicant.

4. Hearing of this O.A. was concluded before the Single Bench on 28.8.1997. In course of hearing, the learned lawyer for the petitioner submitted that the applicant was never called to appear in the screening test on 19.7.1989 nor did he appear in the said test and therefore, the question of finding him unsuitable in the screening test does not arise. In view of this submission, the learned Senior Counsel appearing on behalf of the respondents was directed to produce the relevant records relating to the screening test in which the applicant allegedly appeared. In spite of six adjournments, these documents were not produced. On the other hand, learned lawyer for the petitioner filed a memo on 19.12.1997 specifically

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mentioning that the petitioner was never called to the screening test on 19.7.1989, no call letter was received by him, and in spite of several adjournments no records relating to the applicant's appearance in this screening test could be produced by the respondents. In view of this, learned lawyer for the petitioner wanted appropriate adverse inference to be drawn against the respondents.

5. I have heard the learned lawyer for the petitioner and the learned Senior Counsel appearing on behalf of the respondents and have also perused the records including the records of T.A.No.194/86 and O.A.No.330 of 1988. It has been submitted by the learned lawyer for the petitioner that the applicant was disengaged by the Railways and he did not leave the engagement of the Railways on his own accord. In any case, even granting for argument's sake that the applicant left the service of the Railways on his own in 1982, that point is immaterial because in 1986 T.A.No.194/86 was allowed and a direction was issued to confer temporary status on him. The learned Senior Counsel appearing on behalf of the respondents, on the other hand, has submitted that the applicant was called to the screening test on 17.9.1989 where he was found unsuitable and after that he has come up in this O.A. only in 1994 and therefore, the prayer of the petitioner, according to the learned

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Senior Counsel, is barred by limitation. The admitted position, as earlier noted, is that the applicants in T.A.No.194/86 had worked under the respondents for periods ranging from 7½ to 13½ years as mentioned in the counter to the above T.A. In consideration of that and the Railway Board's circular dated 11.9.1986, the Tribunal in T.A.No.194/86 directed granting of temporary status within thirty days from the date of receipt of copy of the order if the same had not already been done. A similar order in case of another batch of casual labourers working under present respondent no.4 was passed in O.A.No.330/88. The respondents have mentioned at page 4 of their counter as also in paragraph 6 that in order to implement the order of the Tribunal the applicant along with other casual labourers were called to a screening test on 19.7.1989 where he was found unsuitable. The conferment of temporary status and subsequent regularisation are always subject to suitability and this is done by holding a screening test. It is also noted that in order dated 11.4.1989 in O.A.No.330/88 the Tribunal ordered for regularisation of applicants therein after giving them temporary status, provided such incumbents are found suitable. Thus, if the applicant was called to the screening test and was not found suitable by a properly constituted Screening Committee, he can have no grievance because thereby the respondents must be deemed to have

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adequately complied with the order of the Tribunal. But on this point the specific submission of the rival counsels is contradictory. The learned Senior Counsel appearing on behalf of the respondents has specifically submitted that along with others the applicant was called for the screening test on 19.7.1989 where he was found unsuitable. The learned lawyer for the petitioner has, however, specifically averred and filed a memo denying that the applicant was ever called to the screening test on 19.7.1989. He has also denied that the applicant received any call letter to appear in such screening test. In view of the contradictory stand on the factual aspects of the matter, the learned Senior Counsel for the respondents was directed to produce the records with regard to the screening test on 19.7.1989 to which the applicant allegedly was called and where he allegedly appeared. But in spite of a large number of adjournments, no such records could be produced and it was submitted by the learned Senior Counsel for the respondents that the matter may be disposed of on the basis of records. In the context of the above facts, it is not possible to hold that the respondents did call the applicant for the screening test on 19.7.1989.

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6. The next point, which arises for consideration, is what relief the applicant is entitled to

in the above context. The respondents have pleaded limitation. But in view of the fact that it has been held that the applicant was not called to a screening test on 19.7.1989 and the Tribunal's orders have not been complied with in respect of the applicant, the respondents cannot urge the point of limitation, moreso when their stand that the orders have been complied with has not been accepted by me for the reasons indicated above. In consideration of the above facts, a direction is issued to the respondents to call the applicant to a screening test within a period of 90 (ninety) days from the date of receipt of copy of this order. Further action with regard to the applicant should be taken by the respondents within a period of 30 (thirty) days thereafter.

7. With the above direction, the Application is disposed of. No costs.

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