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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 287 OF 1994.

Cuttack, this the 3rd day of April, 2000.

TRILOCHAN DIXIT.

...

APPLICANT.

VRS.

UNION OF INDIA & ORS.

...

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

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.287 OF 1994.

Cuttack, this the 3rd day of April, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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Trilechan Dixit, Aged about 26 years,
Son of Pravakar Dixit, At/Po: Anle,
Via. Bairoi, Ps: Niali, Dist. Cuttack,

: Applicant.

By legal practitioner: M/s. R.N. Naik, A. Deo, B. S. Tripathy,
P. Panda, D.K. Sahoo, Advocates.

-Versus--

1. Union of India represented by its Secretary, Ministry of Communication, Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunications, Orissa Circle, At/Po Bhubaneswar, Dist. Khurda.
3. Sub-Divisional Officer, Phones (I), Cuttack, Central Telegraph Office Compound, Cantonment Road, Cuttack.
4. Divisional Engineer of Telephones, Cantonment Road, Cantonment, Town/District: Cuttack.

: Respondents.

By legal practitioner: Mr. J. K. Nayak,
Additional Standing Counsel (Central).

J. K. Nayak.

R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act,1985, the applicant has prayed for a direction to the Respondents to regularise his services.

2. His case is that he worked as casual driver under the Divisional Engineer of Telephones,Cantment Road,Cuttack from 1.12.1990. He has worked as such till 2.1.1993 after which Respondents did not allow him to work. He has stated that as he has rendered satisfactory service Department from 1.12.1990 to 2.1.1993, his services should be regularised and as the Respondents are not taking any step to regularise his services, he has come up in this Original Application with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of applicant. They have stated that the applicant was engaged purely on contract basis intermittently during the year 1990,1991,1992 and 1993. During all these four years, he had worked only for 34 days as casual driver in the absence of the regular driver. Respondents have stated that the posts of Driver are to be filled up in accordance with the Recruitment Rules and according to the Recruitment Rules, the petitioner is not entitled to be so appointed. They have also stated that casual workers with temporary status can only be regularised against regular vacancies in accordance with the Recruitment Rules and as the applicant could not have the temporary status, he is not entitled to be regularised.

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4. We have heard Mr.B.S.Tripathy,learned Counsel for the applicant and Mr.J.K.Nayak,learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

5. Learned counsel for the applicant has filed a Miscellaneous Application No.77/2000 after serving copy on the other side stating that some posts of Driver are going to be filled up shortly and at that time his case should be considered and his past experience should be taken into consideration and relaxation of age should be given to him. We have also heard learned counsel for both sides on this M.A. 77 of 2000.

6. In the Original application,prayer of applicant is for regularisation.According to his own submission in para -5 of the Original Application he had worked from 1.12.1990 to 2.1.1993 and thereafter he was dis-engaged.In the M.A. however, he has stated that he joined the Department on 1.12.1990 and has been continuing till the date of filing the Miscellaneous Application on 31.1.2000continuously.In view of his earlier averments in the Original Application that he has been disengaged on 2.1.1993 his subsequent averment in the M.A. that he has been working all through these seven years from 1993 to 2000 is not believable .It is submitted by learned counsel for the petitioner that actually the applicant is working as a casual driver but the Respondents not maintaining the records in the name of applicant.There has been no such averments either in the O.A. or in the M.A. and therefore, this aspect can not be taken into consideration. Respondents in the other hand stated that for the four years

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from 1990 to 1993 the applicant had worked only for 34 days as casual driver. There has also been no averment by the applicant that he has ever been conferred with temporary status. Therefore, there is no case for his regularisation. Prayer for regularisation of the service of the applicant in the vacant post of driver is accordingly held to be without any merit and is rejected.

7. In the Miscellaneous Application the prayer of application is for a direction to the Respondents to consider his case at the time the post of Driver under the Respondents is filled up. We find from the pleadings of the parties that for filling up of the post of Driver under the Respondents, there is a statutory rules called Posts and Telegraphs Department (Motor, Jeep, Lorry and Staff Car Driver) Recruitment Rules, 1983 which has been issued under Article 309 of the Constitution. Under these rules 50% posts of Drivers are to be filled up by promotion of Gr.D employees working in the Department and also by promotion of Gr.C employees having a scale of pay lower than the pay of the Driver. So far as the other 50% posts is concerned the Recruitment Rules provide that these are to be filled up by casual labourers with temporary status working as Driver in the Department and who have been engaged prior to 1.4.85. Recruitment Rules also provide that if there are no sufficient number of candidates under the Departmental quota, the vacancies are to be transferred to the direct recruitment quota. As the applicant is not a casual driver engaged prior to 1.4.1985 and he has not been conferred temporary status, he can not be considered even under direct recruitment quota but like the

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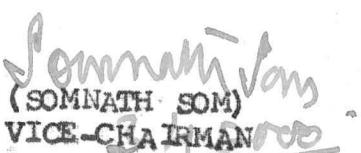
Departmental quota, there can be shortfall in the Direct Recruitment quota for eligible candidates from the casual drivers engaged prior to 1.4.1985 with temporary status working as casual drivers in the Department. In such cases, Respondents are entitled to consider fresh cases from open market as per the Recruitment Rules. In case the Respondents in this case, at the time of filling up of the posts of Driver under the Direct Recruitment quota consider fresh candidates from the open market, then the case of applicant should also be considered strictly in accordance with Rules.

8. Applicant has also asked for condonation of age. General principle is in cases where condonation of age is allowed such relaxation/condonation is given to the extent of services rendered in the Department. Respondents have stated that applicant had worked only for 34 days in these years. In view of this, in case the candidature of applicant is considered alongwith other fresh candidates from the open market, then age relaxation to the extent of 34 days should be given to him in accordance with the Recruitment Rules.

9. In the result, the original Application and the Miscellaneous Application No.77/2000 are disposed of in terms of the observations and directions made above. No costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.


(SOMNATH SOM)
VICE-CHAIRMAN