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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 554 OF 1994
Cuttack, this the 28th day of March, 2000

Surendra Kumar Das 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*

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(ASHOK AGARWAL)
CHAIRMAN

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
AND
HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....
Surendra Kumar Das, son of Rama Chandra Das,
At/PO-Dulanapur, Dist.Cuttack, at present working as
Driver under D.E.T., S.A.P., Keonjhar
.....
Applicant

Advocate for applicant - Mr.P.K.Giri

Vrs.

1. Union of India, represented through Chief General Manager, Telecom Project, East Zone, 10, Raja Subodh Malik Square, Calcutta-700 013.
2. Chief General Manager, Telecommunication, Bhubaneswar, District-Khurda.
3. Director, Telecom Micro Wave Project, 23, Saheed Nagar, Bhubaneswar-7, Dist.Khurda.
4. Divisional Engineer, Telecommunication, Survey & Advance Project, At/PO-Nihalsingh Chhak, Dist.Keonjhar Respondents

Advocate for respondents - Mr.S.B.Jena
A.C.G.S.C.

O R D E R
(ORAL)

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SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to absorb the applicant in the cadre of Motor Driver giving weightage to his past experience as Driver. Thesecond prayer is for a direction to the respondents to continue the applicant as Motor Driver till his regular absorption.

2. For the purpose of considering this petition it is not necessary to go into too many facts of this case. It is only necessary to note that according to the applicant he was appointed as Casual Driver on 15.10.1991 under Divisional Engineer, Telecom, Optical Fibre Project, Bhawanipatna and continued as such till 31.12.1991. He has stated that he has worked as Driver under Divisional Engineer, Telecom, Sambalpur, from 1.1.1992 to 31.5.1992. His further averment is that from 1.6.1992 he is continuing as Driver. He has further stated that even though he has been continuing for long as Casual Driver the departmental authorities have not taken any steps to regularise his services. According to the applicant, there are 11 posts of Driver in Orissa Circle and out of these, two posts are earmarked for the office of Divisional Engineer, Telecom, Survey & Advance project, Keonjhar (respondent no.4). The applicant's prayer is to regularise him against one of these posts.

3. Respondents in their counter have opposed the prayers of the applicant stating that assuming that the applicant had worked casually from 15.10.1991 to 1.7.1993 with intermittent breaks, such engagement will not confer on him any right to get regularised. They have stated that in accordance with the circular issued by the Department of Telecommunication, engagement of casual workers after 31.3.1985 is strictly banned. Notwithstanding this, the applicant had been appointed as Casual Driver. But such appointment is irregular and therefore he cannot get the benefit of such appointment for the purpose of regularisation. It is further stated by the respondents that according to the

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Recruitment Rules for the post of Driver, 50% is meant for departmental quota and the remaining 50% for direct recruitment quota. The departmental quota is filled up by considering persons who are working in Group-C and Group-D posts which have been declared as dying cadre and the direct recruitment quota is meant only for those temporary status Mazdoors doing the driving job and casual Motor Drivers engaged prior to 1.4.1985 and are currently under engagement. The respondents have stated that as the applicant has not been conferred with temporary status nor has he been engaged prior to 1.4.1985, he cannot be considered against the direct recruitment quota for the post of Driver.

4. We have heard Shri P.K.Giri, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. The law is well settled that regularisation has to be done against a vacant post and such regularisation has to be done strictly in accordance with the Recruitment Rules. Hon'ble Supreme Court have held that if regularisation is done otherwise than in accordance with the Recruitment Rules, then this will be a second channel of recruitment which will breed corruption and arbitrariness. In consideration of the above, the prayer of the applicant to get regularised straightaway in a vacant post of Driver is held to be without any merit and is rejected.

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6. The second prayer is for consideration of the applicant for the post of Driver under the direct recruitment quota if and when the same is filled up. The

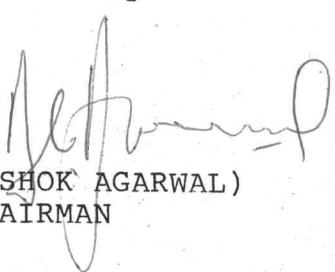
respondents have opposed this prayer on the grounds stated earlier. We find that in this case notwithstanding the instructions of Department of Telecommunication that no casual workers should be engaged after 31.3.1985, the respondents have actually engaged the applicant as Casual Driver from 15.10.1991 to 1.7.1993. We also note that the Recruitment Rules for Driver, which are enclosed by the respondents at Annexure-R/2, do not provide that under the direct recruitment quota only those casual mazdoors who have been conferred with temporary status and who have driving licence and those casual drivers who have been engaged prior to 1.4.1985 can only be considered. In this case when the departmental authorities had engaged the applicant as Casual Driver even after 31.3.1985 and he had worked for sometimes, he has a right to be considered along with other persons strictly in accordance with rules and according to his eligibility. In view of this, this prayer is disposed of with a direction to the departmental authorities that the case of the applicant should be considered for the post of Driver along with others under the direct recruitment quota strictly in accordance with rules and according to his eligibility and by ignoring the executive instruction limiting consideraton under this quota only to the persons mentioned earlier.

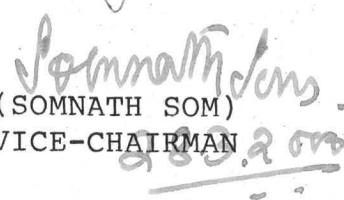
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7. The third prayer is for a direction to the departmental authorities to re-engage him as Driver. The law is well settled that a Casual Driver is engaged only for casual, seasonal or intermittent nature of work. In view of this, it is not possible for the Tribunal to issue a direction to the departmental authorities to

re-engage him as a Driver. But as he has been disengaged as a Driver, in case respondent no.4 engages Casual Driver, then as a retrenched Casual Driver, the applicant will have preference over fresh candidates. In such case respondent no.4 is directed to consider the applicant in accordance with the above well settled legal position.

8. With the above direction and observation, the Original Application is disposed of but without any order as to costs.


(ASHOK AGARWAL)
CHAIRMAN


(SOMNATH SOM)
VICE-CHAIRMAN
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