

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 155 OF 1995.

Cuttack this the 20th day of July, 1995.

BIJCY KUMAR SWAIN & OTHERS.

APPLICANTS.

-VERSUS-

UNION OF INDIA AND OTHERS.

RESPONDENTS.

(FOR INSTRUCTIONS)

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

(SOMNATH SOM
VICE-CHAIRMAN 98)

20-7-95
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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 CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 155 OF 1995.

Cuttack this the 20th day of July, 1995.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

....

1. Bijaya Kumar Swain,
 S/o. Pravakar Nagendra Swain,
 At-Delang Choripida,
 PO. Jorakari, Dist. Puri.
2. Benudhar Behera,
 S/o. Bhagaban Behera,
 At/PO. Jorakani,
 Via. Delang, Dist. Puri.
3. Kamadev Behera,
 S/o. Gurucharan Behera,
 At/PO. Bitipur, Jorakani,
 Via. Delang Dist. Puri.
4. Jayadeb Prasad Mohanty,
 S/o. Nilamani Mohanty,
 At. Bachhara Patana,
 Bakbangle Road,
 PO. Jatni, Dist. Khurda.
5. Dhuliram Jena,
 S/o. late Chakradhar Jena,
 At-Madhupur,
 PO. Brajamohanpur,
 Dist. Khurda.
6. Baman Charan Parida,
 S/o. Prafulla Ch. Parida,
 At/PO. Saranga, Dist. Puri.
7. Jayadev Swain,
 S/o. Lachhan Swain,
 At/PO. Asarala, Dist. Khurda.
8. Pabitra Mohan Bhuyan,
 S/o. Banchhanidhi Bhuyan,
 At. Patabenana, PO. Sarangadharpur,
 Dist. Nayagarh.

9. Kailash Chandra Behera,
S/o. Manguli Behera,
At. Bambarada, P.O. Sarithania,
Dist. Puri.

10. Baladeb Prasad Mohanty ,
S/o. Nilamani Mohanty,
At. Dakbanglow Road,
P.O. Jatni, Dist. Khurda.

11. Ajoy Kumar Pradhan,
S/o. Gobinda Chandra Pradhan,
At. Batol, P.O. Motoni,
Dist. Puri.

12. Sk. Kudrat Ali,
S/o. late Sk. Forzon Ali,
At. Totapada, P.O. Panabaroj,
Dist. Khurda.

13. Hrudananda Swain,
S/o. Nabina Swain,
At. Gopalpur,
P.O. Patapur,
Via. Banki,
Dist. Cuttack.

14. Manguli Charan Das,
S/o. late Sanatan Das,
At/P.O. Sadangoi,
Dist. Puri. ... Applicants.

-VERSUS-

1. Union of India through the General Manager,
S.E. Railway, Garden Reach, Calcutta-43.

2. Divisional Railway Manager (P),
S.E. Railway, Khurda Road,
P.O. Jatni, Dist. Khurda.

3. Chairman, Railway Recruitment Board,
Orissa Forest Corporation Building,
2nd floor, A-84, Kharabela Nagar,
Bhubaneswar, Dist. Khurda. ... Respondents.

For the Applicant : M/s. G. A. R. Dora, V. Narasingh, Advocates.

For the Respondents : M/s. B. Pal. O. N. Ghosh, Sr. Standing Counsel.
(1 and 2)

For Respondent No. 3 : Mr. L. Mohapatra, Additional Standing
Counsel.

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :-

Applicants 14(fourteen) in number claiming to have been selected as Casual Labourers in Class-IV Posts, by the Chairman, Railway Recruitment Board, Bhubaneswar, Respondent No. 3, seek a direction to the Respondents to consider and appoint them in regular Class-IV Posts with consequential benefits from the dates, their juniors, were appointed in regular Class-IV posts. Their specific case is that they were retrenched on 04-02-1986 (Annexure-A/1). Still on 02-04-1986 (Annexure-A/2), Respondent No. 3 forwarded their names alongwith number of working days to Respondent No. 2 i.e. Divisional Railway Manager, South Eastern Railway, Khurda Road for their future absorption. Still without considering the cases of the applicants and similarly placed persons, freshers were recruited and appointed in a regular manner. Persons similarly placed, that of the applicants, preferred Original Application Nos. 365 and 366 of 1987 challenging non-consideration of their cases for appointment on regular posts and appointment of freshers and their reinstatement. Though by judgment dated 19.6.1989, this Tribunal dismissed their applications, however, on review, as per the order dated 20.3.1990 (Annexure-A/3), this Tribunal directed the Respondents, to consider their cases for appointment as and when posts are available. Consequently, under Annexure-A/4, dated 18.4.1994, those applicants and

others have been appointed in regular Group 'D' service and some of those applicants i.e. Sl.Nos. 2, 7, 20 and 31 in Annexure-A/2 are juniors to the applicants and had put in less number of days than the applicants. Since the applicants have continuously worked for more than 240 days and are workmen under the I.D. Act, they are entitled to reinstatement, on preferential basis.

2. Respondents, in their counter, filed on 23rd August, 1995, denied the selection/appointment of these applicants as Casual labourers in regular recruitment process by the Railway Recruitment Board because the Board does not recruit any Class IV staff. They, even denied the retrenchment order dated 04-02-1986 (Annexure-A/1) has been issued by the Railway Recruitment Board on the ground that the signature of the then Chairman does not tally with the signature appearing in Annexure-A/1. At the same time, Respondents gave this Tribunal to understand that the same is under a thorough probe so as to prove its authenticity. On the same ground, they even denied the authenticity of the letter dated 2.4.1986 in Annexure-A/2. They did not, however, comment anything with regard to the final order passed in Original Application Nos. 365 and 366 of 1987.

3. In their rejoinder, the applicants asserted that the then Chairman of the Railway Recruitment Board namely Dr. H. Pattnaik, issued Annexure-A/1 and Annexure-A/2. Xerox copy of the Affidavit dated 2.2.1996 of Dr. H. Pattnaik, the then

Chairman has been annexed as Annexure-A/5. In this Affidavit, Dr. Patnaik, asserting that he was the Chairman of the Railway Recruitment Board at Bhubaneswar from 9.2.1984 to 19.3.1986, asserted that he had gone through the counter filed by the Railway Administration in this case, disputing his initials at Annexures-A/1 and A/2 and emphatically stated that the initials appearing in Annexures-A/1 and A/2 are his initials. Annexure-A/9 series, have been filed with assertion that Dr. H. Patnaik, the then Chairman, had issued certificates in respect of these applicants as ~~per~~ the number of days they worked as Casual labourers.

4. At the time of hearing of this Original Application, Shri Dora, learned counsel for the Applicants, submitted that he would not press the prayer to direct the Respondents to consider and appoint the applicants in regular Class-IV service from the date, their juniors were appointed in regular Class IV service but confined his prayer for their appointment against future vacancies. Such a prayer is admissible in view of the rulling of the Hon'ble High Court of Orissa in NILAMANI MISHRA VRS. STATE OF ORISSA AND OTHERS reported in 1991 (71) Cuttack Law Times, page-99 wherein it has been held that under the prayer 'any other relief' appropriate relief can be considered.

5. Shri B.K. Pal, learned Senior Counsel appearing on behalf of the Respondents 1 and 2, contended that as per the Railway Rules, no recruitment is held for selecting Class-IV casual labourers, and as such, Annexures-A/1 and A/2

open to doubt and suspicion. However, there has been no answer from the Respondents as to what ultimately happened to the probe in this regard as mentioned in their counter, filed on 23rd August, 1995. Apparently, the probe did not confirm their suspicion. On the other hand, as has been indicated, the applicants, have filed an affidavit and certificates from Dr. H.Pattnaik, the then Chairman of the Railway Recruitment Board, Bhubaneswar. Learned Senior Counsel appearing on behalf of the Respondents 1 and 2, however, made an attempt to persuade us to compare the initials and arrive at a conclusion. Law is well settled that in the absence or assistance of an opinion of an expert, a court of law, normally, should avoid such endeavour except to receive confirmation to his conclusion on this aspect on the other evidence on record. As already indicated that there is no mention in the record to arrive at the conclusion that Annexures-A/1 and A/2 are not genuine. In fact, on perusal of the record, in Original Applications 365 and 366 of 1987 we find that the Railway Respondents had taken similar stand questioning the genuineness of the claim of the applicants to have been engaged as Casual labourers by the Railway Recruitment Board, Bhubaneswar, but the same has been turned down by this Tribunal. We, therefore, can not assume, that Annexures-A/1 and A/2 are forged and for the purpose of adjudication of this Original Application, we treat the same to be genuine.

6. Question, thus, arises whether the applicants can be ordered to be appointed as regular Railway Servants as against future vacancies. Law, by now, is well settled that a Casual Labourer can not have direct claim over regular appointment unless he appears and is selected through ~~regular~~ process of selection. However, in course of hearing, it has been brought to our notice that in O.A. Nos. 153 and 154 of 1997 filed by dis-engaged casual labourers, of Khurda Road Division of South Eastern Railway, through common order dated 2nd April, 1998, this Tribunal directed that names of two applicants shall have to be included in the Live Casual Register maintained by the Divisional Railway Manager and Senior Divisional personnel Officer, South Eastern Railway, Khurda Road (Respondents 2 and 3) and engagements shall have to be offered to them as and when available in terms of their position in the Live Casual Labourers. Learned Senior Counsel appearing for the Respondents submitted that this order may not be binding on the Railway Administration inasmuch as in those two cases, the General Manager, SE Railway who is Respondent No. 1 in this application, was not impleaded as Respondent. We do not find any force in this contention because direction was given only to Sr. Divisional personnel Officer and the Divisional Railway Manager and not to the General Manager. Even otherwise, in OAs 365 and 366 of 1997, the General Manager, SE Railway, was Respondent No. 1 and in those applications similar issues were also involved.

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It has further been contended by the learned Senior Counsel appearing for the Respondents that under the provisions of I.D. Act and Industrial Disputes (Central) Rules, 1957, the Railway Recruitment Board, Bhubaneswar is a separate Industrial Establishment and the applicants are only workmen pertaining to that establishment and are no way concerned with other Respondents i.e. General Manager, S.E. Railway and Divisional Railway Manager, Khurda Road Division. Still the fact remains that the Apex Court in DAKHIN RAILWAY EMPLOYEES' UNION - VRS. - GENERAL MANAGER S.E. RAILWAYS AND OTHERS reported in AIR 1987 SC 1153 arising out of INDRAPAL YADAV - VRS. - UNION OF INDIA AND OTHERS reported in (1985) 2 SCC 643 relating to regularisation of Casual Labourers of the Railways gave directions to the General Manager of the South Eastern Railways in the matter of regularisation of Casual Labourers under the Scheme ultimately approved by the Court. We are, therefore, not inclined to accept the contention of the learned Senior Counsel appearing on behalf of the Respondents, in this regard.

7. The fact remains that the applicants are casual labourers engaged by Respondent No. 3 for a considerable time and were disengaged thereafter. As held in similar matters i.e. O.A. Nos. 153 and 154 of 1997, we hold that the applicants have a right for consideration and preference

for engagement as Casual Labourers over persons freshly taken from Open market. We accordingly direct the Respondents to include the names of the applicants in the Live Casual Register maintained by them and offer engagements to them, as and when available, in terms of their position in the Live Casual Registers.

8. The Original Application is accordingly disposed of. No costs.

Somnath Som.

(SOMNATH SOM)
VICE-CHAIRMAN

7.7.98

20-7-98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.