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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.196 OF 1995  
Cuttack, this the 13th day of January, 1998

Sri Prafulla Chandra Pati ... 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  
13.1.98

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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NO.196 OF 1995

Cuttack, this the 13<sup>th</sup> day of January, 1998

**CORAM:**

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN**

.....

Sri Prafulla Chandra Pati,  
aged about 39 years,  
son of Sri Biswanath Pati of village Somnathpur,  
P.O-Dadhimachhagadia, Dist.Khurda ... Applicant.

\*deleted vide  
order no.16  
dt.13.1.98.

By the Advocates -

\*  
Mr's ~~Asitok Mohanty~~  
G.B.Dash &  
A.K.Swain.

Vrs.

*Somnath Som  
13.1.98*

Vice-Chairman

1. Union of India,  
represented by the Secretary,  
Department of Mines,  
Central Secretariat,  
Sastri Vawan,  
New Delhi-110 001
2. The Director-General,  
Geological Survey of India,  
27, Jawaharlal Nehru Road,  
Calcutta-700 016.
3. The Deputy Director General,  
Geological Survey of India,  
12A & B Russel Street,  
Calcutta-700 071.
4. The Deputy Director General,  
Geological Survey of India,  
Operations, Orissa, Unit No.VIII,  
Nayapalli, Bhubaneswar-12.
5. The Administrative Officer/D.D.O.,  
Geological Survey of India,  
Operations, Orissa, Unit No.VIII,  
Nayapalli, Bhubaneswar-12 .... Respondents.

By the Advocate - None

**O R D E R**

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 regularise his

services with retrospective effect along with consequential benefits.

2. Applicant's case is that he has worked in the Geological Survey of India as daily rated casual worker. According to the circular dated 13.11.1979, a casual worker was eligible for regularisation if he had put in 240 days of service in a year for two consecutive years after allowing age relaxation. The applicant was engaged at Pattangi Camp as well as Lanjigarh Camp of Geological Survey of India. In support of this, he has produced two experience certificates at Annexures 1 and 2. According to Annexure-1, he has worked at Lanjigarh Camp from 21.3.1978 to 25.6.1978 as a contingent worker and according to the certificate at Annexure-2, he has worked as Night Watchman at Pattangi Camp from June 1977 to April 1978. Applicant's case is that he has worked from 13.5.1977 to 31.12.1978 continuously and has completed more than 240 days in each year. The applicant further states that services of two other persons S/Shri Biswanath Naik and Bidyadhar Nayak were recommended by respondent nos. 4 and 5 and their services were regularised, but his case was not forwarded at that time. He further states that Shri Biswanath Naik has worked for 288 days in one year and 78 days in the next year. In case of Shri Biswanath Naik, the requirement of putting in 240 days of work in the second year was condoned and his services were

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regularised. The applicant had filed representations before respondent nos. 4 and 5 and his case was recommended in letter dated 25.7.1990 (Annexure-3) stating that his case was not forwarded earlier and the applicant has fulfilled the requirement of putting in 240 days in two consecutive years. Reply to Annexure-3 was sent by respondent no.3 in his letter dated 5.10.1990 in which it was noted that the applicant had not put in 240 days of service in two consecutive years. In view of this, Director-in-charge, Orissa Region, to whom Annexure-4 was addressed, was directed to check up and confirm the position with regard to official records and resubmit the same with proper justification. In Annexure-5, the Orissa office sent a further letter to respondent no.3 on 1.1.1991. In this letter, it was noted that the applicant worked for the period from 13.5.1977 to 20.3.1978 for 311 days continuously as has been verified from the Muster Roll. He again worked from 26.6.1978 to 26.12.1985 with intermittent breaks. In view of the above, instructions were sought from respondent no.3 if the applicant could be regularised on the ground that he was continuously engaged prior to 31.10.1977 and he was engaged continuously for a period of 311 days in the year 1977-78. It was further explained in this letter that the applicant's case was not forwarded earlier as the then

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Administrative Officer remarked that his case could not be considered as he had not worked for 240 days continuously in two consecutive years. It was further reported that the applicant has claimed that in similar cases requirement of 240 days of engagement has been ignored in respect of S/Shri Biswanath Naik and Bidyadhar Naik and therefore, the applicant has claimed for regularisation. Respondent no.3 sent a reply in his letter dated 25.2.1991 (Annexure-6) in which it was noted that as per records relating to the applicant forwarded to respondent no.3, it had been noted that the applicant had completed 308 days of service in 1977-78 but has put in only 174 days of service in 1978-79 and as such, he is not eligible to be regularised. In this letter, it was also mentioned that of the two persons whose cases have been referred to by the applicant, Shri Bidyadhar Naik had put in 240 days of service in two consecutive years. As regards Shri Biswanath Naik, he had put in 288 days of service from September 1977 to August 1978 and 78 days from September 1978 to December 1978. But considering the contingency service for the period of three years from September 1977, the contingent workers S/Shri Bidyadhar Naik and Biswanath Naik were regularised. It was clarified that as the applicant had not put in 240 days of service in two consecutive years, his services cannot be regularised. Bhubaneswar office then sent letter dated 9.4.1991

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(Annexure-7) in which it was clarified that the applicant returned to Bhubaneswar after 20.3.1978 when Pattangi Camp was closed, but could not be provided with engagement at Headquarters till 26.6.1978. From 26.6.1978 he has worked for 174 days which falls short of 240 days by 66 days. But Bhubaneswar office in this letter specifically pointed out that Shri Biswanath Naik has put in only 78 days of service in the second year and has been made contingent and therefore, it will be discriminatory if the applicant is not made contingent. It was further stated that in view of services of the applicant from 1979 till 1985, the short-fall of 66 days in the second consecutive year may be condoned and he may be declared contingent. At this stage, the office of respondent no.3 referred the case of the applicant to respondent no.1 in the Head Office of Geological Survey of India. In this letter, it was mentioned that the applicant has worked in different years for the following number of days:

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|                      |          |
|----------------------|----------|
| 13.5.77 to 20.3.78 - | 311 days |
| 26.6.78 to 31.12.78  | 174 days |
| 1979                 | 30 days  |
| 1980                 | 141 days |
| 1981                 | 87 days  |

|      |          |
|------|----------|
| 1982 | 210 days |
| 1983 | 98 days  |
| 1984 | 205 days |
| 1985 | 103 days |

In view of the above, orders were sought if the applicant would be enrolled as a regular contingent hand of Eastern Region and if his name would be included in the contingent seniority list. In the memo of this letter, which was addressed to Orissa office, it was clarified by the Eastern Regional Office of Geological Survey of India that Shri Biswanath Naik had put in 245 days of service in 1978 and 359 days of service in 1979 and therefore, in case of Biswanath Naik no relaxation has been made. At Annexure-9 is the letter dated 15.7.1991 from the office of respondent no.3 to Orissa office indicating that after 31.10.1977 there is a ban order against engaging any contingent worker. The applicant had also not put in 240 days of service in each year during two consecutive years. Moreover, he had been disengaged after 1985 and he is no longer in service and therefore, he cannot be brought in the Muster Roll of contingent workers. His case was again taken up in letter dated 1.1.1992 at Annexure-11 and it was again turned down in order at Annexure-12 on the same ground. The applicant's case was again taken up by Bhubaneswar office on the basis

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of two certificates. But the office of respondent no.3 pointed out that the two certificates at Annexures 1 and 2 are contradictory because some period covered in both the certificates is common and it was physically impossible for the applicant to have been engaged at both Lanjigarh and Pattangi Camps at the same time. It was also pointed out that according to the certificate at Annexure-2, the applicant worked at Pattangi Camp till April 1978 whereas from the letter at Annexure-7 from Bhubaneswar office, it appears that Pattangi Camp was closed down on 20.3.1978. Because of these discrepancies, Bhubaneswar office was asked to re-verify the period of his engagement. At Annexure-16 is a letter from the officer who gave the two contradictory certificates at Annexures 1 and 2 wherein he mentioned that certificate at Annexure-2 was issued by him from his residence without verifying official records and on the basis of official records the applicant's case should be decided.

*Sonmath Sam  
13.1.92* Again in Annexures 17 and 18, the applicant's case was strongly taken up by the Orissa office and specific dates of engagement of the applicant from September 1985 were mentioned. It was also mentioned that he has been working as a casual worker with effect from 13.7.1993. As in spite of so much of efforts on the part of the applicant and Orissa office, his services were not regularised, the applicant

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filed two representations, copies of which are at Annexures 19 and 20 and as these were not disposed of, he has come up in the O.A. with the aforesaid prayer.

2. Respondents in their counter have taken the stand that the applicant has not completed 240 days of service in two consecutive years. The certificates given at Annexures 1 and 2 are contradictory and cannot be relied upon. They have also said that as the applicant has not completed 240 days of engagement in two consecutive years, his services are not eligible to be regularised. Respondents have also stated that the cases of S/Shri Biswanath Naik and Bidyadhar Nayak are on different footing as both of them had completed 240 days of service in two consecutive years and no relaxation was given to any of them. Respondents have also taken the stand that the application is barred by limitation as the two representations at Annexures-19 and 20 have not been received by the respondents.

3. The applicant has filed a rejoinder in which he has stated that one of the representations has been received by respondent no.3 and he has also filed a copy of the postal acknowledgement. He has also submitted that in order dated 10.3.1994 (Annexure-R/1) his case for regularisation as a contingent worker has been rejected. But copy of this order was never served on him and therefore he could not represent in time. In his rejoinder, the applicant

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has relied on the circular dated 12.2.1969 of Department of Mines and Metals and has reiterated his prayer.

4. I have heard the learned lawyer for the applicant. The learned Additional Standing Counsel appearing on behalf of the respondents was absent. He was permitted to make written submissions by 13.11.1997, but no written submissions were filed. Learned lawyer for the applicant had filed a date-chart which has been kept on record.

5. The sole point for consideration is whether the applicant has put in 240 days of service in two consecutive years to be regularised as a contingent worker. From the details of the applicant's engagement, quoted above, it is seen that in 1977-78, he has put in 311 days and in 1978-79 he has put in 174 days, i.e. in the second year his service falls short by 66 days. As a matter of fact, Orissa office has pointed out this short-fall of 66 days and asked for its condonation. As the Scheme specifically provides for 240 days of engagement in two consecutive years. From the details it is clear that the applicant has not put in 240 days of service in two consecutive years.

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6. The second point is about the case of S/Shri Bidyadhar Naik and Biswanath Naik. Both the above persons, as earlier noted, had put in 240 days of service in two consecutive years and as such, no relaxation was made in

their cases and therefore, the applicant has not been discriminated in any way vis-a-vis those two persons.

Learned lawyer for the petitioner has relied upon the circular dated 12.2.1969, the relevant portion of which is quoted below:

".....A question has arisen whether two years spell of service mentioned in the office memorandum of 2.12.1966 should be strictly continuous or whether some allowances should be given for the periods of absence for the reasons, like those of sickness or cessation of work which is not due to any fault on the part of the casual labourers or other unavoidable causes. The matter has been considered and it has been decided that a casual labourer may be given benefit of the orders dated 2.12.1966, if he has put in at least 240 days of service as a casual labourer (including the broken period of service) during each of the 2 years of service referred to above."

Basing on the above, it has been submitted by the learned lawyer for the applicant that as the circular speaks of counting the broken period of service, the period during which the applicant was not in service should also be counted towards 240 days. From a plain reading of the above circular, quoted by the applicant in his rejoinder, it is clear that what has been envisaged under the circular is that the period of 240 days should be counted ignoring the periods of disengagement when the person was not in service because of sickness or cessation of work which is not due to any fault on the part of the casual labourer or other

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unavoidable causes. In other words, 240 days of engagement in a year has to be calculated ignoring the periods of disengagement during that year. This does not lend any support to the contention of the learned lawyer for the petitioner that the words "including the broken period of service during each of the two years of service" would mean that the period during which the person was not in engagement should be taken into account. That will make the requirement of engagement for 240 days totally illusory. This contention of the learned lawyer for the petitioner cannot, therefore, be accepted. In consideration of the above, it is held that the applicant has not been able to make out a case proving that he has put in 240 days of work in two consecutive years and therefore, he is not entitled to have the benefit of the circular dated 13.11.1979.

7. In the result, therefore, the application is

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held to be without any merit and is rejected but without any order as to costs.

8. Before parting with this case, however, it is noted that in letter dated 10.9.1993 (Annexure-18) Bhubaneswar office has reported that the applicant has worked for long periods from 16.9.1985 till 30.12.1992 and

again from 13.7.1993. It is made clear that because of such long continuous engagement and because of his seniority amongst the casual workers, if the respondents are inclined to regularise the applicant as a contingent worker, this order will not operate as a bar.

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(SOMNATH SOM)  
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VICE-CHAIRMAN

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