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(19)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.209 OF 1995

Cuttack, this the 2nd day of February, 1998

Dilip Kumar Pallai

....

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
22/2/98

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(20)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.209 OF 1995

Cuttack, this the 2nd day of February, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

....

Dilip Kumar Pallai, aged about 24 years,
son of Jagannath Pallai,
resident of At/PO-Pegar Para,
P.S.-Rajakanika, Dist.Kendrapara,
at present working as Driver,
C/O D.E.T.(Installation),
485/2, Sahid Nagar, Bhubaneswar

....

Applicant

By the Advocates - M/s S.K.Nayak-2,
K.K.Rout, B.K.Sahoo &
S.R.Ahmed.

Vrs.

1. Union of India, represented through
Chief General Manager, Telecommunication,
Bhubaneswar, Dist.Khurda.
2. The Divisional Engineer, Installation,
Switching 485/2, Sahid Nagar,
Bhubaneswar, Dist.Khurda.
3. The Divisional Engineer, Telecommunication,
Transmission, Sahid Nagar, Bhubaneswar,
District-Khurda

....

Respondents.

By the Advocate - Mr.P.N.Mohapatra.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for regularisation of his services as Driver under the respondents within a stipulated period.

2. Facts of this case, according to the applicant, are that in the office of Divisional Engineer, Telecommunication (Transmission), Bhubaneswar, there were seven vehicles, but there were only two regular Drivers. In order to

Somnath Som.
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run the vehicles, casual drivers were appointed. The applicant was appointed as a casual Driver from March 1992 on the basis of verbal order of the authorities. It is submitted by the applicant that he gets his salary on monthly basis, but the facilities given to regular Drivers have not been given to him in spite of his approaching the authorities on several occasions. The applicant apprehends that the authorities are taking steps to fill up the five posts of Driver by transferring regular Drivers from other Divisions and fill up the vacancies which will be caused by transfer of regular Drivers by engaging casual Drivers in those places. The applicant has completed three years of service and two posts are available and therefore, he has prayed that his services should be regularised. After filing of the O.A., the applicant had also filed M.A.No.755/95 in which there was a prayer that pending consideration of the O.A., the respondents should be directed not to retrench the applicant. Counter was filed to M.A.No.755/95, but the M.A. was disposed of as withdrawn. This matter was fixed to 30.7.1997 for hearing, on which date it was reported that the arguing counsel had suffered a bereavement. Thereafter two more adjournments were given on 2.9.1997 and 23.9.1997. Ultimately, on 30.9.1997, at the instance of the learned lawyer for the applicant, the matter was fixed to 4.11.1997. On that day, the learned lawyer for the applicant was absent. As the date was fixed to 4.11.1997 at the instance of the learned lawyer and the pleadings had been completed long ago, the hearing was taken up in the absence of the learned lawyer for the applicant, the learned Addl.S.C., Shri P.N.Mohapatra appearing on behalf of the respondents was heard, and the hearing was concluded. Learned lawyer for the applicant was given liberty to file written submissions by 11.11.1997, but no written submission has so far been filed.

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3. Respondents in their counter have pointed out that the applicant was engaged on daily wage basis as and when there was necessity for engagement of a Driver. He was not recruited through any selection process nor did his name come from the Employment Exchange. The Department has issued a ban order for engagement of casual workers and therefore, the applicant cannot be engaged as a casual Driver. There is also no necessity for engaging the applicant. It is further submitted that the applicant is not eligible to be regularised or conferred with temporary status in accordance with the scheme circulated by the Department. On these grounds, the respondents have opposed the prayer of the applicant.

4. From the counter to MA No.755/95, it is seen that the applicant was paid at the rate of Rs.35/- per day on the days he worked under the respondents. In 1993 he has worked only from 6.1.1993 to 26.1.1993 and from 1.2.1993 to 11.2.1993, i.e. altogether for thirty-two days. In the year 1995 he has worked for thirty-three days from 25.5.1995 to 30.5.1995, from 8.7.1995 to 31.7.1995 and from 18.9.1995 to 20.9.1995. In the year 1994 he was not given any engagement at all. From this it becomes very clear that the applicant's engagement was on daily wage basis and nature of engagement was casual and intermittent. Moreover, he had not come through any process of selection. It has been laid down by the Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Suresh Kumar Verma and others, AIR 1996 SC 1565, that daily wage employment cannot be a conduit pipe for getting regular service because that will amount to back-door entry and will breed corruption. Moreover, for filling up of every post, recruitment rules have to be followed, and the applicant's daily wage

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employment cannot simply be regularised because he has worked under the respondents for the days mentioned earlier.

5. In view of the above, I hold that the Application is without any merit and the same is rejected but, under the circumstances, without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22/98

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