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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH.

ORIGINAL APPLICATION NO.212 OF 1995

Cuttack, this the 31st day of October, 1997

DEBENDRA MALICK

.....

APPLICANT

VRS.

UNION OF INDIA & 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 31.10.97

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH.

Original Application No.212 of 1995

Cuttack, this the 31st day of October, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
Debendra Mallick,

aged about 25 years,
son of Narendra Mallick,
residing at B.K.Lane,
P.S-Madhupatna,
Town & Dist. Cuttack

Applicant.

Vrs.

Union of India and others ... Respondents

Advocates for applicant - M/s S.K.Das,
J.K.Mohanty &
K.C.Majhi.

Advocate for respondents- Mr.Ashok Mishra.

O R D E R

Somnath Som, Vice-Chairman

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for regularisation of his services under the respondents from the date of his joining in January 1993.

2. Facts of this case, according to the applicant, are that he was engaged as a casual mazdoor to work against a clear vacancy of Extra-Departmental Mailman under the Mail Office of Cuttack R.M.S. in January 1993. According to the certificate dated 2.2.1995 (Annexure 1) by Head Sorting Assistant, the

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applicant has been working as daily mazdoor from January 1993 to February 1995. In Annexure-2 the representation of the applicant has been forwarded by the Head Record Officer (the appointing authority) to Senior Superintendent of R.M.S. "N" Division. The case of the applicant is that he has been working as a casual mazdoor for more than 250 to 300 days getting of daily wages Rs.15/- originally and Rs.25/- later on for engagement for five hours daily and because of his engagement for more than 250 days he is entitled to be regularised in the post of E.D.Mailman. It has also been alleged that because he has approached the Tribunal in this O.A., his casual engagement has been stopped without giving him any notice and such act of the respondents is violative of Articles 14, 16 and 19 of Constitution of India. Because of the above, the applicant has come up with the aforesaid prayer.

3. The respondents in their counter have submitted that the applicant is not a contingent paid employee or an Extra-Departmental employee in Cuttack R.M.S. "N" Division. While Shri Subal Ch.Mallick was working as Head Sorting Assistant he had issued a certificate dated 2.2.1995 (Annexure 1) to the effect that the applicant has been working as daily mazdoor in

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Cuttack R.M.S. continuously since January 1993. Respondents' case is that no details regarding bio data or other information relating to the work of the applicant as Mazdoor are available in the office record. It only appears that from 23.12.1994 to 4.2.1995 the applicant has worked in five spells, in total 32 days, as a substitute E.D.Mailman. The respondents claim that the certificate given on 2.2.1995 by the Head Sorting Assistant is unauthorised. There are also no supporting records about the engagement of the applicant in the R.M.S. office as casual mazdoor from January 1993. The applicant's engagement as a substitute E.D.Mailman for 32 days would not entitle him to be regularised in the post of E.D.Mailman even though there are ten vacancies in the post of E.D.Mailman.

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4. I have heard the learned lawyer for the applicant and Shri Ashok Mishra, the learned Senior Panel Counsel appearing on behalf of the respondents and have also perused the record.

5. At the instance of the learned lawyer for the applicant, the learned Senior Panel Counsel has obtained from the Department voluminous records which consist of photocopy of vouchers showing payment of

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wages of Rs.25/- and Rs.15/- to the applicant as also an abstract of list of voucher numbers, date and the amount paid against each voucher. From these documents, it is clear that the applicant has worked as casual mazdoor for 366 days. The contention of the respondents in their counter that no records are available regarding the engagement of the applicant as casual mazdoor from January 1993 must, therefore, be rejected in the face of these documents produced by the respondents themselves. It is, therefore, clear that the applicant has worked from January 1993 for 366 days as casual mazdoor getting daily wages of Rs.15/- and subsequently Rs.25/- for five hours work as mentioned by the applicant in paragraph 5(B) of the application.

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Besides, it is admitted by the respondents that the applicant has worked for 32 days as substitute E.D.Mailman. The point for consideration, therefore, is whether on the basis of such engagement, the services of the applicant can be ordered to be regularised as E.D.Mailman. Learned Senior Panel Counsel has filed a copy of the decision of the Hon'ble Supreme Court dated 2.2.1996 in Civil Appeal Nos.3385-86 of 1996 and Civil Appeal Nos.3389, 3390,3387,3388 and 3392 of 1996 (Sub-Divisional Inspector of Post, Vaikam & others, etc. v. Theyyam Joseph, etc.). In the above decision,

Hon'ble Supreme Court considered the facts of one case out of the batch of cases. In that case, the applicant before the Tribunal worked as substitute E.D.Packer from September 1991 to August 1993 when his services were terminated without any notice. On a consideration of the relevant Rules, Hon'ble Supreme Court took the view that the decision of the Tribunal that E.D.Packer is a workman and his services have been illegally terminated was wrong. The Hon'ble Supreme Court observed that the E.D.Packer having been appointed and having worked de hors the rule, he continued to remain as an ad hoc E.D.Packer and therefore, the direction of the Tribunal to terminate his services in accordance with the provisions of the Industrial Disputes Act, 1947 is illegal. Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Suresh Kumar Verma and another, 1996 SCC (L&S) 645, have laid down that the appointment on daily wage basis is not appointment to a post according to the Rules and in case of termination of such employees, direction cannot be issued by the Tribunal to re-engage them without any reference to the relevant recruitment rules. In view of the above position of law, the prayer of the applicant that his services should be regularised straightaway as E.D.Mailman is held to be without any merit and is

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rejected.

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6. According to the Respondents, there are ten vacant posts of E.D.Mailman in Cuttack R.M.S. "N" Division. In consideration of the fact that the applicant has worked for 366 days over a period of three years as casual mazdoor, the respondents are directed to consider the candidature of the applicant strictly in accordance with Rules for the post of E.D.Mailman when the vacancies are proposed to be filled up. At that time, if necessary, the respondents should give age-relaxation to the applicant to the extent of his engagement as casual mazdoor and substitute under the respondents. Learned lawyer for the applicant has referred to the decision dated 7.3.1997 of a Division Bench of this Tribunal in O.A.Nos.53,60,61 and 69 of 1992 in which also a similar direction has been issued.

7. In the result, the application is disposed of in terms of the observation and direction contained in paragraphs 5 and 6 of this order. No costs.

Somnath Som
(SOMNATH SOM)
31/10/97
VICE-CHAIRMAN