

10

15

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.43 OF 1995
Cuttack, this the 18th day of November, 1997

Smt. Kanak Lata Devi 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 18/11/97

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 a direction to the respondents to regularise her in the post of Sweepress under respondent no.3.

2. Facts of this case, according to the application, are that the applicant was engaged as Sweepress on daily wages under respondent no.3 from 20.2.1990. According to her, she was engaged as a daily wage worker in place of the regular Sweepress of the establishment. Initially she was paid Rs.11/- per day which was the prescribed minimum wages then. Subsequently, minimum wages were raised to Rs.25/- per day. In spite of her request and representations, she continues to be paid Rs.11/-. According to the applicant, she has completed required length of service as a Sweepress on daily wage basis against a regular post of Sweepress under respondent no.3 and has made several representations for regularisation of her services, but without any favourable orders. In May, 1992, an interview was conducted for filling up of the vacant post of regular Sweepress and names were called for from the Employment Exchange. Initially she was not called to the interview, but with the intervention of Director of Scheduled Castes and

Somnath Som
18.11.92

18

13

Scheduled Tribes to whom she apparently took her grievances, she was interviewed but not selected. On 1.9.1993 Government of India brought out a Scheme for granting temporary status and regularisation of casual labourers. Again the applicant made several representations, but without any effect. An interview was again called on 19.1.1995 for filling up of the vacant post of Sweepress. The applicant came up before the Tribunal and in order dated 18.1.1995 the respondents were directed to allow her to appear at the interview. It was also further directed that the result of the interview should not be published.

3. Respondents in their counter have pointed out that the post of Sweeper in the Weavers' Service Centre, Bhubaneswar, under respondent no.3 was held by one Lochan Nayak, husband of the petitioner. He was promoted to the post of Peon from the post of Sweeper with effect from 20.2.1990. Prior to this, in order dated 3.1.1990 (Annexure-R/1) one T.G.Rao, Sweeper of Weavers' Service Centre, Guwahati, was transferred to Weavers' Service Centre, Bhubaneswar and was ordered to be relieved on 12.1.1990 with direction to appear before respondent no.3 at Bhubaneswar. But Shri T.G.Rao did not join at Bhubaneswar. In any case from 20.2.1990 the applicant, wife of Lochan Naik was engaged on contract basis

18.11.97

on a stop gap arrangement. She was never given any order of appointment but was engaged only on contract basis with payment of daily wages of Rs.11/-. It is further submitted by the respondents that the applicant has been sweeping only the office and no area outside the office, not even the campus. She also does not do the roof cleaning, washing, etc. which have been done by engaging other contract labourer. Respondents have filed two vouchers at Annexures R/2 and R/3 showing that outside workers have been engaged for cleaning office premises including latrine, lavatory, etc. Such payment has been made through Lochan Naik, the erstwhile Sweeper and husband of the applicant. Respondents have further asserted that when the applicant was asked to do cleaning work, she expressed her inability on the ground that she does not have time to do all the cleaning work after looking after her family members of four children, etc. Respondents have stated that the applicant is not putting eight hours of work. She is working from 8.00 A.M. to 9.30 A.M. The applicant was considered in the interview held on 28.5.1992 but was not selected. Respondents have further stated that the applicant is not a casual worker. She is a part-time worker engaged on daily wages and her case is not covered under the Scheme of 1993 for granting of temporary status and regularisation of casual labourers. Respondents have further stated that in pursuance of the direction of the

John M. Jan.
12.11.97

applicant as also the learned Senior Standing Counsel, Shri Ashok Mohanty appearing on behalf of the respondents and have perused the records.

7. From the above recital of facts, it is seen that the applicant has been engaged on a stop gap arrangement in the post vacated by her husband. She has not come through Employment Exchange or through any process of selection. From Annexures R/2 and R/3 it appears that from time to time cleaning work is being done by engaging outside worker. From this, it does appear that the applicant is working as a part time daily wage worker. Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Suresh Kumar Verma and another, AIR 1996 SC 1565, have laid down that daily wage worker cannot be regularised by appointment to a regular post without reference to the recruitment rules. The observation of the Hon'ble Supreme Court in this regard is quoted below:

".....The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a pre-condition....."

In view of the law as laid down by the Hon'ble Apex Court in the above decision, it is clear that the applicant's prayer for regular appointment to the post of Sweepress which is a Group-D post must be rejected and it is so ordered. It is,

S. Anandam Das
12.11.97

however, made clear that in case in the interview held on 19.1.1995 in which the applicant appeared in pursuance of the Tribunal's order dated 18.1.1995, she has been selected, then the respondents should take further action accordingly.

8. The other aspect of the matter is payment of wages of Rs.11/- to her. Learned Senior Standing Counsel has filed a notification dated 1.2.1989 of the State Government in which the minimum wages for unskilled workers including Sweeper have been fixed at Rs.11/- per day. But that was for workers engaged in Coir Industry and is not applicable to the applicant. From the date of her engagement, the applicant is getting Rs.11/- per day without any increase. The minimum wages for unskilled workers have been increased in the meantime and it is presently Rs.30/- per day. In view of this, the respondents are directed to work out the wages payable to the applicant with reference to her hours of work and with reference to minimum wages applicable to unskilled workers and fix her daily wages accordingly and pay her the same from the date the minimum daily wages for unskilled workers including Sweeper have been increased.

9. In the result, therefore, the application is disposed of in terms of the direction and observation in paragraphs 7 and 8 of the order. No costs.

Somnath Som
(SOMNATH SOM)
18/11/97
VICE-CHAIRMAN