

14

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

(14)

ORIGINAL APPLICATION NO. 448/95
Cuttack, this the 25th day of January 1999

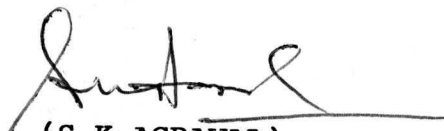
Shri Govinda Chandra Naik and others Applicants

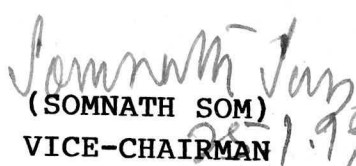
Vrs.

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.


(S.K. AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 28/1/99

15

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

15

ORIGINAL APPLICATION NO.448 OF 1995
Cuttack, this the 25th day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

....

1. Gobinda Chandra Naik,
son of Panchu Naik
At/PO-Singhapada,
Via-Khandapada, Dist.Nayagarh.
2. Bhagirathi Sethi,
son of Bahadura Sethi
of Basuapada, Post-Erade,
Via-Sobarang,
District-Bhadrak.
3. Trilochan Routray,
s/o Arjuni Routra
of Lendera, P.S-Salipur, Dist.Cuttack.
4. Gagan Behera,
s/o Gandharba Behera
of Kulasankhua
PO-Gobindapur,
P.S-Gobindapur,
Dist.Cuttack.
5. Umakanta Pradhan,
son of Sri Rasananda Pradhan
At-Gopinathpur, Post-Gopinathpur,
P.S-Salipur, Dist.Cuttack

By the Advocates -

Applicants
M/s A.K.Misra
D.N.Misra
J.Sengupta
C.Mohanty

Vrs.

- J Som
1. Union of India,
represented through Secretary, Communication,
Sanchar Bhawan,
New Delhi.
 2. Shri D.K.Behera,
Divisional Engineer Telecom,
Microwage Project, Budharaja, Sambalpur.

- 16
3. Director, Telecom, Projects,
Modipara, Sambalpur.
4. Divisional Engineer, Telecom (Administration),
Office of the Chief General Manager, Telecom,
Projects,
Eastern Zone, 10, Raja Subodh Mallick Square,
Calcutta-13.
5. Chief General Manager, Telecom,
Orissa Telecom Circle, PMG Square,
Bhubaneswar-1.
6. Tarak Nath Mandal
7. Bimal Ku. Pani
8. Krushna Chandra Pradhan
10. Sri Bijay Ku. Behera
11. Umakanta Sethi
12. Nityananda Barik
13. Sitalal Prasad Tiwari
14. Narayan Patel

(respondent nos. 6 to 12 are all working under
D.E.T.M/W(P), Sambalpur, Budharaja)
and Respondent nos. 13 and 14 are working under
D.E.T.(T&OP), Modipara, Sambalpur)

.....

Respondents

By the Advocate -

Mr.P.N.Mohapatra
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

Jdm

In this application under Section 19 of
Administrative Tribunals act, 1985, the five applicants
have prayed for a direction to respondent nos. 1 to 5 for
regularising their services and for quashing the order
dated 19.4.1994 granting temporary status to respondent
nos. 6 and 7 and the order dated 21.10.1993 (Annexure-6)
granting temporary status to respondent nos. 8 to 14.

2. The facts of this case, according to
the petitioners, that petitioner no.1 was appointed on
3.6.1988 as casual labourer in Group-D post in the office of

Divisional Engineer, Telecom, Microwave Project, Sambalpur (respondent no.2). Petitioner nos. 2 and 4 were appointed as casual labourers on 2.6.1988. Petitioner no.3 was appointed on 1.6.1988. Petitioner no.5 was appointed on 3.5.1988. Out of these five applicants, petitioner no.5 was discharging the duties of a Clerk. For regularisation of casual employees, the Department of Telecommunication issued two circulars dated 8.4.1991 and 22.7.1993 at Annexures 1 and 1/A. The petitioners have stated that in paragraph 2 of the circular dated 8.4.1991 (which has been actually issued by Department of Personnel & Training and not by Department of Telecommunication, as has been mentioned wrongly in the petition) it has been mentioned that requests have been received from various Ministries/Departments for allowing relaxation in the conditions of upper-age limit and sponsorship through Employment Exchange for regularisation of such casual employees against Group-D posts who were recruited prior to 7.6.1988, i.e., the date of issue of guidelines. The Department of Personnel & Training has laid down in this circular that as a one time measure it has been decided in consultation with Director General of Employment and Training, Ministry of Labour, that casual workers recruited before 7.6.1988 and who are in service on the date of issue of these instructions, may be considered for regular appointment in Group-D posts in terms of general instructions even if they were recruited otherwise than through Employment Exchange and had crossed the upper age limit prescribed for the posts provided they are otherwise eligible for regular appointment in all other respects. The applicants have further stated that as per the working certificates

J.M.

issued by Divisional Engineer, Telecom (respondent no.4) which are at Annexures 2 and 3 series, the applicants worked till 1995. Respondent nos. 2 and 3 regularised the services of respondent nos. 6 to 12 who have been appointed simultaneously with the applicants. According to the applicants, this action is grossly arbitrary and violative of Article 16. The applicants sent representations to respondent no.2 and these representations are at Annexure-4. It is also stated that respondent nos. 6 to 12 have been given temporary status in order dated 19.4.1994 and 21.10.1993 which are at Annexures 5 and 6. The petitioners have continuously discharged their duties for seven years and have acquired a right to be absorbed on regular basis. But suddenly they have been removed from service without any order. According to the applicants, after they have worked continuously for more than one year they are entitled to be absorbed. Even though respondent nos. 6 to 12 have been given temporary status, such enefit has not been given to the applicants. The applicants have also stated that in accordance with the circular dated 22.10.1990 (Annexure-7), the casual labourers who have completed 240 days of service in the immediately preceding two calendar years are entitled to be given temporary status, but this has not been done for the applicants. In view of this, the applicants have come up with the prayers referred to earlier.

J. Sam

3. Respondent nos. 2 and 3 in their counter have denied that the applicants were engaged as casual workers against Group-D posts on the respective dates as mentioned in the Application. According to the departmental authorities, the applicants were engaged as

casual labourers after 1988 purely on temporary basis as and when required. The departmental respondents have stated that the applicants were never engaged by respondent nos. 2 and 3 prior to 7.6.1988 as casual workers. Therefore, the circulars relied on by the applicants do not apply to them. The respondents have also stated that official records do not disclose engagement of the applicants and the certificates at Annexures 2 and 3 series have not been issued from the office of respondent nos. 2 and 3. These certificates do not bear any issue number or official seal. These also do not disclose the File No. in which orders were passed for issuing the same. On the face of this, it is seen that these certificates have been manipulated. One S.K.Bandopadhyaya has issued Annexure-2 series on 28.1.1994 as Divisional Engineer, Microwave Survey Division, Calcutta and not as Divisional Engineer, Microwave Project, Sambalpur. It is also stated that the applicants have manipulated the documents vide Annexure-3 series and the manipulation is apparent from the seal of ex-D.E.T., Microwave Project, Sambalpur. According to the official records, the applicants were engaged for a few days according to the necessity with intermittent breaks. The departmental respondents have also stated that services of respondent nos. 6 to 14 and not respondent nos. 6 to 12 (as has been mentioned by the applicants) have not yet been regularised. They have only been conferred with temporary status in accordance with the circular dated 7.11.1989 at Annexure-R/1. Respondent nos. 2 and 3 have also denied that the applicants were engaged simultaneously with respondent nos. 6 to 14. According to the departmental respondents, respondent nos. 6 to 14

19

20

were engaged as casual mazdoors prior to 22.6.1988 whereas the applicants were engaged for the first time on the following dates:

Applicant no.1 - June 1989

Applicant nos.2,3 & 5 - July 1991

Applicant no.4 - July 1993

Thereafter, they have been engaged with intermittent breaks purely on temporary basis and because of their engagement after 22.6.1988, they cannot be equated with respondent nos. 6 to 14. It is also submitted that the engagement of casual labourers was banned by Department of Telecommunication since 30.3.1985 vide orders at Annexure-R/2. Subsequently, engagement upto 22.6.1988 has been regularised as a one time measure by virtue of the circular dated 25.6.1993 at Annexure-R/3. The applicants were never engaged as casual mazdoors prior to 22.6.1988 and therefore, no action was taken on their reminder at Annexure-4. These respondents have also denied that the applicants have worked continuously for seven years. They have indicated that Microwave Project itself is temporary in nature and engagement of a casual labourer for a few days in Project work does not give any right to him to claim regularisation. The respondents have further stated that the applicants were never engaged continuously and therefore, the question of their removal does not arise. The applicants are not covered by the circulars referred to by them and therefore, they cannot be conferred with temporary status. On the above grounds, they have opposed the prayers of the applicants.

Jdm

4. In their rejoinder, ^{to} the counter filed by respondent nos.2 and 3 the applicants have asserted that all of them have been appointed prior to 22.6.1988

Jdm

against Group-D posts under respondent no.2. They have denied that the certificates at Annexures 2 and 3 series have been manipulated. They have stated that at the time of appointment of the applicants, Shri S.K.Bandopadhyaya was the Divisional Engineer, Telecom, Microwave Project, Sambalpur and the applicants were working under him. As at the relevant time, he was the Divisional Engineer, Telecom, Microwave Project, he was competent to issue the working certificates and also to countersign payment particulars and on that ground, the applicants have denied the charge of manipulation. They have also asserted that respondent nos. 6 to 14 were simultaneously appointed with the present applicants. They have also asserted that the applicants worked continuously from the date of appointment till their termination in 1995. They have further stated that the departmental authorities in their counter have admitted that respondent nos. 6 to 14 are covered by the departmental instructions and accordingly, temporary status has been conferred on them. As the applicants are similarly placed, the same benefit should have been conferred on them also. The applicants have filed a further affidavit on 9.2.1998 in which besides reiterating their earlier points, they have mentioned that the Tribunal had directed the respondents to produce certain documents, but these documents have not been produced. Had the documents been produced, the genuineness of the working certificates enclosed by the petitioners to their Original Application could have been proved. But at the same time without producing the documents, the respondents cannot be allowed to challenge the working certificates which are genuine and have been issued by the competent authority.

J. S. M.

22

5. It is noted that the applicants filed MA No.651 of 1997 calling for certain records mentioned in Schedule I of this application. This M.A. came up for consideration on 10.12.1997 and it was ordered that File No. MWD/SMB/S-9, Parts I and II (from 1988) should be produced along with the casual labour file in the office of Director, Telecom, Telecom Project, Sambalpur and the file in the office of D.E.T.(M/W) Maintenance, Sambalpur, from which letter dated 15.10.1992 was issued. But in spite of giving two adjournments, it was submitted by the learned Additional Standing Counsel on 27.1.1998 that he required ten days time to produce the documents. In spite of that on 25.3.1998 the documents were not produced.

6. Notices were issued to private respondent nos. 6 to 14, but they have not appeared and filed any counter.

7. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioners and Shri P.N.Mohapatra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records.

8. The five petitioners have stated that they were working in the office of respondent no.2 Divisional Engineer, Telecom, Microwave Project, Sambalpur. Petitioner no.5 was appointed in May 1988 and other petitioners were appointed in June 1988. They have also stated that they were working as casual labourers against Group-D posts except applicant no.5 who was discharging the duties of a Clerk. In support of their contention, the applicants have produced working certificates vide Annexure 3 series which prima facie show that they were working from May 1988 and June 1988.

S. Jm

For every month Bill no. and the number of days worked by them in the month have been indicated. These working certificates have been signed by Assistant Engineer, Microwave Project and some of these have been signed by Shri S.K.Bandopadhaya, Divisional Engineer, Telecom, Microwave Survey Division, Calcutta. Respondent nos. 2 and 3 in their counter have stated that the applicants were not engaged as casual workers against Group-D posts. They have further stated that they were engaged as casual workers in June 1989, July 1991 and July 1993 and they worked purely on temporary basis as and when required by the official respondents. They have also stated that the working certificates produced by the applicants are not genuine documents and Shri S.K.Bandopadhaya, Divisional Engineer, Telecom, Microwave Survey Division, Calcutta, who had signed these certificates had no authority to give such certificates if at all these have been given by him. In order to establish the genuineness of the working certificates, the applicants have prayed for calling for certain records from the office of respondent no.2 and as earlier indicated, orders were passed to produce certain records and adequate opportunity was also given to the respondents to produce the records. But in spite of that the departmental respondents have not produced the records. We note that these certificates have not only been signed by Shri S.K.Bandopadhaya, but by the then Assistant Engineer, Telecom, Microwave Project and Junior Telecom Officer, Microwave Project, Sambalpur. In view of the failure of the departmental respondents to produce the records which were ordered to be produced, it is not possible to ignore these certificates merely on the bald assertion of the departmental respondents that the certificates are manipulated. If these certificates

J Sm

24

24

are manipulated, the departmental authorities could have taken action against the Assistant Engineer, Telecom, Microwave Project, Sambalpur and Divisional Engineer, Telecom Microwave Survey Division, Calcutta, who have signed these false certificates. But there is no mention in the counter that the departmental authorities have conducted any enquiry or initiated any action against the persons concerned who have signed these certificates. In any case, the admitted position is that these applicants were working as casual labourers under respondent no.2. The date of their initial engagement and duration of their engagement as casual workers are subject-matters of dispute. The learned counsel for the petitioners in course of his submissions stated that he is not pressing the prayer for regularisation. But he only wants that temporary status should be conferred on the applicants. In view of the fact that the applicants have produced records which prima facie indicate their engagements from May and June 1988 as referred to earlier and in view of the fact that they have subsequently been disengaged, it is ordered that whenever respondent no.2 engages casual labourers he must engage the applicants as they were disengaged casual workers. The settled legal position is that when casual workers are disengaged, they should be disengaged following the principles of last come first go and again in case of fresh engagement of casual workers, the disengaged casual labourers will have priority according to their date of initial engagement over fresh candidates.

John

9. The second aspect of the case is conferring of temporary status on the applicants. The respondents have stated in their counter that as these applicants have been engaged for the first time in June 1989, July 1991 and July 1993, they are not entitled to

be conferred temporary status. According to the circular dated 7.11.1989 at Annexure-R/1 no casual labourer, who has been engaged after 30.3.1985, should be granted temporary status without specific approval of Department of Telecommunication. The Scheme enclosed to this circular envisages conferring of temporary status on casual labourers who are currently employed subject to the conditions laid down in the Scheme. Thus, according to the original Scheme, casual labourers engaged after 30.3.1985 are not entitled to be conferred temporary status. In this case, the applicants by their own admission have been engaged for the first time in May 1988 and June 1988. Later on, however, in a circular issued on 8.4.1991, which is at Annexure-1, it has been laid down that as a one time relaxation casual workers who are recruited before 7.6.1988 and who are in service on the date of issuing of these instructions, i.e., on 7.6.1988, may be considered for regular appointment in Group-D posts. Respondent nos. 2 and 3 have enclosed the circular dated 25.6.1993 at Annexure-R/3. In this circular, casual labourers who are engaged after 30.3.1985 in Project Circles and dismantling/erection of lines in Railway Electrification Circles have been brought under the Scheme of conferment of temporary status. This circular ^{also} ~~also~~ lays down that casual workers who are engaged during the period 31.3.1985 to 22.6.1988 and who are still continuing should be conferred temporary status. In this case, the applicants have stated that they have been engaged in May 1988 and June 1988 and have continued till 1995. As earlier noted, in the working certificates in Annexure-3 series signed not only by the then Divisional Engineer, Telecom Microwave Project, Sambalpur, but also by the Assistant Engineer

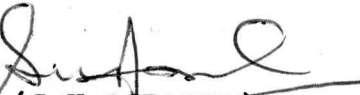
25


and Junior Telecom Officer, Telecom Microwave Project, Sambalpur, bill numbers in which payments have been made to these applicants from May and June 1988 have been indicated. In the circular dated 25.6.1993 it has been mentioned that the Scheme for conferring temporary status should be extended to all those casual mazdoors who are engaged by the Project Circles during the period from 31.3.1985 to 22.6.1988. The applicants' case is that they have been initially engaged during this period in May and June 1988. As such, according to them, the Scheme is applicable to them. Under paragraph 5(i) of the Scheme, which is the enclosure to Annexure-R/1, it has been mentioned that temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days . This Scheme was made applicable to the casual labourers who were engaged during 31.3.1985 to 22.6.1988 in circular dated 25.6.1993 when according to the applicants they were still working as casual labourers. In view of the above, we direct that the departmental respondents should get the bill numbers mentioned in the working certificates at Annexure-3 series ^{verified} and come to a finding if the applicants were engaged in May 1988 and June 1988 and if they had continued till July 1995. In case they had continued by the time the circular dated 25.6.1993 came into force, the departmental respondents should have conferred temporary status on them in case they were engaged prior to 22.6.1988. The departmental respondents should, therefore, verify the bill numbers mentioned in the working certificates and in case it is found that the

applicants were actually engaged prior to 22.6.1988 and they had continued with intermittent breaks beyond 25.6.1993, then their cases should be considered strictly in terms of the Scheme which is enclosed to Annexure-R/1 and on their re-engagement as casual workers, they should be conferred with temporary status.

10. The applicants have stated that the order conferring temporary status on private respondent nos. 6 to 14 should be quashed. As the departmental respondents have conferred temporary status on private respondent nos. 6 to 14 presumably because they are covered under the Scheme, there is no case made out for quashing the orders granting temporary status to respondent nos. 6 to 14. This prayer of the applicants is held to be without any merit and is rejected.

11. In the result, therefore, the Original Application is allowed in terms of the observation and direction contained in paragraphs 8 to 10 of this order. There shall be no order as to costs.


(S.K. AGRAWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.1.99

AN/PS