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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.452 OF 1995
Cuttack, this the 16th day of July, 1996

Thukuri Behera

....

Applicant

Vrs.

Union of India & another

....

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*

N. Sahu
(N.SAHU) 16/7/96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO.452 OF 1995
Cuttack, this the 16th day of July, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

....

Thukuri Behera,
aged about 20 years,
son of late Hadibandhu Behera
of village Bhadimula,
P.O.CRRI, Dist.Cuttack

....

Applicant

By the Advocates

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M/s R.N.Mohanty &
B.N.Rath

-versus-

1. Union of India,
represented through its secretary
to Government of India,
Department of Agriculture,
New Delhi-110 001.

2. Director,
Central Rice Research Institute,
Cuttack-6

....

Respondents

By the Advocate

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Shri Ashok Misra.

...

O R D E R

N.SAHU, MEMBER(ADMN.)

This is an application filed on 3.7.1995 for
appointing the applicant on compassionate grounds. The father of
the applicant, late Hadibandhu Behera joined as a Casual
Labourer in the Central Rice Research Institute on

25.11.1975 under Muster Roll No.75 and worked for a period of 14 years and died on 26.10.1989. The applicant states that his father worked continuously for a period of 14 years whereas it is maintained by the Respondents that "Hadibandhu, father of Thukuri, Trailokya brother of Sanjaya and Tilottama wife of Mohan had worked intermittently and for sometime in the past they were not to be heard and they had disengaged themselves from rendering casual work" (vide paragraph 6 of the judgment dated 7.2.1994 passed in OA No.202/93).

O.A.No.202/93 was a plea for compassionate appointment. The Tribunal did not rule out the possibility of disengagement before death due to their illness. It directed that Thukuri and Sanjaya "be given work as casual labourers as and when work is available". On 15.11.1994 after the judgment, the applicant filed an application for engagement but received a letter dated 24.12.1994 to the effect that as and when any new casual labourers would be engaged in the Institute in future in accordance with the existing provisions in force, his case would be considered first for the same as per the direction of the Court in OA No.202/93. The applicant is aggrieved by this letter. It is stated that in the Project at Santapur, the Respondents have engaged four persons as casual labourers on permanent basis, namely, Dhaneswar Muduli, Surendra Biswal, Santosh Tripathy and Ram Pradhan during the calendar year 1994. An affidavit was filed to this effect on 8.2.1995. It is also stated that one Kailash Chandra Ram and Adait Nayak were appointed as casual labourers on 6.5.1994 and 28.10.1994 respectively. In the counter filed by the

Respondents, it is stated that there was complete ban on the engagement of new casual labourers due to the decision of the I.C.A.R./Government of India. At paragraph 6 it is stated that the Institute required the services of labourers daily and the applicant's father was engaged on his own in purely temporary capacity and was never in the regular establishment of the Institute. At paragraph 7 it is stated that Smt.Shanti Dei, Smt.Kanchan Dei and Smt.Bilash Bewa were engaged much before the death of the father of the applicant and at that time there was no ban order on engagement of new casual labourers. These three persons are now enjoying temporary status. These three ladies were engaged when other labourers were regularly engaged. Compassionate appointment is given to a family member of a regular employee and not to that of a casual labourer. The above position, it is stated, has been explained in detail to this Tribunal in O.A.No.757 of 1994 filed by Smt.Tilottama Behera who was also a party to O.A.No.202/93. With regard to the claim of the applicant at page 5, paragraph 4(xi) of the application, it is stated that the five persons named therein, who joined as N.M.Rs. along with the father of the applicant, were given permanent appointment to Group 'D' posts. It is stated that such persons were given permanent appointment by a duly constituted Selection Committee as they were found suitable. With regard to Sita Dei, an additional counter affidavit has been filed on 19.1.1996 to clarify the three Sita Deis

who were considered by the Institute. The first Sita Dei, who was 13 years senior to the father of the applicant and the second Sita Dei and the third Sita Dei, who were also senior to the father of the applicant, were conferred with temporary status along with many others as per the D.O.P.T. order and if the father of the applicant had been alive, he too would have been conferred with the same temporary status. This additional counter affidavit sought to reply to the averments made in paragraph 4(xi), page 5 of the application and also in response to the observations of this Bench in the order No.3 dated 5.12.1995. In the written notes submitted, it is mentioned that at the new Project at Santapur the Respondents have appointed four persons as labourers on permanent basis from fresh candidates. They are named as Dhaneswar Muduli, Surendra Biswal, Santosh Tripathy and Ram Pradhan. There is an affidavit filed by the Respondents on 5.7.1996. The affidavit was signed by Puspa Nayak on 30.4.1996. It is categorically stated:

"...that after the orders of the Hon'ble Tribunal dated 7th February, 1994 in O.A.No.202 of 1993, not a single casual labourer has been appointed either at the Headquarter of the Institute at Cuttack or in any of its Sub-Station including K.V.Ks. in view of the restriction imposed by the I.C.A.R. However, the seven persons namely S/Shri Dhaneswar Muduli, Surendra Biswal, Susant Tripathy (not Santosh Tripathy), Ram Pradhan, Harihar Marandi, Kailash Ch.Ram and Adait Nayak have been duly interviewed and selected by a duly constituted Selection Committee and have been appointed as regular S.S.Gr.I and not as casual labourer. As per rule, the above vacancies were notified to the local Employment Exchange who sponsored the names of many candidates including

Sri Dhaneswar Muduli, Sri Surendra Biswal, Susanta Tripathy, Rama Pradhan, Sri Harihar Marandi. Similarly, Sh. Kailash Ch. Ram and Shri Adait Ch. Nayak were allowed to face the Selection Committee along with many others as they have been working as Casual Labourers. The Selection Committee after holding the interview had recommended the names of the above persons for appointment. As such there have been no deviation from the established procedures and neither any action has been taken nor can be imagined against the order of the Hon'ble Tribunal."

It is further stated that Smt. Shanti Dei and Smt. Bilash Bewa were never appointed under the rehabilitation scheme. It is clarified that no such scheme exists for appointment of the dependants of the casual labourers. However, these two ladies were engaged as casual labourers along with many others when there was no ban on their engagement.

2. The learned counsel has filed additional written notes on behalf of the applicant soon after the conclusion of the hearing and reiterated that the applicant's father worked under the Respondents since 25.11.1975 and died "in the course of his employment on 26th October, 1989" (paragraph 4(i) and (ii) of the application). The applicant's counsel in the additional written notes wants to dispute the finding that the deceased persons disengaged themselves from the work sometime prior to their death. The applicant's counsel had annexed the copy of the order passed in O.A.No.757 of 1994 wherein one of the officers of the Respondents was present and had given assurance that the applicant Tilottama shall be the first labourer in the new Project. It is stated that the ban order which came into force from 19.9.1990 would not apply to the present case since the father of the applicant died on

26.10.1989 and the applicant applied for compassionate appointment on 13.3.1990. The applicant's counsel also annexed the familiar decisions of the Supreme Court in the cases of Smt.Sushma Gosain and others v.Union of India & others (AIR 1989 SC 1976) and Smt.Phoolwati v.Union of India & others (AIR 1991 SC 469). Both the decisions state that there should not be any delay in the case of a compassionate appointment. In the Sushma Gosain's case the application was rejected in view of ban subsequently imposed on appointment of ladies to post. This denial of appointment was held by the Apex Court to be arbitrary. Following this decision, the Orissa High Court in the case of Mohini Kumar Nayak v. Orissa State Electricity Board and others (1992 (1) OLR 173) held that the widow of a Helper applying for a post of Peon under the rehabilitation assistance scheme should be considered for appointment as the scheme is of a special category and is meant to mitigate the hardship due to the death of the breadwinner in the family and the appointment under the scheme is not affected by any ban order.

3. I have carefully considered the submissions of the rival counsels and perused all the averments. The fact remains that the applicant's father died, according to the finding of the Tribunal, after working intermittently for a period of 14 years and he was disengaged before his death. The applicant refers to O.A.No.452/95 that he died in the course of his employment on 26.10.1989. The fact remains that there is no scheme of rehabilitation assistance for casual labourers. The existence of such a scheme was denied by the Respondents.

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The Respondents cannot appoint any dependant in the family of the deceased casual labourer under the rehabilitation assistance scheme which has no application to casual labourers. It has been clarified that the appointments made to the three ladies, namely, Shanti Dei, Kanchan Dei and Bilas Bewa, are not under the rehabilitation assistance scheme but as engagement of casual labourers before the ban order. With regard to the engagement of the seven persons in permanent capacity, it has been clarified that they were appointed as regular S.S.Gr.I and not as casual labourers. They were sponsored by the local Employment Exchange and were adjudged by the Selection Committee. The Respondents have been able to meet each and every point mentioned in the application. This Tribunal has referred to the ban order also in O.A.No.757 of 1994. The only thing that remains is the commitment given by the Institute at paragraph 6 of the order dated 29.9.1995 passed in O.A.No.757 of 1994 (Smt.Tilottama Behera v. Union of India & others). It is not understood as to why this assurance was not worked out for the new Project in the case of the applicant in O.A.No.757/94 as well as in this O.A. However, the affidavit filed on 5.7.1996 extracted above denied appointment of any casual labourer after the order in O.A.No.202/93 was passed on 7.2.1994. This averment has not been challenged anywhere by the applicant. In conclusion, it is not possible to give a direction prayed for in the application to give permanent appointment and other consequential benefits on the lines given to the three ladies mentioned in paragraph 8(A) of the application.

An appointment to a permanent post can be given only in accordance with the procedure prescribed in law for the purpose, ^{taking into account} age and qualification, experience and sponsoring from Employment Exchange. I would, however, direct that if the applicant fulfils these, preference should be given to him, but the only ^{further} direction that can be given is the one already given earlier in O.A.No.202/93 and O.A.No.757 of 1994, namely, as and when the Respondents require the services of any casual labourer anywhere in their organisation in any Branch whatsoever, there shall be an invitation to the applicant and priority shall be given to him for the said purpose. There is no question of any appointment under the rehabilitation assistance scheme to a casual labourer. If once that is allowed, then there will be no general employment of any casual labourer and all the requirements of casual labourers will be filled in only by the dependants in the families of earlier casual labourers who died. This is not the intention of the rehabilitation assistance scheme. This contention is, therefore, negatived.

B 4. [In the result, the application is disposed of by reiterating the direction made in the earlier O.A.No.202/93 to the effect that the applicant shall be given preference whenever work is available and a casual labourer is required.] No costs.

Narasimhaiah
(N.SAHU) 16/7/96
MEMBER (ADMINISTRATIVE)

A.Nayak, P.S.