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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO. 467 OF 1995
Cuttack, this the 10th day of February, 2004.

BINODA BIHARI PATTANAİK
AND ANOTHER.

APPLICANTS.

-Versus-

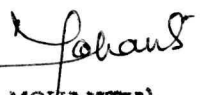
UNION OF INDIA & ORS.

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? Yes


(B. N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
10/02/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 467 OF 1995
Cuttack, this the 10th day of February, 2004.

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

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1. BINODA BIHARI PATTANAİK,
Aged 28 years, S/o. Rama Chandra Pattanaik,
now residing C/o. Deba Panda, Plot No. 303,
Ganganagar, Unit No. VI, Bhubaneswar, now
working as Billing Clerk/Bradma Machine
Operator, CSD(I), Canteen-NCC Directorate,
Orissa, Lewis Road, Bhubaneswar.
2. PRATAP CHANDRA MOHAPATRA,
aged 29 years, S/o. Balakrushna Panda,
At-Gourinagar, Old Town, Bhubaneswar,
at present working as Canteen Clerk/
Assistant Manager, CSD(I) Canteen,
NCC Directorate, Orissa, Lewis Road,
Bhubaneswar.

.... APPLICANTS.

By legal practitioner: Mr. B. R. Sarangi, Advocate.

:Versus:

1. Union of India represented through the Secretary,
Ministry of Defence, New Delhi.
2. Director General, N.C.C. West Block No. IV,
R. K. Puram, New Delhi-110 066.
3. Officer-in-Charge, N.C.C. Directorate,
C.S.D(I) Canteen, Lewis Road, Bhubaneswar.

.... RESPONDENTS.

By legal practitioner : Mr. S. B. Jena,
Additional Standing
Counsel (Central).

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):-

Applicants (two in number), in this Original Application under section 19 of the Administrative Tribunals Act, 1985 have prayed for a direction to the Respondents to absorb the Applicants as against regular posts of L.D.C. by granting regular scale of pay.

2. It is the case of the Applicants that Applicant No:1 was selected and appointed as Canteen boy w.e.f. 29.7.1988 (with a consolidated pay of Rs.200/-p.m.) and, subsequently, he was allowed to work as Billing Clerk/ Brahma Machine Operator (with a consolidated pay of Rs.800/-) and Applicant No.2 was initially appointed as Canteen Clerk on 20-02-1991 with a consolidated pay of Rs.700/- in the Departmental Canteen of Respondents. Initially, they were on probation and, subsequently, they have been allowed to continue as such on regular basis with due increments, as stipulated at the time of their appointment. They have been performing their duties for last several years, without any break. The duties performed by them are in conformity with the duties and responsibilities being discharged by regular employees of the organisation. It is the case of the Applicants that since they have been continuing in the Canteen run by the Department, as per various departmental instructions on the subject, they are entitled to be absorbed in a regular manner with all

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consequential benefits; but, surprisingly, when posts were created instead of regularising the Applicants, against these posts, the Respondents have gone on inviting nomination from the Employment Exchange. Hence this Original Application with the aforesaid prayers.

3. By filing a counter, the Respondents have maintained that the Applicants are working as Billing Clerk/Bradma Machine Operator and Canteen Clerk/Asst. Manager respectively on temporary basis in the NCC Directorate Unit Run Canteen with effect from 29.7.1988 and 22-02-1991 respectively. Both the Applicants are temporary employees in the NCC Directorate Unit Run Canteen which works from 0900 hours to 1230 hours on all working days. Their pay have been fixed at Rs. 900-20 maximum of Rs. 1100/- and Rs. 800-20 maximum of Rs. 1100/-. They are not paid either by Ministry of Defence or Director General, NCC. Hence, they cannot be absorbed or their service cannot be regularised in the Civil side of the NCC Directorate. There was a vacancy for LDC post released by Director General NCC; for which Employment Exchange was asked for nominating names. The Applicants could have applied for the post of LDC and in that event they were entitled to be considered, alongwith others, as per the Rules. However, subsequently, the said post (vacancy) has been cancelled vide DG, NCC, New Delhi letter dt. 07.08.1995. The vacancy in the NCC Directorate, Bhubaneswar has no bearing with the NCC Directorate Unit Run Canteen. It is a non-official Unit

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and is run for welfare of Serving/retired personnel of Armed Forces. It has also been submitted by the Respondents that the Applicants are discharging their duties as per the NCC Directorate Canteen Standing order (under clause 4(f)) and getting their remuneration as per the scheme/standing order and that whenever vacancy would arise their cases would receive due consideration for the job; provided their names are routed through the Employment Exchange and since, there is no vacancy at present, no consideration can be given to the cases of the Applicants.

4. Applicants, by filing their rejoinder, submitted that as per the records (of the Canteen) they are full time employees of the Canteen and that since they are working in the Departmental Canteen for a long time, they are entitled to claim regularisation against the regular vacancies. It is submitted that the Director of NCC is the Controlling Authority who has been vested with the power to look after the Canteen affairs and that, under his direct supervision, the Canteen is functioning. Finance is also being made ^{available} for the purpose of running the Canteen by the Ministry of Defence and therefore, there is a pervasive control by the Director of NCC on the affairs of the Canteen as well as on the Applicants and that, the Applicants are being paid from the funds available in the Directorate of NCC for the Canteen affairs.

5. Respondents, by filing their reply to rejoinder, have denied the assertions made in the rejoinder.

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6. Heard learned counsel for both sides and perused the materials placed on record. It has been submitted by the learned counsel for the Applicants that the CSD Canteen of NCC Directorate of Orissa at Bhubaneswar came into existence in the year 1963 under the authority of Army Headquarters letter dated 1st February, 1963. The Canteen is registered with the CSD Head Office, Adelphi, Bombay and the said Canteen is directed to be located in the premises of the NCC Directorate and will be operated on behalf of the NCC Director at Bhubaneswar under the control of the said Director; who is called as local controller for the purpose of CSD Canteen operation. The Canteen is a Welfare institution and, for smooth running of the same, a procedure has been framed and since the applicants are working for a considerable long time, they are entitled to be regularised. Learned counsel appearing for the Respondents submitted that since the Applicants are part time worker engaged on temporary basis in the Canteen of the Department, they have no right to claim absorption/regularisation in the post available in the Civil Wing Department of the Directorate. Hence, they have objected the prayer of the Applicants for such absorption/regularisation. However, the learned counsel appearing for the Applicants (during his argument) has relied upon a decision of the Jodhpur Bench of the Central Administrative Tribunal (rendered in the case of RAJENDRA JAGARWAL AND OTHERS v. UNION OF INDIA AND OTHERS REPORTED in (1996) 34 ATC 114) and we have gone through the said decision of the Jodhpur Bench of this Tribunal; wherein, after taking

into consideration various decisions of the Apex Court, it has been held that the Canteens in question are departmental canteens and, therefore, the employees, therein are holders of Civil posts under the Union and, after a vivid discussions about various aspects of the matter, it was held as under:-

"the appellants are entitled to pay and other benefits similar to the pay and other benefits available to the Canteen employees in the CSDI. It is, hereby, directed that the Respondents shall pay to all the applicants and similarly situated nonapplicants, the minimum of the salary presently being paid to their counterparts in the CSDI. The Respondents shall also give them all the benefits of other service conditions available to the regular government employees in the CSDI"

This Bench of the Tribunal have also, while deciding similar questions of the Canteen employees in O.A.No.82 of 1995 (disposed of on 11.8.2000) between Pradeep Kumar Nanda and others v. Central Board of Trustees and others, also directed for regularisation of the Canteen employees from different dates, according to their date of engagement etc.

7. Now that the post, as against which the Applicants seek regular absorption/regularisation being no more available (as the post has been withdrawn) and that in view of the settled position of law, we hereby direct that according to the decisions of this Tribunal rendered in the cases referred to above the Applicants are entitled to be regularised and are entitled to be treated at par with their counterparts employee in the CSDI. Accordingly, the Respondents should take immediate action to consider

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the cases of the Applicants for their regularisation and for payment of salary etc. as per their counterparts employees of the CSDI, within a period of 60 days from the date of receipt of a copy of this order. While allowing this case, we impose no order as to costs.


(B. N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
10/02/04