

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 581 OF 1995
Cuttack, this the 11th day of April, 2001

Sri K.Satyanarayan Murty 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.*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Soni
(SOMNATH SONI)
VICE-CHAIRMAN
11.4.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Sri K.Satyanarayan Murty,
son of K.Visheswar Rao,
At Hat Bazar, Bachara Road, Plot No. 330(P), P.O-Jatni,
District-Khurda.
 2. Sri Narayan Champati, son of Indramani Champati,
At/PO-Lathipara, Via-Mandhatpur, District-Puri.
 3. Bhramarbar Jena, son of Nilamani Jena, At/PO-Jhintيسان,
Via-Balkati, District-Puri.
- All are workers employed as Khalasis in E.R.Division, Central
Water Commission, Bhubaneswar, District-Khurda
- Applicants

Advocate for the applicants - M/s C.M.K.Murty

Vrs.

1. Union of India, represented by Secretary, Ministry of
Water Resources, Government of India, Sramasakti, Rafi
Marga, New Delhi-110 001.
 2. The Superintending Engineer, Hydrological Observation
Circle, Central Water Commission, Sahidnagar,
Bhubaneswar, District-Khurda, Pin-751 007.
 3. The Executive Engineer, Eastern River Division, Central
Water Commission, Plot No.13 and 14, Vani Vihar, P.O-Vani
Vihar, Bhubaneswar-14, District-Khurda.
- Respondents

Advocate for respondents-Mr.A.Routray,
ACGSC

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this O.A., the three petitioners have prayed
for quashing the orders at Annexures 2 and 5 and also for a
direction to the respondents to permit the applicants to

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appear at the interview scheduled to be held on 11.10.1995 for the post of Observer Grade-II and to consider their cases for the above post taking into consideration the order of the Tribunal in OA No.27/91 (Annexure-1) and the long service rendered by them. The respondents have filed counter opposing the prayers of the applicants. No rejoinder has been filed.

2. The case of the three applicants is that they have been working as temporary/seasonal work-charged Khalasi in the Central Water Commission from the year 1978 under the Executive Engineer, Central Water Commission. It is stated that their services were extended from time to time and some of them have been employed as Typists due to non-availability of regular persons. As in spite of their long service they were not regularised, they approached the Tribunal in OA No.27 of 1991 along with some others praying that orders terminating their services should be quashed and the respondents should be directed to allow the applicants to continue in service along with all financial benefits. The Tribunal in their order dated 21.1.1993 referred to the decision of the Hon'ble Supreme Court in the case of Managing Director, Orissa Construction Corporation Ltd. and others v. Shyam Sundar Jena and others, Civil Appeal Nos.2282,2282,2285,2286 and 2287 of 1992, and observed that the Executive Engineer, Central Water Commission, Bhubaneswar (respondent no.3 before them) would strictly adhere to the observations made by the Hon'ble Supreme Court and accordingly give benefit to the petitioners. It was also directed that as and when vacancies arise in the post of Typist, those out of the applicants before them who are found to be suitable for the post of Typist, should be given such post according to their seniority. Finally it was ordered

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13 that till then the petitioners should be employed as workcharged Khalasis. Against the order the departmental authorities filed Review Application No.35 of 1993 which was rejected in order dated 21.10.1998. It is stated that the Executive Engineer, Eastern Rivers Division (respondent no.3) has issued a vacancy circular for filling up some posts of Observer Grade-II in the work-charged establishment by upgrading the post of Khalasi and Worksarkar Grade-III from among the departmental candidates. Applications were invited from departmental candidates working in the post of workcharged Khalasi and Worksarkar Grade-III within a period of thirty days. The applicants' case is that they submitted their applications in response to the above circular. This vacancy circular is at Annexure-2. The applicants have stated that in response to the vacancy circular dated 11.7.1995 they applied for the post and they had the eligibility to be considered for the post of Observer Grade-II. But in the impugned order at Annexure-5 some other persons have been asked to appear at the interview on 11.10.1995 but no such intimation for interview has been sent to the three applicants. The applicants have stated that in spite of the order of the Tribunal in OA No.27 of 1991, their services have not been regularised and in the context of the above they have come up in this petition with the prayers referred to earlier.

JJM 3. Respondents in their counter have stated that the applicants have been engaged as seasonal Khalasi in the Department against purely temporary and short term vacancies during the monsoon seasons only. They are not having the same status as work-charged staff under regular establishment and therefore, they cannot be treated as

departmental candidates. It is stated that as per recruitment rules the post of Observer Grade-II can be filled up either by candidates sponsored through Employment Exchange or departmental candidates, and the applicants do not come under any of these two categories. The respondents have further stated that posts of Observer Grade-II are proposed to be filled up by upgradation of equal number of posts of Khalasi and Worksarkar Grade-III in order to cope up with the work in absence of Junior Engineers and because of this, only the Khalasi and Worksarkar Grade-III, who were working in the Department, were called to the interview. It is stated that the applicants were engaged as seasonal Khalasi for three/four months during monsoon seasons and thereafter their services are dispensed with. It is furtherstated that the applicants are still continuing as seasonal Khalasis and therefore they cannot be considered for the post of Observer Grade-II. On the above grounds, the respondents have opposed the prayers of the applicants.

4. We have heard Shri C.M.K.Murty, the learned counsel for the petitioners and Shri A.Routray, the learned Additional Standing Counsel for the respondents. Before proceeding further it has to be noted that against the order dated 21.10.1998 of the Tribunal rejecting RA No.35 of 1993 filed by the Department, the departmental authorities had approached the Hon'ble High Court in OJC No. 6521 of 1999 which was disposed of in order dated 24.1.2000 dismissing the writ application. Against the above order of the Hon'ble High Court, the departmental authorities approached the Hon'ble Supreme Court in Civil Appeal No.11253 of 2000 and the Hon'ble Supreme Court in their order dated 4.8.2000 directed

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that the impugned order to the extent it directs that the respondents before the Hon'ble Supreme Court shall be employed as workcharged Khalasi shall remain stayed. The Hon'ble Supreme Court also held that they would continue to work on the same terms and conditions as prior to passing of the impugned order.

5. From the above recital of pleadings of the parties, it appears that selection procedure was undertaken for filling up some posts of Observer Grade-II in the workcharged establishment by upgrading the post of Khalasi and Worksarkar Grade-III in the workcharged establishment. This is clearly mentioned in the vacancy circular at Annexure-2. The prayer of the applicants to quash Annexure-2 is misconceived because their other prayer is for considering them for the post of Observer Grade-II which has been notified in the vacancy circular dated 11.7.1995 at Annexure-2. In view of this, we hold that the prayer for quashing the vacancy circular at Annexure-2 is without any merit and the same is rejected.

6. The second prayer of the applicant is for quashing the interview letter which has been issued to some other candidates but not issued to the three applicants. Therefore, the sole question for consideration is whether the applicants are entitled to be considered for the post of Observer Grade-II in the Workcharged Establishment. From the vacancy circular itself it appears and this has also been mentioned by the respondents in the counter that these posts of Observer Grade-II have been created by upgrading the posts of Khalasi and Worksarkar Grade-III in the Workcharged Establishment. Therefore, naturally persons working in the

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Workcharged Establishment can alone be considered. The respondents have pointed out that according to the recruitment rules the posts of Observer Grade-II have to be filled up either by direct recruitment or by departmental candidates. As in the present case the posts of Observer Grade-II have been created by upgrading the posts of Khalasi and Worksarkar Grade-III in the Workcharged Establishment, obviously these two categories of persons have to be considered. The applicants being seasonal Khalasi cannot be considered for the post. Respondents have stated and this has not been denied by the applicants by filing any rejoinder that the applicants do not belong to the Workcharged Establishment. It is also seen from the vacancy circular at Annexure-2 that applications were invited only from Workcharged Khalasi and Worksarkar Grade-III in the Workcharged Establishment. In view of this, simply by making applications for the post, the applicants cannot claim that they should be called to the interview. As applications were invited only from Khalasi and Worksarkar Grade-III working in the Workcharged Establishment, by not calling the applicants to the interview, they have not been discriminated against. Therefore, we hold that Annexure-5 is not liable to be quashed. This prayer of the applicants is rejected.

7. In the result, therefore, we hold that the O.A. is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SONI)

VICE-CHAIRMAN