

11

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.620 OF 1995
Cuttack, this the 29th day of May, 1998

Subash Chandra Dash and four 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.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 29-5-98

12

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.620 OF 1995
Cuttack, this the 29th day of May, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....

1. Subash Chandra Dash,
aged 23 years
son of Chandramani Dash,
a permanent resident of Balarampur-Talabala,
Dist.Jajpur.
2. Mitrabhanu Prusty,
aged 28 years
s/o Harihar Prusty
of Nuapatna,
Town/Dist.-Cuttack.

Corrected vide
order no.20,
dated 22.6.98.

Somnath Som
VICE-CHAIRMAN

22.6.98

*-3-~~Dibakar Das, aged 30 years~~

~~Son of Sribatsa Sahoo~~
~~of Charighudria,~~
~~PO-Harirajpur,~~
~~Cuttack.*~~

* 3. Dibakar Das, aged 30
years, s/o late Banshidhar
Das of Godasahi, P.S-Kanas
Puri.

4. Bijaya Kumar Sahoo, 28
years, s/o Sribatsa Sahoo
of Charighudria,
PO-Harirajpur, Cuttack. *

5. Golakh Patra
aged 30 years
s/o Panchu Patra
of Sanagorada,
PO-Kesharpur,
Dist.Nayagarh

.....

Applicants

Vrs.

1. Union of India,
represented through its Secretary
to Government of India,
Department of Post,
Dak Bhawan,
New Delhi.
2. Chief Post Master General,
Orissa, Bhubaneswar.
3. Manager, Printing Press (Postal),
Godagopinathprasad, Rasulgarh, Bhubaneswar

.....

Respondents

Advocate for applicants - M/s

A.K.Misra, J.Sengupta
B.B.Acharya
& A.K.Guru

Advocate for Respondents- Mr.Akhaya Ku.Misra
A.C.G.S.C.

S Som.

13

(13)

-2-

O R D E RSOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the five applicants, who have been permitted to pursue the petition jointly, have prayed for a direction to the respondents to fill up the Group-D posts and to consider the case of the petitioners. The third prayer is for a direction to the respondents to continue the petitioners on casual basis till the posts are regularly filled up.

2. The short facts of this case, according to the applicants, are that they were continuing as Casual Security Guards/Labourers in Postal Printing Press Colony at Gadagopinathprasad on daily wage basis with effect from 1.7.1992. Copy of the order appointing three of them as Casual Security Guards/Labourers with effect from 1.7.1992 is at Annexure-1. At Annexure-2 is an office order making shift arrangement amongst various Casual Security Guards in which the name of applicant no.2 finds place. The petitioners further state that in order dated 14.1.1993 at Annexure-3, all the five applicants along with another person were disengaged. The petitioners further state that an advertisement was published in daily newspaper dated 7.8.1993 by the respondents to fill up Group-D posts, such as Chowkidar, Peon, Daily Labourer, etc.. There were eight posts of Daily Labourer, one Chowkidar and one

S. Som.

Peon noted in the advertisement. The petitioners were hopeful that their cases would be considered since they were continuing on casual basis and had also applied for the same. They had also registered their names in the Employment Exchange. In response to the applications, the petitioners were directed in letter dated 12.1.1994 to appear at an interview on 21.1.1994. Two such notices calling applicant nos. 3 and 5 are at Annexure-A series enclosed to M.A.No.379/96. Some of the employees, who were continuing in the regular establishment represented by the General Secretary of the Union, filed O.A.No.13/94 which came up for admission on 18.1.1994 and the Tribunal restrained respondent nos. 3 and 4 in that O.A., i.e., Chief Post Master General and the Selection Committee for recruitment to Groups C and D posts in the Postal Printing Press, from holding any interview for the posts in question till 1.2.1994. (Emphasis supplied). The petitioners further state that in O.A.No.13/94 the grievance of the Union was with regard to the posts of Machine Assistant, Assistant Mechanic, Bindery Assistant and Machine Attendant, and O.A.no.13/94 had nothing to do with the posts of Labourers, Chowkidar and Peon. Notwithstanding this, no interview was held for the posts of Labourers, Chowkidar and Peon for which these applicants were apparently called. In O.A.No.13/94 the respondents, i.e., the departmental authorities filed MA No.78/95 seeking vacation of stay order dated 18.1.1994. This M.A. was disposed of in order

S. Som.

dated 6.2.1995 by the Tribunal when the Tribunal noted that originally the interview for the posts in question was stayed till 1.2.1994 and beyond that date there was stay order. The applicants further state that they have been approaching the respondents for getting the interview held so that their cases can be considered along with others for the posts of Labourers, Chowkidar and Peon, but no interview has been held. It is further stated that the work which was being done by the applicants is being managed by engaging daily casual labourers without considering the cases of the petitioners. The petitioners further state that as they have been disengaged from the job of casual labourers, they have a right to be considered for re-engagement when fresh casual labourers are inducted. In M.A.No.379/96 filed by the applicants in this O.A., it has been further submitted that on 8.5.1996 the respondents have advertised again in daily SAMAJ to fill up seven posts of Labourers, one post of Chowkidar and two posts of Sweeper, total ten in number in Group-D. In this advertisement, the age limit has been noted as 18 years of age as on 1.7.1996 and not exceeding 30 years as on that date with relaxation of upper age limit in case of SC, ST, Ex-servicemen, OBC, etc. The applicants state that because of the delay, some of the applicants will become age-barred and that is how they have come up with the aforesaid prayers.

J. Sam,

3. The respondents in their counter have stated that the original engagement of the applicants was purely on ad hoc basis and on daily wages and in the order of appointment it was clearly mentioned that they cannot claim future absorption against the same posts. It is further submitted that as there was no necessity to guard the quarters for which the petitioners were engaged, they were disengaged with effect from 14.1.1993 and an advertisement for recruitment was issued on 7.8.1993. It is further submitted that even though the applicants were called to the interview on 20.1.1994 and 21.1.1994 on the basis of their applications in response to the advertisement, the interview could not be held on the due date in view of the stay order issued by the Tribunal in OA No.13/94. The respondents have denied that they have engaged fresh casual labourers to do the work which was being done by the applicants. The respondents have also mentioned that the six casual labourers have worked for varying periods from 172 to 195 days and the posts of Group-D and labourers are to be filled up as per the recruitment rules and the applicants cannot be directly appointed to these posts. They have also mentioned that in case they apply in response to the second advertisement, their cases will be considered by the Recruitment Committee only as outside candidates. On the above grounds, the respondents have opposed the prayers of the petitioners.

J. J. M.

17

17

-6-

4. I have heard Shri Jayadev Sengupta, the learned counsel for the applicants, and Shri Akhaya Ku.Misra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records.

5. The admitted position is that the applicants were working on daily wages as Casual Labourers/Security Guards and they were disengaged from 14.1.1993. Casual labourers are engaged for casual and intermittent type of work and a casual labourers cannot claim that he must be engaged at all times even when there is no work of casual nature. But the position of law is well settled by a series of pronouncements of the Hon'ble Supreme Court that while disengaging such casual labourers, the principle of last come first go must be observed and when in future any need for engagement of casual labourers arises in that establishment, then the retrenched casual labourers will have to be given preference over fresh outsiders in the order of their initial engagement. In the instant case, the applicants have stated that the work which was being done by them is being managed by engaging fresh outsiders as casual labourers. This allegation has been denied by the respondents in their counter. The applicants in their rejoinder have enclosed two orders dated 17.12.1996 and 20.12.1996 (Annexure-A/1) showing that certain E.D.officials were ordered to work as labourers on daily wage

J. Som

18

basis on certain days in August and September 1996 and they were relieved in February and March 1997. At Annexure-A/2 to the rejoinder is an order regarding payment of wages to one Buina Mukhi, an outside casual Mali, who had apparently been engaged for 12 days from 5.2.1996 to 17.2.1996. This engagement is in the leave vacancy of one Madan Mohan Biswal, Mali of the establishment. From this it appears that casual labourers are being engaged by the respondents. In view of this, a direction is issued to the respondents that while engaging casual labourers, they must give preference to the retrenched casual labourers like the applicants strictly in order of their initial engagement. The third prayer of the applicants is disposed of with the above direction.

6. As regards the main prayer of the applicants, from the counter of the respondents it appears that the applicants were called for an interview on 20.1.1994 and 21.1.1994. The respondents have taken the stand that this interview could not be held as in OA No.13/94 the Tribunal had stayed the interview till 1.2.1994. I am afraid this submission of the respondents cannot be accepted because in OA No.13/94 the dispute is regarding the posts of Machine Assistant, Assistant Mechanic, Bindery Assistant and Machine Attendant. The applicant in OA No.13/94 is the Union of the regular employees of the Postal Printing Press and their grievance in OA No.13/94 was regarding promotional posts and not regarding

S. Som.

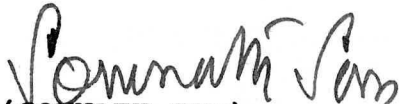
the entry level posts of Chowkidar, Labourers and Peon. The Tribunal in their order dated 18.1.1994 restrained the respondents from holding the interview for the posts in question till 1.2.1994. The posts in question in the above context would mean the posts for which the applicant Union in OA No.13/94 made their claims and therefore, the respondents could have easily held the interview for the posts of Labourers, Chowkidar and Peon for which they had called the present applicants to the interview. But because of wrong understanding of the order of the Tribunal, the interview was not held. In the subsequent employment notice dated 8.5.1996, again 10 posts have been advertised but the composition is different. There are seven posts of Labourers, one post of Chowkidar and two posts of Sweeper. In the original advertisement dated 7.8.1993, the age limit was between 18 and 30 years as on 1.7.1993. In the subsequent advertisement dated 8.5.1996 the age limit is 18 to 30 years as on 1.7.1996. The applicants' case is that some of them have become age-barred because of passage of time from 1993 to 1996 and they will not be considered unless an appropriate direction is issued by the Tribunal. In this case, the admitted position is that the petitioners applied in response to the advertisement dated 7.8.1993 and they were also called to an interview on 20.1.1994 and 21.1.1994. The interview was not held because of wrong understanding of the stay order of the Tribunal which did not

apply to these posts. In view of this, it is ordered that while filling up the posts as advertised in notice dated 8.5.1996, the respondents should consider the cases of these five applicants in accordance with the applications made by them earlier and in accordance with the notice for interview sent to them earlier. So far as these applicants are concerned, if it is found that they were within the age limit as on 1.7.1993, then it must be taken that they are within the age limit even in accordance with the employment notice dated 8.5.1996. This is because for this passage of time, the respondents are responsible and the petitioners cannot be allowed to suffer because of the laches of the respondents.

7. The petitioners have made a prayer for getting appointment to the posts advertised. But the law is well settled that appointment cannot be made to any post dehors the recruitment rules. Thus all that the applicants can claim is that their applications already made should be considered in accordance with rules taking them to be within the age limit. It also requires to be stated that in case there are other applicants who had been called to the interview in response to the notice dated 7.8.1993 and if they were within the age limit as advertised at that time, they should also be considered along with the present applicants for filling up of the posts of Labourers, Chowkidar and Sweepers as advertised in the notice dated 8.5.1996.

J.Jm.

8. In the result, therefore, the application is partly allowed in terms of the observation and direction contained in paragraphs 5, 6 and 7 above. There shall be no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN 29-5-98

AN/PS