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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS 773,774, 775 and 776 OF 1995
Cuttack, this the 30th day of October, 1998

Kailash Ch.Mohanty 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN

30.10.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 773, 774, 775 and 776 of 1995
Cuttack, this the 30th day of October, 1998

CORAM:

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

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In OA 773/95

Kailash Ch.Mohanty
aged about 40 years
son of Raghunath Mohanty
c/o J.K.Das, Plot No.587,
Nuapalli, Behera Sahi,
Bhubaneswar-12,
Dist.Khurda

In OA 774/95

Bikram Singh Pradhan
aged about 33 years
son of Brajabandhu Pradhan
c/o J.K.Das, Plot No. 587
Nayappalli Behera Sahi,
Bhubaneswar-12, Dist.Khurda

In OA 775/95

Hemanta Kumar Jena
aged about 33 years
s/o Narayan Jena
c/o J.K.Das, Plot No. 587
Nayappali Behera Sahi,
Bhubaneswar, Dist.Khurda.

In OA 776/95

Upendra Kumar Mohanty
aged about 34 years
s/o Bansidhar Mohanty
At/PO-Ghatikia
Via-Bhubaneswar-3,
Dist.Khurda

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Applicants

By the Advocates - M/s Dr.M.R.Panda
D.K..Pani
M.K.Nayak
Mrs.M.K.Das.

Vrs.

In all the four cases

1. Union of India, represented by the Secretary in the Department of Agriculture and Co-operation, New Delhi.
2. Director, Central Poultry Breeding Farm, Bhubaneswar-751 012
3. Hatchery Officer, Central Poultry Breeding Farm, Nayapalli, Bhubaneswar-751 012. Respondents

By the Advocate - Mr.Akhaya Ku. Mishra,
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These four cases have been heard separately. But the applicants in OA Nos. 773, 774 and 776 of 1995 have filed identical petitions with identical averments and grounds for the relief. These three applicants base their present relief on a decision of the Tribunal in OA No. 20 of 1989 filed by them jointly. The applicant in OA No.775 of 1995 has also filed an identical petition with identical averments and grounds for the relief. He was not an applicant in OA No. 20/89. But he has stated that because of poverty he could not approach the Tribunal and has asked to be given the benefit of the order of the Tribunal in OA No.20/89. The respondents have filed identical counters in these four cases. The rejoinders filed by these four applicants are also identical. The point for consideration is the same. Therefore, these four cases are being disposed of by a single order. For the purpose of adjudication of the controversy, the facts in OA No.773 of 1995 are being referred to.

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2. The case of the applicant in OA No.773 of 1995 is that he had earlier filed an application in OA No. 20/89 which was disposed of in order dated 21.12.1989. The applicant was working in Central Poultry Breeding Farm, Nayapalli, since 1979. He submitted a representation dated 14.9.1987 (Annexure-1) in which his date of joining was mentioned as 5.5.1979. It is to be noted that this is a joint application filed by the applicants in OA Nos. 773, 774 and 776 of 1995 along with another person who is not before us. On the date of admission of OA No.20/89, by way of interim relief, the Tribunal had directed the departmental authorities not to dislodge the applicants from the jobs which they were holding. This interim order was continued till the disposal of the application on 21.12.1989. The relevant portion of the order of the Tribunal quoted by the applicant is extracted below:

".....We would accordingly direct that a scheme be prepared for absorbing casual labourers in order of their seniority and their services be regularised according to availability of posts. So far as the wages to be paid to them are concerned, it should be calculated on the basis of initial scale of Group D i.e., Class IV posts including Dearness Allowance and Additional Dearness Allowance admissible at that stage but without any annual increment and be paid to them."

J. S. Ram - The applicant's case is that by the circular dated 16.4.1992 (Annexure-2) a scheme was circulated. In the scheme the position of seniority of these four applicants was also mentioned. In OA No.20/89 the applicants filed a Misc. Application for implemenentation of the order of the Tribunal and this was disposed of in order dated 22.1.1992 with the direction that the judgment be implemented by 30.4.1992. In spite of the above direction, the judgment was not implemented, the applicants were not regularised and they were not given the scale of pay as per direction of the

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Tribunal. Later on, Government of India in their Office Memorandum dated 10.9.1993 laid down certain guidelines following the decision of the Principal Bench of the Tribunal on 16.2.1990 in the case of Raj Kamal and others vrs. Union of India. It was indicated that while the existing guidelines contained in O.M. dated 7.6.1988 would continue to be followed, the grant of temporary status to casual employees who are presently employed and who have rendered one year continuous service in offices other than Departments of Telecom, Posts and Railways may be regulated by the Scheme appended. This scheme provided for conferment of temporary status on certain conditions and giving of wages on the basis of minimum of pay scale of the corresponding Group-D official including Dearness Allowance, House Rent Allowance and C.C.A. The scheme also provided that for filling up of Group-D posts casual labourers should be given preference and priority. It was laid down that two out of every three vacancies in Group-D cadre in respective offices where the casual labourers have been working would be filled up in accordance with recruitment rules and in accordance with instructions issued by the Department of Personnel & Training, from amongst the casual workers. There were other conditions regarding age relaxation, etc., which do not concern us in the present cases. The case of the applicant in OA No.773/95 is that even though the judgment was delivered in 1989, the departmental authorities did not carry out the direction in proper spirit and several vacancies were filled up without regularising the applicant. It is also stated that there are existing vacancies and the order of the Tribunal in OA No.20/89 should be implemented and the applicant should be given regular appointment as by this time he has rendered service of 16 years. It is stated that the applicant should be regularised with retrospective effect and he should be entitled to scale of pay with D.A.,

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A.D.A., etc. But as the earlier judgment has not been implemented, he has come up in the present application with the prayer for a direction to the respondents to regularise his services with retrospective effect and to give him all pecuniary service benefits under law.

3. The averments of the applicant in OA No. 774 of 1995 are exactly the same except that he has stated that by the time of filing of the application he has put in 13 years of service. The prayer made by him is also the same as in OA No.773/95. In OA No.776 the averments of the applicant are exactly the same except that he has stated that by the time of filing of the application, he has put in 15 years of service. The relief claimed by him is the same as in the cases of other applicants. The applicant in OA No.775 of 1995 has mentioned that similarly placed persons had filed application before the Tribunal under Section 19 of Administrative Tribunals Act, 1985. The applicant could not approach the Tribunal due to poverty but his case is squarely covered by the judgment delivered in OA No.20/89. In view of this, he has made the same averments as the other applicants and has asked for the same relief.

4. The respondents have filed identical counters in these four cases. They have indicated that the applicant in OA No.773 of 1995 was engaged on daily rated casual basis on 5.5.1979 and other applicants from different dates. They have stated that the applicants in OA Nos. 773, 774 and 776 of 1995 along with one Banamali Nayak filed a representation before Hon'ble Prime Minister which is at Annexure-1 of the O.A. In the meantime, services of Banamali Nayak have been regularised as per rules against the reserved vacancy for ST. They have also stated that wages are being paid to these applicants according to the direction of the Tribunal. These applicants are getting minimum of Group-D pay scale and increment is being allowed

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to them. They are also getting D.A., H.R.A., City Allowance and Interim Relief. Thus, the respondents have stated that this part of the order of the Tribunal in OA No.20/89 has been fully complied with. On the question of regularisation, the respondents have stated that a seniority list has been drawn up and served on the applicants and other similar casual labourers and the cases of these applicants will be taken up for regularisation in accordance with their seniority and on the basis of availability of posts. On the above grounds, the respondents have opposed the prayer of the applicants.

5. In OA No.775 of 1995 where the applicant was not party to the earlier OA No.20/89, the respondents have stated that in accordance with the order of the Tribunal, a seniority list has been drawn up and the applicant in OA No.775 of 1995 is at serial no.3 in the seniority list. Even though he had not approached the Tribunal earlier, his case has also been considered and he is being given all the benefits along with others. More specifically it has been mentioned that he is getting the minimum of the pay scale of Group-D along with D.A. and other benefits like increment, etc. from 1.19.1993. It is further stated that there is no vacant post since 1991 in the category of Group-D. But the case of this applicant will be considered for regularisation in accordance with the Scheme and in accordance with his seniority when posts fall vacant. On the above grounds, the respondents have opposed the prayer of the applicant.

6. The applicants in OA Nos. 773, 774 and 776 of 1995 have filed identical rejoinders in which they have reiterated their averments made in the OAs. They have also stated that according to the order dated 22.1.1992 the Tribunal had directed the departmental authorities to implement the judgment by 30.4.1992 and the respondents

cannot be allowed to say that they have implemented the judgment only from 1.9.1993. In view of this, the applicants in their rejoinders have reiterated their prayer made in the O.As. The applicant in OA No.775 of 1995 has not filed any rejoinder.

7. We have heard Dr.M.R.Panda, the learned counsel for the petitioners and Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel separately in these four cases and have also perused the records. At the time of hearing, the learned Additional Standing Counsel has filed M.A Nos.583, 584, 585 and 586 of 1998 in these four cases with copy to other side. In these M.As. letter dated 31.7.1997 from the Department of Animal Husbandry & Dairying to the Director of Central Poultry Breeding Farm, Bhubaneswar, has been enclosed. It has been mentioned that a representation from the casual labourers working in Central Poultry Breeding Farm, Bhubaneswar, has been received in the Ministry and the same has been forwarded to the Director, Central Poultry Breeding Farm, Bhubaneswar. The representationists have requested for regularisation of their services and the Director has been requested to examine the matter as per procedure prescribed in O.M. dated 10.9.1993, a copy of which has also been enclosed to these M.As.

8. It has been strenuously urged by Dr.M.R.Panda, the learned counsel for the petitioners that as the Tribunal had directed the respondents to implement the judgment by 30.4.1992, the services of these petitioners should be regularised from that date, the judgment having become final. It has been urged, on the other hand, by the learned Additional Standing Counsel that the scheme having come into force from 1.9.1993, the services of the applicants can be regularised only after 1.9.1993 and that too on availability of vacancies. It has been further urged

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by the learned Additional Standing Counsel that the services of the petitioners can be regularised only in accordance with their seniority as intimated to them and as a matter of fact, the services of one Banamali Naik who was a signatory to the representation at Annexure-1 of the O.As. have already been regularised as he belongs to Scheduled Tribe community and a vacancy came up in S.T. quota. On the basis of the averments made by the respondents, we find that the applicants are getting the minimum of Group-D pay scale along with D.A., H.R.A. and other allowances as admissible. They have also been allowed increments. As such, this part of the order of the Tribunal has already been complied with. On the question of their regularisation, the Tribunal had directed in their order the relevant portion of which has been extracted earlier, to prepare a scheme for absorbing casual labourers in order of their seniority and regularise their services according to availability of posts. From this it is clear that the Tribunal did not order regularisation of these applicants straightaway. They only ordered for preparation of a scheme and regularisation in accordance with the terms of the scheme. The scheme has been framed and has come into force from 1.9.1993. In view of this, the question of regularisation of the services of the applicants from 30.4.1992 would not arise. By 30.4.1992 no scheme for regularisation had been framed and therefore, the services of the applicants can only be regularised in accordance with the scheme which came into force from 1.9.1993. The second aspect of the matter is that their services can be regularised only on availability of vacancies and that too, in order of their seniority. While filling up the vacant posts, the Scheme provides that two out of three vacancies in Group-D posts will go to casual workers. It is also provided that surplus Group-D staff will have priority over

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casual labourers to be anbsorbed against vacant posts. The services of the applicants can, therefore, be regularised only in accordance with the scheme. It has been urged by the learned counsel for the petitioners that the vacancies are available and the respondents are deliberately delaying in regularising the services of the applicants. In view of the above, these Original Applications are disposed of with a direction to the respondents to regularise the services of these four applicants strictly in accordance with the scheme and in accordance with their seniority from the date vacant posts were available. From the date of their regularisation, financial benefits, if any, accruing to them should also be paid to them. If there are vacancies available now and the applicants or some of them according to their seniority are entitled to be regularised against such vacancies, then such regularisation should be done within a period of 60 (sixty) days from the date of receipt of copy of this order.

9. With the above observation and direction, the Original Applications are disposed of. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(Signature)
(SOMNATH SOM)
30.10.98
VICE-CHAIRMAN