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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 200 OF 1996
Cuttack, this the 26th day of March, 1999

Sri Arun Kumar Behera Applicant

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)
VICE-CHAIRMAN

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A diagram showing a circle with a point on its circumference. A line segment is drawn tangent to the circle at that point, extending from the point into the exterior of the circle.

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Applicant

Advocate for applicant - Mr.T.Rath

Vrs.

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Respondents

A.S.C.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

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with effect from 1.7.1992 when he has completed ten years of service. He has also asked for consequential financial benefits and for quashing the order dated 5.9.1996 at Annexure-R/1 rejecting his representation for regularisation.

2. Facts of this case, according to the applicant, are that on being duly sponsored by Employment Exchange and being selected through an interview conducted by Assistant Engineer (Electrical), P & T Electrical Sub-Division, Cuttack, held on 25.6.1982, he was appointed on Muster Roll basis as Assistant Wireman. Copy of the call letter for the interview is at Annexure-1 and copy of offer of appointment to the temporary post of Assistant Wireman on Muster Roll basis on daily rate of Rs.8.75, dated 26.6.1982 is at Annexure-1/A. The applicant joined the office of Junior Engineer, P & T Electrical Section, Sambalpur, on 1.7.1982. Department of Telecommunication in their letter dated 7.11.1989 (Annexure-2) circulated a Scheme entitled Casual Labourers (Grant of Temporary Status and Regulation) Scheme. In pursuance of this Scheme, temporary status was conferred on the applicant in order dated 5.2.1990 (Annexure-3). The applicant's case is that he has already completed 14 years of service from the date of his joining as Assistant Wireman and six years of service from the date of conferment of temporary status. He is drawing pay of Rs.890/- per month in the scale of Rs.800-1150/- and has already drawn six increments. Department of Telecommunication in their letter dated 3.1.1992 (Annexure-4) have issued certain instructions regarding regularisation of casual labourers with temporary status. According to the Scheme, temporary status Mazdoors who have put in ten years of service or more as on 31.12.1991 will be considered for regularisation and such regularisation will be done on year to year basis at the end of each financial year; i.e., temporary status mazdoors with ten

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years service as on 31st March every year will be considered for regularisation thereafter. The applicant has stated that he has completed ten years of service as on 1.7.1992 and he satisfies all other terms and conditions stipulated in letter dated 3.1.1992 at Annexure-4. It is also submitted by him that he is the only person working as Assistant Wireman under Orissa Telecom Circle and therefore, he is entitled to regularisation from 1.7.1992. The applicant states that the letter dated 3.1.1992 (Annexure-4) stipulates that in order to regularise the services of eligible temporary status mazdoors required number of posts is to be created. There is also an obligation on the authorities to regularise the services of eligible employees without sanction of posts. It is further submitted by the applicant that one B.K.Satpathy, Assistant Wireman in the office of Executive Engineer, Telecom Electrical Division, Bhubaneswar, has been promoted to the post of LDC in 1991. As a result, a regular post of Assistant Wireman has been lying vacant since 1991. Executive Engineer, Telecom Electrical Division, Bhubaneswar, has moved the Superintending Engineer (Electrical), Telecom Electrical Circle, Calcutta, in his letter dated 23.12.1991 at Annexure-5 to fill up the post of Assistant Wireman urgently. The applicant is a matriculate with ITI qualification as Electrician Wireman and is also holding a Wireman Permit-B which is more than the qualification prescribed for the post of Assistant Wireman as per Recruitment Rules. He has also appeared at a trade test at the time of his initial appointment in July 1982 and therefore, he is not required to appear at any further trade test. It is further stated that Department of Telecommunication has sanctioned thirteen posts of Wireman and seven posts of Assistant Wireman for the Telecom Electrical Circle, Bhubaneswar. The posts of Wireman are to be filled up by promotion from the posts of Assistant Wireman and the posts of Assistant Wireman are to be filled

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up from amongst the temporary status mazdoors. These posts were ordered to be filled up by 29.2.1996. In January 1996 DPC meeting was held for promotion to the posts of Wireman and all the posts of Wireman have been filled up by promotion from the posts of Assistant Wireman. As a result, there are now twenty-one posts of Assistant Wireman vacant arising out of the order at Annexure-6 and one referred to in Annexure-5. In the letter dated 12.1.1995 at Annexure-7 issued by Executive Engineer, Telecom Electrical Division, Bhubaneswar, it has been indicated that eight posts of Assistant Wireman are lying vacant and Assistant Engineers, Bhubaneswar, Cuttack, Berhampur and Sambalpur have been directed to collect applications in the prescribed proforma from the eligible staff working under them according to the recruitment rules and forward the same to the Executive Engineer by 28.1.1995. Accordingly, the applicant filed an application within the due date and a DPC meeting was also held on 29.2.1996, but the result of the DPC meeting has not been published. The applicant states that he has come to know that the authorities have not considered the case of the applicant for the purpose of regularisation. He has made several representations and one such representation dated 15.11.1995 is at Annexure-8. It is further stated that in order dated 5.9.1996, which is at Annexure-R/1, his representation has been rejected. Such rejection is contrary to rules and therefore, is liable to be set aside. Because of the above, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that the applicant cannot be regularised in the post of Assistant Wireman. According to the respondents, the applicant was

working initially as daily rated mazdoor from 1.7.1982 doing the work of Assistant Wireman on Muster Roll on daily wage of Rs.8.75. He was never appointed against a post of Assistant Wireman or for that matter against any post on regular basis. According to the scheme dated 7.11.1989 the applicant was conferred with temporary status on 5.2.1990 in the minimum pay scale of Group-D on completion of eight years of service. He was allowed to do the work of Assistant Wireman as per the terms and conditions in sub-para (iii) of para 5 of the Scheme enclosed to Annexure-2 on daily wage basis. The respondents have further stated that when regular vacancy in Group-D posts arose, the applicant was offered regularisation against Group-D post in the scale of Rs.750-940/-, but he did not opt for regularisation against Group-D post and he was willing to be regularised only against the post of Assistant Wireman in the pay scale of Rs.800-1150/-. According to the respondents, the Recruitment Rules for the Assistant Wireman provide that only Khalasis of the Department in the scale of Rs.750-940/- are eligible for promotion to the grade of Assistant Wireman in the scale of Rs.800-1150/-, and as the applicant was not in the grade of Khalasi, he is not eligible to be regularised as Assistant Wireman against the departmental quota irrespective of conferment of temporary status on him. The respondents have stated that the applicant is eligible to apply for the post of Assistant Wireman against the direct recruitment quota as and when advertisement is published in the newspaper and he can be considered for the post at that time as per Recruitment Rules. These facts have been intimated to the applicant in letter dated 5.9.1996 at Annexure-R/1 in response to his representation. The respondents have further stated that the applicant was erroneously allowed the scale of Assistant Wireman and consequential benefits from 1.10.1989 and this matter is being re-examined with a view to correct the same.

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According to the respondents, the applicant is eligible to get the minimum pay scale of Group-D , i.e., Rs.750-940/- with all other consequential benefits as per the Scheme enclosed by the applicant at Annexure-2 provided he opts for it. The respondents have stated that although the applicant has completed 14 years of engagement as daily rated mazdoor and temporary status mazdoor doing the job of Assistant Wireman, that does not confer any right on him for regularisation/appointment as Assistant Wireman. It is further stated that the applicant is to be regularised in Group-D post carrying pay scale of Rs.750-940/-, but he has been erroneously allowed to enjoy the scale of Assistant Wireman at Rs.800-1150/-. He is not in the cadre of Khalasi in the scale of Rs.750-940/- and therefore, he cannot claim regularisation as Assistant Wireman. It is also stated that Annexure-3 conferring temporary status on the petitioner, he was wrongly shown as Assistant Wireman. It is further stated that the applicant is willing to be regularised only as Assistant Wireman in the scale of Rs.800-1150/-, i.e., a scale higher than Khalasi at Rs.750-940/- though the post of Assistant Wireman is also treated as Group-D post. It is further stated that at present there is a ban on recruitment of any kind due to surplus temporary status mazdoors who are waiting for regularisation for long time. Accordingly, the applicant has to wait for regularisation till the ban is lifted and recruitment against direct recruitment quota is done by the respondents for the post of Assistant Wireman. In view of the above, the respondents have opposed the prayer of the applicant.

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4. The applicant in his rejoinder has submitted that the respondents have admitted in their order at Annexure-3 that the applicant has been conferred with temporary status in pursuance of the scheme dated 7.11.1989. He was also given the scale of pay as admissible to

semi-skilled Group-D employees and therefore, the question of his non-regularisation does not arise. The applicant has also stated that the respondents have wrongly averred that for regularisation the applicant has to opt for placement in the scale of Rs.750-940/-. The respondents have admitted in the counter that Assistant Wireman is a Group-D post. The applicant has come through Employment Exchange and has been taken against a post of Assistant Wireman and he has worked for more than 14 years and therefore, he is entitled to be regularised against a permanent vacancy under the Scheme at Annexure-2. It is further stated that under the respondents there are three categories of casual workers, unskilled in the scale of Rs.750-940/-, semi-skilled in the scale of Rs.800-1150/-, and skilled in the scale of Rs.950-1500/-. The post of Assistant Wireman comes under semi-skilled category and accordingly he has been given the scale of Rs.800-1150/-. It is further stated that in accordance with Chief General Manager, Telecom's letter dated 12.12.1984 (Annexure-9), semi-skilled workers are to get daily wages equal to 75% of the one-thirtieth of the minimum of the scale fixed for semi-skilled, which is Rs.210-270/-, and for skilled workers the relatable scale is Rs.260-350/- along with admissible D.A. and A.D.A. Accordingly, on his getting temporary status, applicant has been given the scale of Rs.800-1150/-. It is also stated that in the order dated 18.9.1987 at Annexure-11 his daily wage was fixed with reference to the pay scale of the Fourth Pay Commission at Rs.28.80. The applicant has further stated that the plea of the respondents that the scale of Rs.800-1150/- and the increments thereon were given to the applicant erroneously and they would rectify the above mistake is totally untenable because the Department is estopped from reducing the pay scale of the applicant to Rs.750-940/-. As regards the averment that there is a ban on

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direct recruitment of Assistant Wireman, the applicant has pointed out that in notification dated 1.10.1996 at Annexure-10, three posts of Assistant Wireman have been sought to be filled up and eligible and concerned candidates from amongst the electrical operative staff have been asked to apply on or before 10.10.1996. The applicant has stated that this clearly indicates that there is no ban on direct recruitment. On the above grounds, the applicant has reiterated his prayer in his OA.

5. We have heard Shri T.Rath, the learned counsel for the petitioner, and Shri S.Behera, the learned Additional Standing Counsel for the respondents and have also perused the records.

6. The admitted position is that the applicant was interviewed for the post of Assistant Wireman (Electrical) which is borne out from Annexure-1. The offer of appointment was also given to him in Annexure-1/A in which it has been stated that the applicant is offered temporary post of Assistant Wireman on muster roll basis on daily rate of wages. After the scheme for granting temporary status and regularisation came into force in letter dated 7.11.1989 (Annexure-2), in order dated 5.2.1990 temporary status has been conferred on the applicant and in this order the applicant has been shown as Assistant Wireman. It is also admitted position that on conferring of temporary status, the applicant has been given the scale of Rs.800-1150/- and he has also drawn six increments in that scale. The respondents have taken the stand that the applicant was all along working on daily wage basis and on conferring of temporary status, giving of scale of Rs.800-1150/- was wrong and they intend to correct the same. From Annexure-9 it is clear that for semi-skilled worker the daily wage is relatable to the scale of Rs.210-270/- which is the Third Pay Commission scale. The replacement scale of the Third Pay Commission scale of

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Rs.210-270/- is Rs.800-1150/- as it appears from the First Schedule to Central Civil Services (Revised Pay) Rules, 1986 (page 92 of Swamy's Revised Pay Rules Publication for 1986 Pay Rules). From the above it is clear that the applicant was treated as a semi-skilled worker even when he was working admittedly on daily wage basis and he was working as Assistant Wireman. On granting of temporary status therefore the replacement scale Rs.800-1150/- has been rightly given to him. The question of regularisation of services of the applicant has to be considered in terms of the scheme issued in letter dated 7.11.1989 (Annexure-2). The detailed scheme is at enclosure to this Annexure-2. Paragraph 4 of this Scheme lays down that vacancies in Group-D cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointment on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules. From this it is clear that casual workers with temporary status would be considered for regularisation against Group-D posts subject to their eligibility regarding educational qualification and subject to their regularisation in their turn. The letter dated 3.1.1992 at Annexure-4 deals with regularisation of casual labourers with temporary status. In this letter it has been laid down that regularisation of temporary status mazdoors will be done in a phased manner and in the first instance temporary status mazdoors who have put in 10 years service or more as on 31.12.1991 will be considered for regularisation. Thereafter the regularisation will be done on year to year basis at the end of each financial year, i.e., temporary status mazdoors with ten

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years service as on 31st March of each year. The applicant has completed ten years service on 1.7.1992 and therefore, his case for regularisation has to be taken up with effect from 1.4.1993. The respondents have stated that they had offered regularisation to the applicant in the lower scale of Rs.750-940/-, but the applicant has not opted for the same. The respondents have also stated that the applicant cannot be regularised in the post of Assistant Wireman because according to the Recruitment Rules, which have been enclosed as Annexure-R/2 of the counter, posts of Assistant Wireman are to be filled up 25% by direct recruitment and 75% by promotion, and the promotion quota is to be filled up from amongst Electrical Khalasis with five years regular service in the grade. As Electrical Khalasis are in the scale of Rs.750-940/-, the applicant cannot be regularised as Assistant Wireman against the promotion quota because it will be violative of the Recruitment Rules. The respondents have further stated that at present there is a ban on direct recruitment and when direct recruitment is taken up, the applicant would be free to apply and he would be considered against direct recruitment quota. As a temporary status mazdoor, the applicant is due to be regularised against a Group-D post. It is also the admitted position that Assistant Wireman is a Group-D post. The applicant is enjoying the scale of semi-skilled worker at Rs.800-1150/- and therefore, the applicant is entitled to be regularised against a post of Assistant Wireman and not against a post of Electrical Khalasi in the scale of Rs.750-940/-. The respondents have also stated that there is a complete ban on direct recruitment and therefore, the case of the applicant cannot be considered for regularisation against direct recruitment quota. This contention is without any merit because in paragraph 4 of the scheme at Annexure-2, referred to by us earlier, it is laid down that there is a complete ban on appointment of outsiders till the casual mazdoors are

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absorbed. This itself shows that casual mazdoors are entitled to be absorbed in Group-D posts in preference to outsiders. The applicant is working as Assistant Wireman and he is entitled to be regularised against a Group-D post of Assistant Wireman against a direct recruitment quota posts, recruitment to which is banned according to the respondents though this has been contested by the applicant.

7. In consideration of all the above, we hold that the applicant having been conferred temporary status as Assistant Wireman and having been given the scale of Rs.800-1150/-, which is the pay scale of Assistant Wireman according to the Recruitment Rules, is entitled to be regularised against a direct recruitment quota post of Assistant Wireman in accordance with the Scheme at Annexure-2. The learned counsel for the petitioner has referred to the case of State of Maharashtra and others v. Vijay Vasantrao Deshpande, 1998(7) SUPREME 231, where the prayer of an ad hoc appointee for regularisation and merit promotion under UGC merit promotion scheme was allowed by Maharashtra Administrative Tribunal. On appeal, their Lordships of the Hon'ble Supreme Court held that in consideration of the fact that the applicant has continued ad hoc Lecturer for eight years, only a direction to the authorities to consider the case of the applicant for regularisation could have been granted in that case. In line with the above decision, we direct the respondents to consider regularisation of the applicant against a post of Assistant Wireman in the direct recruitment quota with effect from 1.4.1993 in terms of the Scheme at Annexure-2 and the order at Annexure-4, along with all financial and service benefits.

8. In the result, therefore, the Original Application is allowed but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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