

Order dated 18.9.2001 at 2.30 P.M.

This matter has been posted today at 2.30 P.M. for passing orders on MA No. 90 of 2001 filed by the respondents in this disposed of O.A. For the purpose of considering this M.A., a few facts of the O.A. will have to be referred to. The twelve applicants in the O.A. were working in different posts under Deputy Director, Census Operation, Orissa. Apparently the Staff Inspection Unit (SIU) in a report suggested reduction of the strength of the office involving reduction of several posts. The applicants approached the Tribunal in the O.A. with the prayer for setting aside the agreed strength of the staff suggested by the SIU resulting in the impugned retrenchment of the applicants. The O.A. was disposed of in order dated 12.11.1996. The Tribunal noted in their above order that the SIU's report is only a proposal and quite likely the recommendation of the SIU may not be accepted by the respondents and in that event the petitioners will have no cause of action. The Tribunal ordered that in case the respondents are forced to declare any of the applicants as surplus and they are required to retrench any of the applicants, then they shall do so only after obtaining the permission of the Tribunal. The respondents had filed MA No. 709 of 1997 seeking permission to retrench applicant no.1 P.K.Das and the Tribunal in their order dated

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NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

27.3.1998 permitted the Department to retrench Shri P.K.Das following the legal procedure. Subsequently, the respondents filed MA No.407 of 1998 which was disposed of in order dated 20.7.1999. In that M.A. the respondents sought permission of the Tribunal to retrench/terminate the services of applicant nos.6 to 12. The Tribunal in their order dated 20.7.1999 noted that there is no material before the Tribunal that applicant nos. 6 to 12 are juniormost persons in their cadre. The M.A. was disposed of with a direction that only the juniormost persons amongst the surplus persons should be retrenched, along with certain direction for giving them priority in case of re-employment besides sending their names to Surplus Cell.

2. In the present M.A.No.90 of 2001 filed by the respondents, they have prayed for the leave of the Tribunal to terminate the services of applicant nos. 2 and 3 who are working as ad hoc LDC. They have stated that it has been possible for them to adjust two Group-D officials, who are applicant nos.4 and 5 in this O.A.. But applicant nos. 2 and 3 are ad hoc LDC and it is necessary to retrench them to appoint regularly selected candidates sponsored by the Staff Selection Commission.

3. I have heard Shri B.P.Das, the learned counsel for the petitioners and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have perused the records.

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4. It has been submitted by the learned counsel for the petitioners that the Tribunal in their order dated 12.11.1996 had directed that in case any of the applicants is declared surplus and he is required to be retrenched, then such retrenchment should be done only with the leave of the Tribunal. It has been submitted by the learned counsel for the petitioners that applicant nos. 2 and 3 have not been declared surplus and therefore the Tribunal should not grant leave to the respondents to retrench these two applicants. The Tribunal had earlier noted in their order on one of the earlier M.As. filed by the respondents that recommendation of SIU has been accepted by the Department. Therefore, the question of not accepting the recommendation of SIU does not arise. Moreover, admittedly applicant nos. 2 and 3 ^{are working as ad hoc L.D.C.} and under the Recruitment Rules the post of LDC is to be filled up by the candidate selected and nominated by the Staff Selection Commission. The respondents have stated that it is necessary to retrench applicant nos. 2 and 3 to make room for candidates sponsored by the Staff Selection Commission. In view of the above, MA No.90 of 2001 is disposed of with a direction to the respondents that they can retrench the services of applicant nos. 2 and 3 by following the legal procedure and only for the purpose of accommodating the candidates sponsored by the Staff Selection Commission in their place. In view of the fact that

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applicant nos. 2 and 3 have rendered long years of service on ad hoc basis, we direct the respondents that these two applicants should be given preference as retrenched candidates when selection is made for the post which can be filled up by the respondents themselves without getting candidates from the Staff Selection Commission. Similarly, their names should also be sent to the Surplus Cell. With the above direction, MA No.90 of 2001 is allowed. Copy of this order be given to the learned counsel of both sides.

Somnath Som
(SOMNATH SOM)
18.9.2001
VICE-CHAIRMAN

Free copy of
the order
dt. 18.9.01 given
to the both
counsel.

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