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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 152 OF 1998
Cuttack this the 12th day of July/2000

Sarada Prasad Mohanty & Others ... Applicants

-VERSUS-

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

S. Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.7.2000

12.7.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 152 OF 1998
Cuttack this the 12th day of July/2000

CORAM:

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

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1. Sarada Prasad Mohanty, aged about 37 years
Son of Gangadhar Mohanty, Village : Kanungo
Sahi, PO: Naugaon Hat, Dist: Jagatsinghpur
(Orissa)
2. A.Dharma Rao, aged about 36 years,
Son of Tamaya, At: J.P.Kattrau, PC: Baruva
Railway Station, Dist - Srikakulam (A.P.)
3. Nrusingha Charan Mohanty, aged about 29 years
S/o. Kanduri Charan Mohanty, Vill & PO: Nuagaon
Dist - Jagatsinghpur

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Applicants

M/s.R.B.Mohapatra
N.R.Routray
S.K.Sahoo
S.Patsani

By the Advocates

-VERSUS-

1. Union of India represented by it's
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43 (W.B.)
2. Senior Divisional Engineer-II, South Eastern
Railway, At/PO: Chakradharpur,
Dist - Singhbhum (Bihar)
3. Assistant Engineer-I, Bandhomunda,
S.E.Railway, PC/PS: Bandomunda,
Dist - Sundargarh

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Respondents

By the Advocates

M/s.B.Pal
A.K.Mishra
S.K.Ojha
P.Das

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ORDER

MR .G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed by three applicants vide order dated 17.4.2000, relief is not pressed on behalf of Applicant No.2 on the ground that he had already secured a regular job. Hence this Original Application is treated as withdrawn so far as applicant No.2 is concerned.

2. In this Application praying for grant of Temporary Status with effect from 5.3.1988 and consequently regularisation of service, the case of the two applicants (Applicant Nos.1 and 3) are that they were initially appointed on oral basis to work as Casual Gangman under C.P.W--I, Bandhomunda on 5.5.1988. They worked upto 16.8.1988, but on 17.8.1988 their services were terminated through oral order. Again Res.3 gave them oral appointments as casual Gangmen from 1.7.1992 to 16.10.1992. Thereafter the respondents never took any action for regularisation of their services in spite of several approaches through representations, and despite the decision of the Apex Court in the case of Union of India vs. Basant Lal & Ors. reported in 1992 AIR, A.C.W. Page 3124, wherein it has been decided that casual labourers completing 120 days service continuously are entitled to get salary as Temporary Employees as well as to get the rights and privileges of status of temporary railway servants as laid down in Chapter 23 of Railway Establishment Manual.

3. Respondents (Department) in their counter aver that the two applicants were employed as seasonal casual Gangmen from 7.5.1988 to 16.8.1988 only and they have not completed 120 days of employment. Subsequently they were discharged on the expiry of the sanction and no other occasion they were employed as casual Gangmen. Thus the applicants, attained temporary status which is a ~~gou~~ ^{part}.

which of course does not have any effect to the relief sought, via., for regularisation. They also deny to have received any representations from the applicants. ^{and thus} They subsequently deny the averments of the applicants in Paragraphs 4 and 5.

4. In the rejoinder the applicants reiterated their stand.

5. We have heard Shri R.B.Mohapatra, learned counsel for the applicants and Shri D.N.Mishra, learned Standing Counsel appearing for the respondents(Railways). Also perused the records.

6. In the counter and rejoinder reference has been made to Original Application No.559/93 filed by some casual labourers with identical reliefs against the Railways. This was disposed of by this Tribunal on 16.5.1999. In course of arguments, the learned counsel for the applicants submitted that in O.A.559/93 respondents did not produce the pay sheets for the months of February to April/1988 in spite of direction of this Tribunal on the ground that records being more than 10 years old were not available. It is, therefore submitted that for non production of those records adverse inference could have been drawn against the respondents in that case, but the matter is already under consideration before the High Court of Orissa in a Writ Petition. It is reiterated by the learned counsel for the petitioner that adverse inference should also be drawn against the respondents in this case, because, according to applicants, they were engaged from 5.3.1988 to 16.8.1988, where as according to Respondents such engagement was only from 7.5.1988 to 16.8.1988. We are not inclined to accept this submission of the learned counsel for the applicants because the burden of proof lies on



the applicants establish that they were in fact engaged in March, 1988 itself. Excepting their averments that they were orally engaged there is no other proof available in this case. Further we cannot take any adverse view against the Department for non-production of pay sheets pertaining to the year February, 1988 to April, 1988 in this Application filed on 23.3.1998; moreso where no application has been filed praying for such production. It is not expected of the Department like Railways to preserve all their papers for ever. It is also not the case of the applicants that these pay sheets ought to have preserved for ever.

7. Similarly barring their averment that they were orally engaged as Casual Gangman w.e.f. 1.7.1992 to 16.10.1992 no other material is available in support of such engagements. In view of categorical denial of the applicants, we are not inclined to place reliance on these averments of the applicants. It comes to this that applicants were never in engagement as casual Gangmen for more than 120 days. Their engagement from 7.5.1988 to 16.8.1988 does not exceed 120 days. The applicants are, therefore, not entitled to any of the reliefs prayed by them.

8. In the result Original Application is dismissed, as against applicants 1 and 3, but without any order as to costs.

Somnath Somu
(SOMNATH SOMU)
VICE-CHAIRMAN

12-7-2007
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//