

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 262 of 1998.

Cuttack, this the 14th day of March, 2000.

Bijoy Kumar Mohapatra. Applicant.

-VRS.-

Union of India & 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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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 262 of 1998.

Cuttack, this the 14th day of March, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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Bijaya Kumar Mohapatra, Aged about 28 years,
Son of late Bhima Mohapatra, At: Gangeswarpur,
PO: Kalyanpur, PS: Bhubaneswar, Dist: Khurda. : Applicant.

By legal practitioner: M/s. S. J. Pradhan, S. N. Satpathy, Advocates.

- VERSUS -

1. Chief General Manager, Telecom,
Orissa Circle, Bhubaneswar-1.
2. The Divisional Engineer (Trans & Mace)
Door Sanchar Bhawan, Bhubaneswar-7.
3. The Director (Trans. & Instln.),
4th floor, Door Sanchar Bhawan,
Bhubaneswar-7.
4. Union of India represented through
its secretary, Ministry of Telecommunication,
New Delhi.

: Respondents.

By legal practitioner: Mr. A. K. Bose, Senior Standing Counsel.

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O R D E R

(O R A L)

S. Som.
MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, u/s. 19 of the AT Act, 1985, applicant has prayed for a direction to the Respondents to re-engage him as a Casual Driver and to continue him as such till his service is regularised. He has also prayed for a direction to disburse his salary in the usual scale of pay of Rs. 950-1500/- plus allowances as admissible to the post of Driver from the date of his engagement.

2. For the purpose of deciding this Original Application, it is not necessary to go into too many facts of this case.

Applicant's case is that he was initially engaged as a Casual driver in 1990 and has continued till 31.3.1998 except for the period from April, 1995 to January, 1997. Again he was engaged from 7-2-1997 to 31.3.1998. Thereafter, he was dis-engaged from service and he approached this Tribunal in ^{this} Original Application, with the aforesaid prayers. Applicant has stated that there is ample workload to engage the applicant as Driver as is seen from the letter of the Respondent 1 addressed to some travel agencies at Annx-A/4 asking them to provide drivers to drive the departmental vehicle on casual basis. Applicant has prayed that he was paid Rs.35/- per day though he was doing the same type of job as was discharging the regular employees of the Deptt., and therefore, he is entitled to the same scale of pay as was being given to his counter parts. Respondents have denied the assertion of the applicant that he was engaged from 1990. They have stated that Annexure-1 given by the applicant in support of his engagement from 1990 is not a genuine document. Respondents have stated that the applicant was engaged on 21.7.1997 for a period of three months on contract basis. They have also stated that there was complete ban for engagement of casual workers and that his why steps have been taken to engage driver on contract basis. They have also stated that for engagement of driver on contract basis they have been paid of Rs.35/- per day which is the Govt. rate as per the instruction of the State Govt. and this has been laid down in Circular dated 16.11.1993, at Annexure-R/1. Respondents have further stated that the posts of Driver are to be filled up in accordance with the recruitment rules copy of which is at Annexure-R/3. According to the rules, 50% posts of Driver are to be filled up only from these drivers already

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appointed in the Department on casual basis before 1.4.85 failing which recruitment can be made from amongst casual labourers of temporary status. The other 50% are to be filled up from the line staff and Group 'D' employees. Respondents have stated that as applicant has been engaged on contract basis just to manage the day to day requirement of work, there is no question of granting him the regular scale of pay and absorbing him against a post. On the above grounds, Respondents have opposed the prayers of applicant.

3. Applicant, in his rejoinder has contested the averments of the Respondents that his first engagement was only from February, 1997. Alongwith his rejoinder, he has enclosed certain documents which appears to be the log book copy of the log book of the concerned vehicle in which the applicant has signed on different dates in 1992 and 1993. He has also enclosed an order dated 6.2.1993 in which it has been mentioned that in course of his engagement he sustained injury and the concerned medical officer was directed to attend him. On the basis of these documents applicant has reiterated his averments of his engagement prior to 1997. He has also made further averment in support of his prayer in the O.A.

4. We have heard Mr. S. J. Pradhan, ld. counsel for the applicant and Mr. A. K. Bose, ld. Senior Standing Counsel appearing for the Respondents and have also perused the records.

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5. It has been submitted by ld.counsel for the applicant that after filing this Original Application, petitioner has re-
been engaged as a casual driver and he is continuing as such. As the prayer in this Original Application is for a direction to the Respondents to re-engage the applicant and as the applicant has already been re-engaged by the Respondents, as per the statement of ld.counsel for the applicant, it is not necessary to issue a direction to the Respondents to re-engage the applicant. Applicant has also asked that he should be allowed to continue in such re-engaged service till he is regularised and he should be allowed to get the same scale of pay as regular drivers are getting. For considering these two points, it has to be adjudicated with regard to the date from which the applicant was initially engaged. Applicant's case is that he was engaged from the year 1990 and continued till 1998 except a gap from 1995 to January, 1997. Respondents have stated that he was engaged for the first time on contract basis in February, 1997 and they have denied that any time before February, 1997, applicant was engaged as a casual driver either on contract basis or as a casual labour. Applicant in his rejoinder has given certain documents which appears to be copies of the official records which are available with the Respondents' offices. In view of this, we direct that within 15 days from the date of receipt of a copy of this order, applicant shall submit a representation to the Respondents enclosing copies of all documents in support of his engagement prior to February, 1997 and Respondents are directed to verify these documents and come to a findings with regard to the initial date of engagement of the applicant. This document of initial date of engagement of applicant is important in connection with the

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second prayer of applicant. Applicant has prayed that he should be allowed to continue in service till he is regularised. As admittedly, applicant was engaged as a casual driver, his continuance is based on the requirement of work. The only protection he has to get is that in case he is dis-engaged from service, then the Respondents must strictly follow the principle of LAST COME FIRST GO. For observing this principle, the documents of the initial engagement of applicant is necessary. In consideration of this, we direct that in case applicant's service is dis-engaged because of lack of work, before such dis-engagement of the applicant, as per the direction given above and after determining the same, the Respondents, must follow the principle of last come first go. Prayer for continuous engagement of the applicant till his regularisation is accordingly held to be without any merit and is rejected except to the extent of our ^{observation} ~~absorption~~ and directions made above. ~ Jdm.

6. Next prayer of applicant is that he should be allowed to continue till his regularisation. Position of law is well settled that regularisation can be done only against a post and that too strictly in accordance with the Recruitment Rules. Respondents have enclosed along with the counter the relevant portion of the Recruitment Rules and from which it appears that for filling up of the post of Driver, there are statutory rules. In consideration of this, prayer for regularisation is disposed of with a direction to the Respondents that in case they fill up the post of Driver on regular basis and at that time the petitioner makes an application with all necessary documentation, then the application of the petitioner for appointment against

Jdm

such regular post should be taken into consideration and decided strictly in accordance with rules. This prayer is accordingly disposed of.

7. Last prayer of applicant is for getting the scale of pay of Rs.950-1500/- which is the pre-revised regular scale of pay of the Drivers. For his earlier engagement, applicant was getting Rs.35/- per day as per the circular at Annexure-1. ^{on call} ^{R. J. Somnath} As the applicant is engaged as a driver on casual basis, as per the averments of the ld. counsel for the applicant and he is performing the same duties as a regular driver, he should be paid the same pay by way of daily wages as that of a regular driver in other words, applicant is entitled to get 1/30th of the minimum scale of pay of driver plus usual allowances per very day of engagement. It is ordered that the Respondents should pay the above amount to the applicant from the date of his latest engagement after filing of this O.A. This prayer is also accordingly disposed of.

8. In the result, therefore, the Original Application is allowed with the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.