

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 476 of 1998.
Cuttack, this the 16th day of August, 2000.

AKHAYA KUMAR MOHAPATRA.

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APPLICANT.

VERSUS

UNION OF INDIA & OTHERS.

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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 S. S.
(SOMNATH S. S.)
VICE-CHAIRMAN

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

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Shri Akhaya Kumar Mohapatra,
Aged about 29 years,
S/o. Alekh Mohapatra,
At: Mirzapur (Kartara),
PO: Nandipur, via: Dasarathpur,
Dist: Jajpur.

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APPLICANT.

By legal practitioner: M/s. G. Rath, S. N. Mishra, A. K. Panda,
S. R. Mohanty, T. K. Praharaj,
Advocates.

- VERSUS -

1. Union of India represented by its Secretary,
Department of Culture, Ministry of Human
Resources and Development, Shastri Bhawan,
New Delhi.
2. Director General,
Archaeological,
Bhubaneswar Circle,
Archaeological Survey of India,
Old Town, Bhubaneswar, Dist: Khurda.
3. Superintending Archaeological,
Bhubaneswar Circle, Archaeological,
Survey of India, Old Town,
Bhubaneswar, Dist: Khurda.
4. Conservation Assistant, Cuttack
Sub Circle, Archaeological Survey
of India, Barabati Killa, Cuttack.

... RESPONDENTS.

By legal practitioner: Mr. S. B. Jena,
Addl. St. Counsel (Central).

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application, the applicant has prayed for a direction to the Respondents to confer him with temporary status w.e.f. 1.9.1993 and grant him all benefits due under the temporary status scheme, 1993 and the third prayer is for a direction to regularise the applicant by appointing him in a Gr.D regular post with effect from the date when the applicant's junior Firoz Bukhas had been so appointed.

2. Applicant's case is that he was appointed as a casual labourer in Archaeological Survey of India since 3.6.1992 and has been engaged continuously. He had completed 205 days of continuous employment as casual labourer. Respondents themselves, their counter have pointed out that in 1992-93, the applicant had completed 255 days, 1993-94 - 275 days, and 1994-95-266 days. Applicant's case is that he is entitled to get the benefit of the scheme for conferring temporary status which is at Annex. 4 but Respondents have not conferred temporary status on him but certain other persons, who are junior to him, have been conferred with temporary status and some of them have also been appointed in regular establishment in Gr.D posts. In the context of the above facts, the applicant has come up with the prayers referred to earlier. In course of his submission, it was urged by learned counsel for the petitioner Mr. Mishra that he does not pray for a direction to the Respondents to straightaway appoint him to a Gr.D post. He submits that his prayer is confined to conferment of temporary status on the applicant w.e.f. 1.9.1993 and when such temporary status is conferred, his case will have to be considered for absorption in Gr.D post after three years of service against two out of every three vacancies in the Gr.D posts.

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of the Department.

3. Respondents have filed counter opposing the prayers of the applicant in which they have taken two grounds ; firstly that the work performed by the applicant is different than the work performed by the regular Gr.D employees. The applicant's job is only of clearance&uprooting of vegetation day to day sweeping, maintenance of site etc. Respondents have also stated that the applicant can not be conferred with temporary status because according to the subsequent clarification dated 12.7.1994, a person whose initial engagement is not on the basis of sponsoring through Employment Exchange can not be conferred with temporary status. On the above grounds, the Respondents have opposed the prayer of applicant.

4. We have heard Mr.S.Mishra, learned counsel for the Applicant and Mr.S.B.Jena, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

5. On the point that the applicant's name has not been sponsored through Employment Exchange, it is submitted by learned counsel for the applicant that the Tribunal in their order dated 12.5.2000 in OA Nos.81 & 82/1998 have considered the circular dated 12.7.1994 and held that this circular dt. 12.7.1994 is prospective in nature and is not applicable to the casual labourers whose engagement were prior to 12.7.1994. It has also been held that in view of the decision of the Hon'ble Supreme Court in the case of Excise Superintendent, Malkapatnam, Krishna District, Andhra Pradesh vrs. K.B.N. Visweshwara Rao and others reported in 1996(7)Supreme 201 it is not mandatory for the Departmental Authorities to employ persons only from the Employment Exchange. Thirdly it is submitted that the Departmental Authorities themselves had written to the

Employment Exchange authorities to sponsor name of applicant for engagement as casual labour with a view to confer temporary status but the Employment Exchange Authorities refused to sponsor name of applicant because at that time he had already been engaged under the Respondents. On the above grounds, learned counsel for the applicant has submitted that the fact that his name has not been sponsored through employment exchange can not deprive him for getting the temporary status as per Annexure-4. Besides, it is submitted by him that four other persons who have been engaged as casual labourers much after the applicant have been conferred with temporary status and some of them have also been engaged in Gr.D employment and thus, the applicant has been subjected to hostile discrimination. After delivery of orders dated 12.5.2000 in OA Nos. 81&82 of 1998, it has come to our notice that in the case of PASSPORT OFFICER, TRIVANDRUM AND OTHERS VRS. VENUGOPAL C. AND OTHERS, the Apex Court have considered this circular dated 12.7.1994 in their order dated 27.1.1997. It has been noted in that case that some of the Respondents were conferred with temporary status and later on it was realised that some of those who have been conferred with temporary status had not been sponsored through Employment Exchange at the time of their initial engagement. Apex Court has also noted the Memorandum dated 12.7.1994 in which it was clarified that under the scheme only those employees who have come through Employment Exchange shall be given temporary status. Because of this in Passport Officer's case, those persons who had been given temporary having temporary status. status were derecognised as persons. Considering the matter, the Hon'ble Supreme Court held that de-recognition of the temporary status, under these circumstances can not be held arbitrary and made the following observations:

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"If the Department decides that only those employees who are recruited in normal manner i.e. through the employment exchange shall be given the temporary status, no fault can be found with the department. The decision can not be said to be unreasonable or arbitrary".

In the instant case, admittedly, the applicant was not sponsored through Employment Exchange. This is also borne out by the averments of the applicant himself that later on when the Respondents had asked the Employment Exchange, the Employment Exchange refused to sponsor name of applicant on the ground that the applicant has already been engaged under the Respondents. This itself shows that his initial engagement was not through Employment Exchange. In view of this, on the basis of the circular dated 12.7.1994, which has been considered by the Hon'ble Supreme Court in the case referred to above, he is not entitled to temporary status.

6. Next submission of learned counsel for the applicant is that five other persons have been conferred with temporary status even though they have been engaged as casual labourers after the engagement of applicant. Name of these five persons have been mentioned in paragraph 4.8 of the O.A. Applicant has not made any averment that these five persons have been engaged as casual labourers otherwise than through sponsoring by the Employment Exchange. In view of this, conferment of temporary status on these five persons and subsequent regularisation, in Gr.D posts, can have no bearing so far as applicant is concerned.

7. Last point urged by learned counsel for the applicant is that the law as laid down by the Apex Court in Excise Supdt.' case (supra) is to be applied in this case because it is a later Bench decision of the Apex Court. In any case, the Supdt. Excise's case is reported in 1996 and the case of

Passport Officer (supra) is decided in 1997. In any case in Excise Supdt.'s case, this circular dated 12.7.1994 was not specifically considered but in this instant case, the circular dated 12.7.1994 was considered. Moreover, Excise Supdt.'s case relates to regular appointment to the Civil Posts whereas, the issue before us in the present case, is for conferment on casual workers. of temporary status. In consideration of this, we have to go by the decision of the Apex Court in Passport Officer's case.

8. In view of the above, we hold that the application is without any merit and is rejected. No costs.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath S. M.
(SOMNATH S. M.)
VICE-CHAIRMAN
17/2/98