

24
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 515 OF 1998
Cuttack this the 23rd day of February, 2000

Sudarsan Bhoi

Applicant(s)

-VERSUS-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 515 OF 1998
Cuttack this the 23rd day of February, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sudarsan Bhoi
aged about 32 years
S/o. Balaram Bhoi
Vill: Kokal,
PO: Godabasta, PS: Cuttack Sadar
Dist: Cuttack

Last Employed in the Office of the
Telecom District Engineer,
Rourkela-2

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Applicant

By the Advocates : M/s.S.J.Pradhan
S.K.Bramha

-Versus-

1. Chief General Manager,
Telecom Orissa Circle,
Bhubaneswar
2. Telecom District Engineer
Rourkela-2
3. Union of India represented through
its Secretary, Ministry of
Telecommunications, New Delhi

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Respondents

By the Advocates : Mr.B.K.Nayak
Addl.Standing Counsel
(Central)

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ORDER

9
MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for direction to respondents to reengage him as Casual Mazdoor and continue him as such till his services are regularised.

2. The case of the applicant is that he was engaged as Casual Mazdoor on 1.2.1986 and continuously worked as such till 27.3.1987. A copy of the service particulars is at Annexure-1. It is further stated that in accordance with the decision of Hon'ble Supreme Court in Daily Rated Casual Labour, P & T Dept. vs. Union of India reported in AIR 1987 SC 2342, Respondent No.1 is considering the case of the applicant for absorption in regular and permanent cadre in accordance with the scheme for regularisation. For this purpose a seniority list has been prepared on 9.2.1994 (Annexure-2). In this seniority list the position of the applicant is at Sl. No.17(wrongly mentioned as Sl. No.15). It is further stated that the applicant's case is pending consideration and during that period he is entitled to work as casual mazdoor in preference to fresh candidates whose names do not find place in the seniority list at Annexure-2. It is also stated that the applicant has credible information that casual labourers are now being engaged and being paid their wages. It is also stated that as the applicant is a retrenched casual labourer he has priority over fresh faces. It is further stated that cause of action in this case arises every month when casual labourers are being engaged ignoring his case. It is also stated that the petitioner has filed a representation on 16.5.1997

S Som.

to consider his case, but without any result; that is why he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that from 30.3.1985 there has been complete ban on any kind of engagement on Muster Roll. As per verdict of the Hon'ble Supreme Court, surplus casual mazdoors engaged prior to 30.3.1985 are required to be regularised. Later on departmental instructions dated 16.7.1985 came directing that the departmental work should be carried out through contractors. As there is no work for outsiders like the applicant, reengagement of the applicant does not arise. It is further stated that applicant, according to his ^{not} averment worked in 1986-87 and thereafter he has been engaged and he has made a claim for regularisation 12 years after his disengagement and therefore, the prayer is barred by limitation. It is further stated that the instructions dated 18.11.1988 envisages that only those casual labourers/part-time casual labourers who have rendered seven years of service as on 31.3.1987 and who has been serving the Department prior to 1.4.1988 should be regularised against sanctioned posts. It is ^{stated} stated that the applicant's case is not covered as he has not put in ^{seven} 10 years of service and had not been engaged prior to 1.4.1980. It is further stated that according to scheme for grant of temporary status and regularisation which is at Annexure-R/4 Para-3.3 of the circular dated 7.11.1989 lays down that no casual labourer who has been recruited after 30.3.1985 should be granted temporary status without specific approval of the Department of

11
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Telecommunications. It is also stated that the scheme which is enclosed to Annexure-R/A specifically provides that only those casual labourers who are employed as on 1.10.1989 can be granted temporary status and can be regularised in their turn. The applicant having been engaged in 1986 and 1987 and having been disengaged in 1987 is also not covered under the scheme. It is further stated that the Tribunal in order dated 15.10.1998 directed that representation of the applicant, if the same is pending should be disposed of within 30 days. Respondents have stated that no such representation of the applicant is pending with them. They have further stated that copy of representation which is enclosed as Annexure-3 shows name of the applicant as Sankarsan Bhoi and not Sudarsan Bhoi and therefore, this representation cannot be considered. On the above grounds respondents have opposed the prayer of the applicant.

9/10/98
A. This matter was fixed to-day for final disposal at the admission state. Learned counsel for the applicant Shri S.J.Pradhan and his Associates were not present when called nor was any request made on their behalf seeking adjournment. As in this case pleadings have been completed long ago, it is not possible to drag on the matter indefinitely. I have, therefore, heard Shri B.K.Nayak, learned Addl.Standing Counsel and also perused the records. In this Original Application the prayer of the petitioner is only for his reengagement as casual mazdoor pending grant of temporary status to him and his regularisation. Respondents in their counter have quoted the different circulars which lay down that temporary status cannot be granted to the applicant as he

is not covered by those schemes/circulars and therefore regularisation cannot be done. It is not necessary to take a view on these aspects because the prayer of the petitioner is for reengagement only.

5. So far as reengagement of the petitioner is concerned, respondents have pointed out that according to departmental instructions, engagement of casual labourers has been totally banned with effect from 30.3.1985. Therefore, the applicant cannot be reengaged. But the fact of the matter, ^{is that} notwithstanding this ban order on 30.3.1985 on engagement of casual labourers, the admitted case of the applicant is that he had been engaged in 1986 and 1987. In view of this respondents cannot take the stand that because of the ban order engagement of casual labourers has been totally prohibited. The applicant has made an averment that even now casual labourers are being engaged from time to time. The fact of engagement of the applicant in 1986 and 1987 is an example of engagement of casual labourer notwithstanding the ban order. Applicant has also mentioned that seniority list of casual labourers was prepared in February, 1997 in which his name finds place at Sl. No.17. Law is well settled that a casual labourer is engaged only for casual and intermittant nature of work and when there is no work he can be disengaged. It is also well settled that while disengaging casual labourers, the departmental authorities should strictly follow the principle of "First Come Last Go" and when fresh casual labourers are engaged, retrenched casual labourers will have preference over fresh faces. In view of this the prayer of the applicant as also this Original Application is disposed

S. Som.

of with a direction to respondents, particularly Res. No.2, under whom the applicant was engaged as casual mazdoor in 1986 and 1987 that in case casual labourers are being engaged notwithstanding the ban order, then for the purpose of such engagement, the petitioner must be given priority over other fresh candidates.

With the above direction, this Original Application is disposed of, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO