

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 649 of 1998
Cuttack this the 26th day of April, 2001

Bhubananda Behera Applicant(s)
Vrs.
Union of India & Others Respondents

For Instructions

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

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN
26.4.2001

26.4.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.649 of 1998
Cuttack this the 26th day of April, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER(JUDICIAL)

Shri Bhubananda Behera, aged about 32 years,
S/o. Late Durlabha Behera, C/o. Shri Nirakar Behera,
State Bank of India, At/PO/Dist. Rayagada.

..... Applicant.

By the Advocates

M/s Satyabadi Das
Ramanath Acharya
Satyabrata Mohanty

-Versus-

1. The Government of India,
Represented through
Secretary Communication,
New Delhi.
2. The Chief General Manager (Telecom),
Orissa, Bhubaneswar, Dist-Khurda
3. The Divisional Engineer,
Telecom (Micro Maintenance),
Telephone Bhawan, Koraput,
Dist-Koraput.
4. The Senior Sub-Divisional Engineer,
UHF, Telephone Bhawan,
Rayagada, District. Rayagada
Pin-765 001.

..... Respondents

By the Advocates

Mr. S.B.Jena
A.S.C

.....

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ORDER

G.NARASIMHAM, MEMBER(JUDICIAL): Claiming to have been appointed as an Operator on 1.2.89 by the Respondents on daily wage basis and serving so since then under Senior Sub-Divisional Engineer, Telecom (Maintenance), apparently Respondent No.4 till his termination on 31.8.96, and claiming to have been reappointed (date not mentioned) and again to have been terminated on 31.3.97, applicant Bhubanananda Behera filed this O.A. on 20.10.98 praying for quashing the order of termination and ~~consequent~~ reinstatement with back wages and also for regularization.

2. The grievance of the applicant is that the termination order was passed against him vindictively inspite of requirement of more man power as he claimed regularization and equal wages. This termination is bad because no prior notice or opportunity was given. Even after his termination, respondents appointed new personnel to manage work of the applicant, and even regularised the service of Bhagban Mohapatra, a junior to the applicant.

3. The case of the Respondents is that the applicant was engaged (not appointed) as Casual Mazdoor on need basis to assist Junior Telecom Officer in maintenance work of loading/unloading as and when required from February 1991 to August 1996 with breaks, as per the working particulars under Annexure R/1. As there was no further requirement for engagement, he was not engaged from September 1996 onwards. Hence the question of reengagement and that too with back wages does not arise. While denying engagement of new hands in place of the applicant, it is stated that all the Departmental work is being carried out

through contractors as per D.O.T. Order dtd.16.7.85 under Annexure R/2. The applicant was never in continuous engagement but in engagement as per the particulars mentioned at page 2 of the counter in para 1-'A'. Regularization, according to them is guided under T.S.M. Scheme, 1989 (Annexure R/3) which is applicable to the daily rated Mazdoors who are in engagement since prior to 23.3.85. In view of the ban order dtd.30.3.85 (R/5), recruitment and employment of Casual Labourers had been discontinued after 30.3.85. Bhagban Mohapatra was in engagement since 1.4.84 and as such is not junior to the applicant. Since no order of appointment was even issued to the applicant, question of passing termination order does not arise. Lastly it is pleaded that this application is barred by limitation.

4. In the rejoinder while reiterating the facts averred in the Original Application by enclosing 7 documents, the applicant denies that Bhagaban Mohapatra was in engagement from 1.4.84. According to him he was appointed in March 1992 as would appear from Annexure-4. Further Annexure-5 series are enclosed in support of the plea that the applicant was in employment even after August 1996.

5. We have heard Shri S.B.Das, learned counsel for the applicant and Shri S.B.Jena, learned Addl. Standing Counsel for the Respondents. After conclusion of arguments, the learned counsel for the applicant submitted notes of argument which have been perused.

6. From the aforesaid pleadings it is clear that the applicant worked under Respondents for some time on daily wage

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basis. Annexure-2 of the rejoinder is all the more clear that he worked so as and when required. Further Annexure-4, a certificate dtd.4.6.96 issued by Assistant Engineer, Telephone, Rayagada it is clear that he has been working so as Casual Mazdoor. The certificate dtd.3.9.96 issued by Senior Sub-Divisional Engineer, Rayagada (Annexure-3) discloses that he worked for 127 days in the year 1992; 92 days in 1993; 155 days in 1994; 168 days in 1995 and 174 days in 1996. Further Annexure R/1 reveals that he was engaged in D.E's Office at Koraput as Casual Mazdoor for 28 days in February 1991, 30 days in April 1991 and 30 days in June 1991. Though the applicant in rejoinder described Annexure R/1 to have been manufactured for the purpose of this case, does not give out the number of days he worked in 1989 to 1991. At any rate there is no averment that he continuously worked at least for 205 days or 240 days in any year.

7. There is no dispute that the applicant was in engagement on Casual basis till the end of September 1996. His case that he was subsequently reappointed and retained till 31.3.1997 is denied by the Respondents. Neither in the Original Application nor in the rejoinder there is mention if not as to the exact date at least the month of such reappointment. One document dtd.1.11.1996 forming part of Annexure-5 series, appended to the rejoinder, relied on by the applicant in this regard, besides being illegible, does not contain signature of any authority. Though, by order dtd.8.2.2001, we directed the applicant for production of the original the same was not complied, though originals of some other Annexure were produced. Hence no

reliance can be placed on this Annexure.

8. Thus the position emerging from the discussion above is that the applicant was in engagement under Respondents as Casual Mazdoor from February 1991 to August 1996 as and when required and this engagement was not against a post. Even if, he was in such engagement from the year 1989, there is no material to show that he worked continuously for 205 days or 240 days in any year.

9. On the basis of these materials it is now to be seen whether the applicant is entitled to be regularised and reappointed. Legal position emerging out of a catena of Apex Court decisions is as follows:

(a) Persons engaged against contingencies without a post cannot be regularised. Daily wage appointment will obviously be in relation to the contingent establishment in which there cannot exist any post and it continues so long as the work exists vide State of Uttar Pradesh Vrs. Ajay Kumar, 1998(1)SLJ 164(SC)

(b) One can become regular only after undergoing formalities of rules; Ramlal Vrs. U.O.I, 1996(3)SLJ 123(SC).

(c) Court cannot order regularization of service against Rules, even if the applicant worked for 14 years; E.Ramkrishna Vrs. State of Kerala, 1996(3) SLJ 111(SC)

(d) Regularization can be made pursuant to a Scheme

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and that too against a permanent vacancy; Mukesh Bhai Vrs. J.T. Agriculture and Marketing Advisor, 1995 SC 413.

10. It is not the case of the applicant that he worked as Casual Workers in an existing or sanctioned post. Regularization in the department of Respondents is made pursuant to the Scheme dtd.7.11.89 (Annexure R/3), which came into force on 1.10.89. As per this Scheme the vacancies in Group 'D' cadre would be exclusively filled by regularization of Casual Labourers and no outsiders except in case of compassionate appointment shall be appointed till the absorption of all the existing Casual Labourers. Before actual regularization, they must have attained eligibility for conferment of temporary status, i.e., they must have rendered a continuous service of at least one year out of which they must have been engaged for a period of 240 days (206 days in the case of Office observing 5 day week). This Scheme was issued after a general ban order for engagement of Casual Workers issued on 30.3.1985 (Annexure R/4). Hence it was made clear in the Scheme that normally no Casual Labourers engaged after 30.3.85 would be available for conferment of temporary status and that no Casual Labourer engaged after 30.3.85 should be granted temporary status without specific approval from the D.O.T. Again in order dtd.30.11.90 (Annexure-5) issued by the Chief General Manager Telcom, Orissa, it was clarified that such of those retrenched/removed Casual Mazdoors who were initially appointed prior to 30.3.85 on being sponsored by the Employment Exchange who had at least worked continuously for 240 days and who were within the prescribed age limit,

can be reengaged provided break in service is not more than 6 months. A combined reading of Annexure R/3 to R/5 makes it clear that in the Deptt. of Respondents such of those Casual Labourers who were initially engaged prior to 30.3.85 after being sponsored by the Employment Exchanges and were within the prescribed age limit and those who have completed at least continuous work of 240 days or 206 days (in the case of duties observing 5 days a week) in a year, at first would be eligible for conferment of temporary status and on being conferred temporary status, they can be regularised as against existing Group 'D' posts.

11. Thus even if the applicant was first engaged in 1989, he has no right to be regularised, more so when it is not his case that he was initially engaged on being sponsored from Employment Exchange. The Apex Court in Passport Office, Trivandrum Vrs. Venugopal disposed of on 27.1.97 held the order derecognizing the conferment of temporary status in respect of some persons who were not employed through Employment Exchange as lawful because the relevant Scheme makes provision for initial employment through Employment Exchange. As earlier stated in the scheme governing the present case, initial engagement can be made only when the employee concerned has been sponsored by the Employment Exchanges.

12. We are aware that the applicant made out a case of discrimination alleging that one Bhagaban Mohapatra who was junior to him was regularized in service. But the specific case in the counter is that this Bhagban Mohapatra was engaged

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with effect from 1.4.84 under S.D.O(T), Koraput and much senior to the applicant. To counter this, the applicant in the rejoinder mentions of Annexure-4, certificate dtd.4.6.94 issued by Assistant Engineer, Telephone, Rayagada and addressed to the Divisional Engineer, Koraput. This certificate discloses the number of days of engagement in each month of the applicant and Bhagban Mohapatra from March 1992 to May 1994. This does not mention the dates of their intial engagements because the applicant's own case is that his initial engagement was in 1989, as against February 1991, the version of the Deptt. Moreover Annexure-4 itself discloses that it is not complete as engagements prior to March 1992 could be available in the records maintained at Koraput. We are therefore not inclined to accept the contention of the applicant that Bhagban Mohapatra was junior to him. As his initial engagement was in 1984, he could be regularized as per the Scheme.

13. Prayer for reinstatement can not be acceded to because the applicant was not appointed to any existing or sanctioned post. In view of the specific case of the Respondents that services of the applicant are no more required, question of his reengagement does not at all arise.

14. Shri Das, learned counsel for the applicant placed reliance on the following decisions:

- (1) Himansu Sekhar Sharma Vrs. Presiding Officer; 1993 (II) OLR 141 (Orissa High Court)
- (2) Central Welfare Board Vrs. Mrs. Anjali Bepari; 1997 (I) LLJ 174 (SC)
- (3) General Manager, Telecom Vrs. S.Srinivas Rao; 1998 SC 656.

- (4) Santanu Ku. Das Vrs. Chainman-Cum-M.D, OMFED; 1999 (1) OLR 284 (Orissa High Court)
- (5) Guru Charan Sahu Vrs. Chainman-Cum-M.D, Orissa Small Industries Corp; 1994(I) OLR 307 (Orissa High Court)
- (6) Smt. Urmila Ganapati Vrs. State of Orissa; 1994 L A B I C 28 (SC) 249 (Orissa High Court)
- (7) Workmen of American Express Vrs. Management; 1986 L A B I C 98(SC)
- (8) Surendra Kumar Verma Vrs. Central Govt. Industrial Tribunal; 1980 L A B I C 192 (SC)
- (9) Santosh Gupta, Vrs. State Bank of Patiala; 1980 SC 1912, 1219

15. Decisions under serials 1, 7, 8 & 9 in the preceding para relate to Section 25 and 33-C of the I.D. Act. These decisions are not relevant because the Apex Court in Krishna Prasad Gupta case reported in 1996(32) ATC 211 made it clear that this Tribunal has no jurisdiction to entertain ~~the~~ matters under I.D. ACT.

The decision in Central Welfare Board under serial-2 deals with the principle "last come first go" for which no case is made out in the present application. On the other hand these decisions of the Apex Court make it clear that regularization will be done when regular post is available and that too in order of seniority.

The Apex Court decision under serial-3 is also not relevant for the present case in as much as it was decided in that case that the Telecom Department is ~~not~~ an Industry.

The decision of the Orissa High Court under serial-3 & 4 are distinguishable. In those cases the applicants who worked a number of years prayed for regularization when their juniors were regularised. Considering their continuous engagement for such length it was presumed that work existed for them. This

is not the case before us.

Similarly, Urmila Ganapati's Case decided by Orissa High Court is also distinguishable. In that case the petitioner joined as a Casual Labourer against an existing post of Tracer and completed more than 5 years of service. She had also appeared in the recruitment test and stood seventh in order of merit, but ~~really~~ two posts could be filled up. Under such circumstances it was held that it was not necessary for the Department to further test the suitability of the petitioner along with fresh candidates sponsored by Employment Exchange.

16. The aforesaid decisions relied on by the applicant in no way run contrary to the decisions of the Apex Court referred to in para 9 of this order.
17. In the result, we do not see any merit in this Original Application which is dismissed. No costs.

Registry to return the seven Original documents filed by the applicant on 23.2.2001 to the applicant ~~and~~ his counsel.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.4.2001.

26.4.01
(G.NARASIMHAM)
MEMBER, (JUDICIAL)