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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 705 OF 1998
Cuttack this the 26th day of May, 2000

Radha Kanta Das

Applicant(s)

-Versus-

Union of India & Ors.

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
20.5.2000

J.S. Dhaliwal
(J.S. DHALI WAL)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 705 OF 1998
Cuttack this the day of May 2000

CORAM:

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

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Radha Kanta Das
aged about 41 years
S/o. Late Upendranath Das
At : Deshabandhu PO: Taradosole
Via: Kusalda Dist: Mayurbhanj
at present working as Casual Labourer
for Escorting Mails Baripada - Mantry Line
under S.D.T. (P) Baripada (West) Sub-division
Baripada Dist: Mayurbhanj

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Applicant

By the Advocates : M/s. Pradipta Mohanty
D.N. Mohapatra
G. Satpathy
Smt. J. Mohanty

-Versus-

1. Union of India represented through
its Director General (Posts) Dak Bhawan
Ashoka Road New Delhi-110001
2. Chief Post Master General
Orissa Circle Bhubaneswar
At/Po: Bhubaneswar Dist: Khurda
3. Superintendent of Post Offices
Mayurbhanj Division Baripada
At/Po/Baripada Dist: Mayurbhanj

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Respondents

By the Advocates : Mr. S. B. Jena
Addl. Standing Counsel
(Central)

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ORDER

MR.J.S.DHALIWAL MEMBER(JUDICIAL): Applicant Radha Kanta Das has filed this Original Application pleading that he has been working as a casual labourer under Res.3 since 1988. He has neither been given temporary status nor has been given pay at par with Group D regular employees on the principle of Equal Pay for Equal Work. He was engaged with effect from 3.5.1985 for some time also (Annexure-1). He had earlier filed O.A.431/88 which was disposed of on 17.5.1990. This O.A. was filed claiming relief for absorption of casual labourers like the applicant as per the circular dated 10.2.1988 of the D.G.(Posts). A direction was given to consider him under the said circular but despite that nothing has been done by the respondents. He was engaged on 8 hours per day but was paid initially Rs.12/- per day than Rs.25/- excluding Sundays and Holidays. A scheme was framed under the direction of the Hon'ble Supreme Court for conferment of Temporary Status and regularisation of casual labourers who were in employment as on 29.11.1989. He claims that he is covered under the said Scheme. He is also entitled to D.A. H.R.A. and C.C.A. A ban was imposed on fresh recruitment of Group D posts as casual workers were to be considered for absorption. Annexures-3 4 and 5 were issued, the last relating to employees of Department of Posts. In another O.A.80/97 a direction was given on 6.2.1997 to respondents for their rights but when the direction was not complied C.A.15/98 was filed by the applicants along with others and in response to notice in C.P. he came to know that through a letter dated

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15.4.1998 Res.3 had rejected the case of the applicant on the ground that applicant was engaged subsequent to 7.6.1988 and thus not entitled to on the basis of circular dated 8.4.1991. Circular dated 12.7.1994 was also considered which gave a mandate that casual labourers engaged through employment exchange only are entitled to the benefits and casual workers engaged otherwise is irregular. He pleads that this is misinterpretation of law by non application of mind. He has annexed these circulars along with letter dated 15.4.1998 as Annexures-9 10 and 11. He has prayed for conferment of temporary status with all benefits as available to Group D officials and for Equal Pay for Equal Work and also for regularisation of his service. He has prayed for quashing order dated 15.4.1988(Annexure-11).

2. Respondents have filed the written reply pleading that under the standing orders of Government of India public mails are to be conveyed in buses operated by the State and private buses operating in some routes. People were engaged purely on casual basis for carrying mails till the matter is sorted out in consultation with the State Government. In 1984 a meeting between the Post Master General and the transport authority. It was decided that conductors of O.S.R.T.C. buses would take mails with effect from 10.10.1984. But the order could not be implemented and mail had to be taken by engaging Travelling Mail Peons. Mazdoors on daily rated basis were engaged since 1984. Applicant was engaged to escort mails in Baripada - Mantry line with effect from 30.7.1988. Earlier O.A. was disposed of with a direction to consider his case and 2ndly was with a prayer for grant of

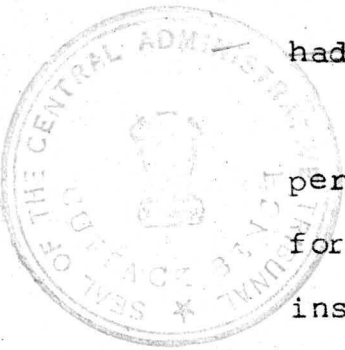
temporary status. In this case respondents were directed to consider the case of the applicants in accordance with provisions of various rules/circulars and notification on the subject. The case of the applicant along with others was examined and finding that he has been engaged as a casual labourer without being sponsored/nominated through employment exchange and considering the mandate of Govt. of India in O.M. dated 12.7.1994 his appointment was taken to be irregular and temporary status could not be bestowed on him. Even in circular dated 8.4.1991 communicated by the Ministry of Personnel Public Grievance and Pension through D.G.(posts) Letter dated 21.11.1997 conditions of sponsorship through employment exchange was reiterated with the exception that 1991 letter would not apply in case of casual workers engaged prior to 7.6.1988 and who were in service on the date of issue of order dated 8.4.1991. This relaxation was given as a one time measure only. Applicant being engaged after 7.6.1988 and not being sponsored through employment exchange is not entitled to conferment of temporary status. They have therefore prayed for dismissal of the Original Application.

Applicant has not filed any rejoinder.

3. Our attention has been drawn to Annexure-1 which indicates that the applicant was engaged under the respondents prior to 7.6.1988 and had worked continuously. Having worked for a few days which was discontinued may not create any right in favour of the applicant. Annexure-1 only indicates that in reply to application of the present applicant he was asked to accompany the mails from 6.5.1985 without fail. But it cannot be said

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with any certainty that he had worked continuously under the respondents. Similarly the next page of Annexure-1 indicates that in January, 1988, an amount of Rs.200/- was sanctioned as payable to the applicant under the operation scheme as daily wage bill for a period of about 14 days ending in 31.12.1987. Considering the stand of respondents, ~~all~~ at best one can make reference to applicant being engaged for another spell of 30.7.1988 to 31.8.1988 excluding Sundays and Holidays. ~~and he cannot carry the mail for the respondents had then~~ This period is after 7.6.1988.



It has been contended on behalf of the applicant that persons have been conferred temporary status who have worked for very long spells and that after somany years of service insistence on such casual employment being made through employment exchange would have the effect of denying the applicant benefits for no fault of his. It is further argued that circular dated 12.7.1994(Annexure-1) can have only prospective effect whereas rights of the applicant had accrued prior to this date as ~~his~~ working under the respondents w.e.f. 30.7.1988 is admitted by the respondents. We have considered the contention. The Court itself cannot have the power of legislating the law. We as a Tribunal have to consider the rights of litigants before us under the circulars issued by the respondents and the rules which may be applicable. A Circular dated 8.4.1991 had given one time exemption ~~that too~~ casual labourers engaged prior to 7.6.1988. Even though the applicant was engaged in the year 1988, but unfortunately that day happens to be after the cut off date. We are of the opinion that respondents-department including Res.1 should sympathetically consider the extension of this date as we are informed that Telecom Department had

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taken some decisions regarding casual labourers employed after 7.6.1988 also. But till such decision is taken no benefit can be extended to the present applicant.

Next contention is that circular of 1994 was issued and that it should be read to be only prospective in operation which lays down that engaging casual labourers without ^{persons} being sponsored through the employment exchange is irregular and no temporary status could be conferred on them. After considering the terms of this circular we find that it is a clarificatory in nature. When a clarification is issued regarding some circular or rule or amendment to the rule is made, being clarificatory in nature, it is in the nature of a declaration of a rule existing. The law for this Court was laid down by the Hon'ble Supreme Court in the case of Central Bank of India & Ors. vs. their Workmen reported in AIR 1960 SC 12 and Sakuru vs. Tanaji, AIR 1985 SC 1279 wherein while dealing with a Declaratory Act or an amendment in the nature of clarification it was held that a Declaratory Act is to remove doubts existing as to the common law or the manner or effect of a statute ^{and} such acts are usually held to be retrospective. In the later case, judgments in the cases of Ramkristo Mandal and another vs. Dhankristo Mandal AIR 1969 SC 204 and AIR 1966 SC 1942, AIR 1970 SC 349 etc. were considered holding the same interpretation regarding the law. 1994 circular being in the nature of a clarification will have to be held ^{not} ~~in~~ prospective but only removing certain doubts about the existing rules. Any judgment of a Bench of the Tribunal will have to be read subject to the decision of the Hon'ble Supreme Court in such case.

Regarding legality of not conferring temporary status if the department has taken a decision that persons not sponsored

through the employment exchange shall not be given this benefit, the Hon'ble Supreme Court has laid down the law in the case of Passport Officer, Trivandrum & Ors. v. Venugopal vide C.C. No.734 of 1997 dated 27.1.1997 as under:

" Under the scheme the respondents were given a temporary status. Later on when it was realised that certain persons whose recruitment was not through the employment exchange had also been given temporary status, by an office Memorandum dated 12.7.1994 it was clarified that under the scheme only those employees who had been recruited through the employment exchange would be given a temporary status though not recruited through the employment were de-recognised as temporary. We do not think that in doing so the appellant had acted in an arbitrary manner. 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 cannot be said to be unreasonable or arbitrary. Therefore, we find it difficult to accept the line of reasoning taken by the Tribunal in holding that the decision was inconsistent with Article 11 of the Constitution".

For the reasons discussed above, the O.A. is dismissed, but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO//

(J.S.DHALIWAL)
MEMBER (JUDICIAL)