

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.237 OF 1999  
Cuttack this the 27<sup>th</sup> day of September/2001

Madhabananda Ray

• • •

**Applicant(s)**

**-VERSUS-**

Union of India & Others .....

**Respondent(s)**

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 74.
2. Whether it be circulated to all the Benches of the N.D. Central Administrative Tribunal or not ?

Somnath J. M.  
(SOMNATH SON)  
VICE-CHAIRMAN  
27.9.2001

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*JP*  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.237 OF 1999  
Cuttack this the 27<sup>th</sup> day of September/2001

CORAM:

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

...

Sri Madhabananda Ray, aged about 39 years,  
Son of Late Jatindranath Ray, B.K.Padapitha,  
Sutahat Talasahi, Cuttack - at present working  
as General Assistant (Casual) Prasar Bharati  
(Broad Casting Corporation of India) Door Darshan  
Kendra, PO-Sainik School, Bhubaneswar

...

Applicant

M/s.S.K.Patri  
B. Nath

-VERSUS-



1. Union of India represented through its Secretary, Ministry of Information and Broadcasting, Govt. of India, New Delhi (Shastri Bhawan)
2. Chairman, Prasar Bharati (Broad Casting Corporation of India), Mandi House, Copernicus Marg, New Delhi
3. Director General, Prasar Bharati (Broad Casting Corporation of India) Door Darshan Bhawan (Mandi House) Copernicus Marg, New Delhi-1
4. Director, Prasar Bharati (Broad Casting Corporation of India) Door Darshan Kendra, PO-Sainik School, Bhubaneswar
5. Senior Administrative Officer, Prasar Bharati (Broad Casting Corporation of India), Door Darshan Kendra, Door Darshan Marg, PO-Sainik School, Bhubaneswar-5
6. Sarat Kumar Das, Son of Sri B.B.Das, resident of Deulasahi, Tulasipur, Cuttack
7. Ramesh Chandra Tripathy, General Assistant (Casual) Door Darshan Kendra, Bhubaneswar
8. Sarada Prasanna Das, General Assistant, Door Darshan Kendra, PO-Sainik School, Bhubaneswar

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Respondents

By the Advocates

Mr.A.K.Bose, Sr.  
Standing Counsel  
(Central) (Res.1 to 5)

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MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, Madhabananda Ray, whose date of birth is 22.3.1960 and who in the year 1982 joined as General Assistant on casual basis under Respondents 4 and 5, earlier moved this Tribunal in O.A.257/93 for his regularisation and for quashing the guidelines under Scheme dated 9.6.1992 requiring 120 days of engagement in a calendar year for relaxation of upper age-limit. O.A.43/93 filed by Sarat Kumar Das (Respondent No.6), O.A.312/93 by Sarada Prasanna Das (Respondent 8) and O.A.424/93 filed by one Ashok Kumar Mohanty contained similar prayers. Hence by common judgment dated 18.1.1994, the then Division Bench of C.A.T., Cuttack Bench allowed these four applications observing that directions of the Bench in the common judgment in O.A.441, 562 and 362 of 1992 delivered on 16.11.1993 would be made applicable to the applicants. In the judgment dated 16.11.1993, age relaxation contrary to the Scheme was given by the Bench.

As against the common judgment dated 18.1.1994, in aforesaid four Original Applications, that is, 43, 257, 312 and 424, all of 1993, the Department preferred Civil Appeals bearing Nos. 2127/96, 2128/96, 2129/96 and 2130/96, respectively before the Apex Court (vide record of O.A.257/93). These four appeals have been disposed by common judgment dated 3.4.1997 (Annexure-3). By that date Sarada Prasanna Das (Respondent No.8) petitioner of O.A.312/93 and respondent in Civil Appeal No.2129 of 1996 and Ashok Kumar Mohanty, petitioner of O.A.424/93 and respondent in Civil Appeal 2130/96 were already regularised. The Apex Court also in the judgment observed that they were eligible, apparently under the Scheme. In regard to the present applicant and Sarada Kumar Das (Respondent No.6),



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the Apex Court held that the Tribunal was not justified in granting them age relaxation contrary to the Scheme which was framed for regularisation and that they are not eligible for appointment even after age relaxation as set out in Clause (5) of the Scheme. But as the Apex Court was informed that subsequent to the judgment of the Tribunal O.M. dated 17.3.1994 was issued giving a different basis for age relaxation and that Sarat Kumar Das has since been regularised on the basis of this O.M., it was clarified that if Sarat Kumar Das and Madhabananda Ray would be eligible for regularisation in accordance with the Scheme and/or directions which may have been issued subsequent to the date of the judgment of the Tribunal, they would be entitled to benefit of such Scheme or directions.

In fact before the pronouncement of the Apex Court judgment, Sarat Kumar Das (Respondent No.6) was regularised by order dated 13.12.1995 (Annexure-5) pursuant to the age relaxation guidelines issued in O.M. dated 17.3.1994.

2. Facts above are not in controversy. Applicant though admits that he never worked for 120 days in any Calendar year (vide O.A.257/93), expresses grievance that although his junior Sarat Kumar Das has since been regularised and although Director General, Door Darshan in Circular dated 11.8.1997 (Annexure-6) clarified that since the appeals preferred by the Department before the Apex Court against judgment of C.A.T., Cuttack Bench dated 16.11.1993 in O.A.Nos.356, 441, and 562, all of 1992 have been dismissed, all casual bookings on assignment basis have to be made strictly on rotational basis impartially by giving equal days of booking to everybody



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available in the list prepared as per the C.A.T. judgment dated 16.11.1993, he is getting work only for seven days in a month. When he sent a legal notice on 11.8.1997 for regularisation, to the Senior Administrative Officer for Director in letter dated 5.12.1997 (Annexure-7) replied that he is not eligible for regularisation. Thereafter in letter dated 7.5.1999 (Annexure-8), the said Senior Administrative Officer issued letter to Ramesh Chandra Tripathy (Res. No.7) asking for option for regularisation in any Door Darshan Kendra, other than Bhubaneswar. Applicant then sent another legal notice dated 11.5.1999 (Annexure-9). These are the relevant averments made in this O.A. filed on 24.5.1999 impleading upto Respondent No.8, with the following three prayers.



- 1) To regularise him as in the case of Res. No.6;
- 2) To quash the order dated 7.5.1999 (Annexure-8) issued in favour of Respondent No.7; and
- 3) Not to take up the process of regularisation without considering his case for regularisation

3. By interim order dated 4.6.1999 it was made clear that regularisation of Respondent No.7 shall be subject to the result of this O.A. and that pendency of the O.A. would not be a bar to consider regularisation of the applicant strictly in accordance with rules, in case he is due for regularisation. On 16.9.1999, the applicant filed Misc. Application 620/99 for amendment of the O.A. to describe Sarada Prasanna Das in his address as Respondent No.8. This was allowed by order dated 21.9.1999. At this stage we may observe that after the addition of Respondent No.8 in cause title of the O.A., averments made in the O.A. do not all convey any meaning for addition of Respondent No.8, because in the Misc. Application 620/99, there

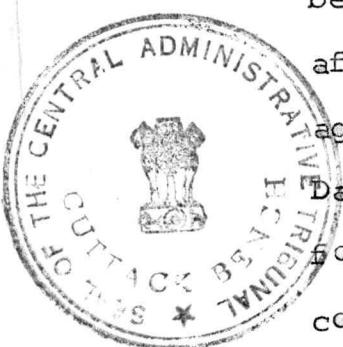
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is no submission or prayer at all to amend any other portion of the O.A. either by addition or alteration excepting addition of Respondent No.8 in the cause title. Be that as it may, Respondent No.8 has been duly noticed.

4. Private respondents though duly noticed had neither filed counters nor appeared. The departmental respondents filed their counter stating that in the year 1982 he was given casual assignments only for 36 days. As per the revised and relaxed regularisation Scheme from 1982 till the date of filing of counter in November, 1999, he has performed duties for more than 120 days in the years 1985 and 1986. His date of birth being 22.3.1960, he was of 33 years of age on 9.6.1992. Even after giving age relaxation for two years he was found overaged for the post in question as per the Scheme. As Sarat Kumar Das (Res. No.6) and Ramesh Chandra Tripathy (Res.No.7) were found eligible as per the revised Scheme, their cases were considered for regularisation. In fact the Department never objected for the employment of the applicant elsewhere.

5. In the rejoinder, while reiterating his version as in the O.A. the applicant mentions about a case of B.B.Mohanta vs. Secretary, Ministry of Informations and Broadcastings regarding engagements of casual Lighting Assistants and that S.L.P. (Civil) No.20224-20226, S.L.P.(Civil) No.12052/95 in regard to eligibles and non-eligibles are still pending for decision. Further he had enclosed a judgment of the Apex Court and some circulars.

6. Since the earlier O.A.257/93 of the applicant was disposed of along with similar O.A.43/93, O.A.312/93 and O.A. 424/93, all these records were perused by us.



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7. Neither the applicant nor the Department enclosed or filed a copy of the Scheme of 1992. However, a copy of this Scheme is available as Annexure-3 from the record of O.A.43/93. It is dated 9.6.1992 prepared by the Government pursuant to the directions of the Principal Bench in O.A.563/86 dated 14.2.1992. Clause 2 provides that who had been engaged for an aggregate period of 120 days in a year (Calendar Year) will be eligible for regularisation and that number of days is to be computed on the basis of actual working days in the Muster Rolls or Attendance Sheets. Clause-6 lays down that upper-age limit would be relaxed to the extent of service rendered at the time of regularisation and that service rendered for less than 120 days in a year will not qualify for age relaxation.

 The applicant in O.A.257/93 admitted that in no year he had been engaged for 120 days. The Apex Court in judgment dated 3.4.1997 (Annexure-3) after considering these Clauses clearly held that Tribunal was not justified in granting the applicant and Respondent No.6 age relaxation contrary to the Scheme and that they are not eligible for regularisation even after age relaxation set out in Clause-6 was given. Thus under this Scheme dated 9.6.1992, the applicant and Respondent No.6 have no scope for regularisation. Yet the Apex Court observed if under O.M. dated 17.3.1994 giving a different basis for calculation of age relaxation they are eligible for regularisation they would be entitled to the benefit of the O.M.

8. The Apex Court pronounced the judgment under Annexure-3 on 3.4.1997. There is nothing on record to suggest that barring O.M. dated 17.3.1994, another Scheme or direction of the Government in this regard was in operation. Hence it is to be



considered if the applicant would be eligible for regularisation on the basis of age relaxation calculation, as provided in this Office Memorandum.

9. There is no dispute that Respondent No.6 was regularised pursuant to O.M. dated 17.3.1994, on 13.12.1995, as averred in Para-4(c) of the O.A. and submitted before the Apex Court (Annexure-3). In Para-6 of the counter it is specifically stated that Respondent No.6 has been regularised as per the revised relaxation scheme of age. Hence even if O.M. dated 17.3.1994 has not been placed before us by either party, it is presumed "revised relaxation scheme of age" mentioned in the counter relates to O.M. dated 17.3.1994.

10. It is not the case of the applicant that Respondent No.6 was not eligible for regularisation as per the revised relaxation scheme of age dealt in O.M. dated 17.3.1994. But his case is that Respondent No.7 is his junior and his case is similar to Respondent No.6. Yet he did not aver either in the O.A. or in the rejoinder the relevant data of Respondent No.6. On the other hand he did not even refute in the rejoinder the Department's case of his non-eligibility as reflected in Para-5 of the counter, which we may as well quote hereunder.

" In the year 1982, he was given 36 days of casual assignments. From the year 1982 till date he has performed duties for more than 120 days in the years 1985 and 1986; as per relaxed regularisation scheme. The date of birth of the applicant as per records is 22.3.1960 and he was of 33 years of age on 9.6.1992. After giving age relaxation for two years he was found overaged for the post in question as per regularisation scheme".

Thus it is clear that even under relaxed regularisation scheme provided in O.M. dated 17.3.1994, that the applicant has no eligibility for regularisation.



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10. Though the applicant prayed for quashing Annexure-8 in regard to regularisation of Respondent No.7 there is averment in the O.A. as to how he would not be eligible for regularisation. On the other hand the Department's case in the counter is that he was eligible for regularisation under the relaxed regularisation scheme. Even Annexure-8 provided that pursuant to the scheme of 1994, his name stood at Serial No.1 of the eligibility list for regularisation. This averment in the counter has not been refuted in the rejoinder. Hence the prayer for quashing Annexure-8 carries no meaning.

11. There is no specific prayer against newly added Respondent No.8, Sarada Prasanna Das. As earlier discussed M.A.620/99 for amendment of O.A. confined only, one prayer, i.e., for adding Sarada Prasanna Das with his address as Respondent No.8 and contains no prayer for amendment of any other portion of the O.A. either by addition or alteration. Be that as it may, the record reveals that he is the sole applicant in O.A.312/93 which was disposed of along with O.A. 43/93, O.A.257/93 and O.A.424/93, by a common judgment dated 18.1.1994 and the Department preferred Civil Appeals No.2127-2130 of 1996 before the Apex Court and that in the judgment dated 3.4.1997 of the Apex Court (Annexure-3) it was reflected that since Sarada Prasanna Das and Ashok Kumar Mohanty of O.A.424/93 are eligible for regularisation and that they have since been regularised. Hence even if the applicant has grievance against this Respondent No.8, his regularisation having been not interfered by the Apex Court, cannot be quashed now.

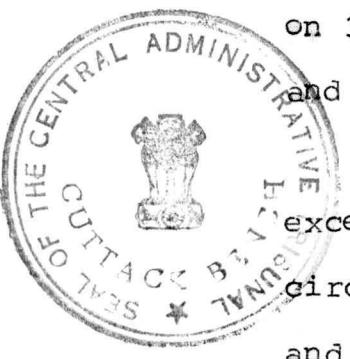
12. Coming to the rejoinder, we observe that though it is



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not clear which Bench has disposed of G.B.Mohanty's case, it is not relevant as it relates to the engagements of Casual Lighting Assistants and not to their regularisation. It should not be forgotten that service of a Lighting Assistant is more essential than that of a General Assistant.

Inspite of several adjournments neither side could apprise us as to the actual facts on law in issue in SLP (Civil) No.20224-20226 (of which year ?) and SLP (Civil) 12052/95 and as to whether these appeals have since been disposed of. But one thing is clear that the applicant is not a party in those SLPs and his case has already been decided by the Apex Court on 3.4.1997 (Annexure-3) and we are bound by the findings and directions made therein.

 In regard to the circulars cited in the rejoinder, excepting circular dated 7.12.1994 (Annexure-A/12) no other circular is concerned with regularisation under the Scheme and hence not relevant for discussion. Under Clause-5 of Annexure-12, it was clarified that only such of the casuals under Bhubaneswar Door Darshan Kendra, who are eligible for regularisation shall be engaged for ten days on rotation basis against the vacancies till finalisation of Court cases. Since there is no specific prayer for continuation of engagement of the applicant on casual basis, we need not discuss as to the applicability of Clause-5 in case of applicant.

Annexure-15 to the rejoinder is a judgment dated 5.2.1998 of the Apex Court. Issues involved therein are whether All India Radio and Door Darshan are Industries and whether termination of some employees without following procedure of Section 25 F of the I.D.A. Act, 1947, is valid. As has been

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well settled that Central Administrative Tribunal cannot  
 usurp the jurisdiction of the Authorities under the I.D.Act,  
 this decision is in no way helpful to the applicant.

13. In view of our discussion above, we cannot accede  
 to the prayers made by the applicant. The Original Application  
 being without any merit is dismissed. No costs.



Somnath Som  
 (SOMNATH SOM)  
 VICE-CHAIRMAN  
27.9.2001

27.9.01  
 (G.NARASIMHAM)  
 MEMBER (JUDICIAL)

B.K.SAHOO//