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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 292 OF 1999

Cuttack, this the 4th day of January, 2002

S.Seshayiri Rao and others Applicants

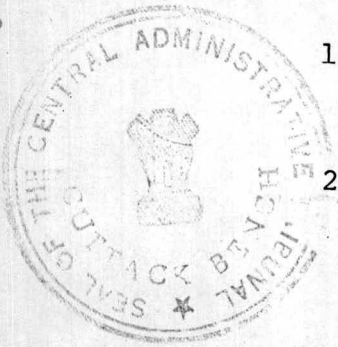
Vrs.

Union of India and others 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*

Somnath Soni
(SOMNATH SONI)
VICE-CHAIRMAN
4.1.2002



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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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1. Seshayiri Rao, son of late Vasudeva Rao, Qr.No.Type-I, S&C/5-B, Construction Colony, S.E.Railway, Rayagada.
2. N.Ramakrishna, son of N.Gumpa Swamy, E/69/4, S.E.Railway Engineering Colony, Rayagada.
3. K.Gourishankar Rao, son of K.Laxmayya, Gandhinagar, 3rd Lane, College Road, Rayagada.
4. Md.Gafoor, son of late Md.Sustafa, Railway Engineering Colony, Rayagada.
5. B.Sankar Rao, son of B.Janardan Rao, College Road, Near Post Office, Rayagada.....Applicants

Advocates for applicants - M/s S.S.Rao
D.K.Sahoo

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Sr.Divisional Personnel Officer, S.E.Railway, Visakhapatnam.
3. Sr.Divisional Engineer (Co-ordination), S.E.Railway, Visakhapatnam.
4. Chief Administrative Officer(Construction), S.E.Railway, Chandrasekharpur, Bhubaneswar.
5. Assistant Engineer (Open Line), S.E.Railway, Rayagada Dist.Rayagada

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Respondents

Advocates for respondents - M/s D.N.Misra
S.K.Panda

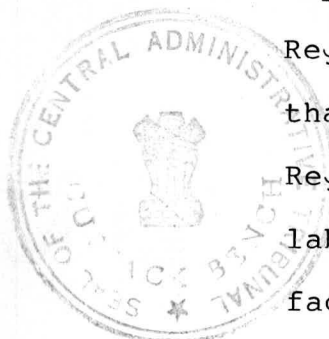
O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.M.
In this O.A. the five petitioners have prayed for a direction to the respondents not to recruit new faces as casual labourers and to quash the decision to call for interview. The alternative prayer is that if fresh faces are recruited as casual labourers, the applicants

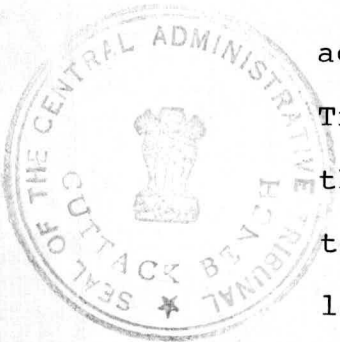
should be granted priority as retrenched casual labourers. By way of interim relief the applicants had prayed for a direction not to issue any appointment order to any person till the disposal of this O.A. In order dated 2.7.1999 by way of interim it was ordered that in case the names of these five petitioners are in the live casual register as on that date then their candidature should be considered first before fresh faces are recruited.

2. The case of the applicants is that they had worked in Koraput Rayagada Railway Line Project for different periods between 15.9.1983 and 30.4.1987 as per details for each of the applicants given in paragraph 4(7) of the O.A. On completion of the project, they were disengaged. The applicants have stated that under the Rules and more particularly after the decision of the Hon'ble Supreme Court in Inderpal Yadav's case, Live Casual Register was maintained, and the applicants have stated that their names were included in the Live Casual Register. Their grievance is that as retrenched casual labourers they have the right to have priority over fresh faces when Railways recruit casual labourers again. Only in exceptional cases, as laid down in the rules, fresh faces can be engaged without exhausting the list of disengaged casual labourers. But in such cases specific approval of General Manager is required to be obtained before engaging fresh faces. It is also stated that retrenched casual labourers of projects can be reengaged as casual labourers in Open Line. The applicants have stated that Divisional Railway Manager (Personnel), Waltair, has issued advertisement on 30.5.1996 (Annexure-3) for engaging fresh faces as casual labourers (Open Line). In column 8 of the



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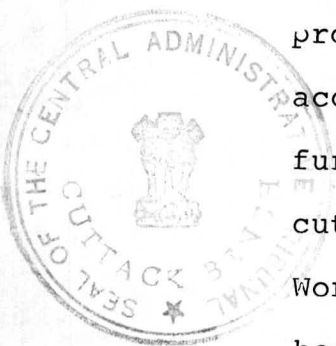
of the advertisement it has been mentioned that retrenched casual labourers whose names are borne in the Live Casual Register will be given preference over outsiders. In the application form enclosed to Annexure-3, in Column 11 details of prior engagement as casual labourers have been asked for. The petitioners' grievance is that they wanted to apply in response to the notice and wanted to submit applications to Assistant Engineer, Rayagada on 4.6.1996. It is stated that Assistant Engineer, Rayagada, refused to receive their applications indicating that if past service is indicated in the application, the same will not be accepted. The petitioners, therefore, had to apply without indicating their past service. But they approached the Divisional Railway Manager with their grievance, but no action was taken. The applicants had earlier approached the Tribunal in OA No.534 of 1996 praying for a direction to the respondents not to recruit fresh faces or alternatively to give priority to the petitioners as retrenched casual labourers over fresh candidates. The applicants have stated that they were given an impression by the respondents that if OA No.534 of 1996 is withdrawn, their cases would be considered. Accordingly, on MA No. 280 of 1997 filed by the applicants, the Tribunal permitted the petitioners to withdraw OA No.534 of 1996. The applicants have further stated that in letter dated 31.5.1998 interview was held for filling up posts at different places including Rayagada, Koraput, Laxmipur, etc. It is stated that some candidates obtained a stay from the Hyderabad bench of the Tribunal. But notwithstanding the stay interviews were conducted in Rayagada, Koraput, Laxmipur and some other places. In the context of the above facts, the applicants



J. J. S.

have come up in this petition with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayers of the applicants. They have stated that the O.A. is barred by limitation because cause of action in this case had arisen in 1996 when the notification dated 30.5.1996 was issued and the applicants have approached the Tribunal only in 1999. The respondents have denied that the applicants had ever been engaged as casual labourers. It is stated that after 1.1.1981 no casual labourer could be engaged without prior approval of the General Manager. Moreover, casual labourer engaged by the Railways is given a Casual Labourer Card bearing his particulars, but these cards have not been produced. The certificates produced by the applicants at Annexure-2 series, according to the respondents, cannot be accepted. It is further stated that the applicants were engaged as jungle cutters and not as casual labourers and the Inspector of Works is not competent to issue the certificates which have been enclosed by the applicants. The respondents have further denied that the names of the applicants find place in the Live Casual Register. It is stated that as they had never been engaged as casual labourers, question of including their names in the Live Casual Register does not arise. As regards the averment of non-receipt of the applications by the Assistant Engineer, Rayagada, the respondents have denied the same. They have stated that in the advertisement at Annexure-3 it was specifically provided that no application can be received directly and the applications in sealed envelopes were required to be dropped in a sealed box which had been provided in the



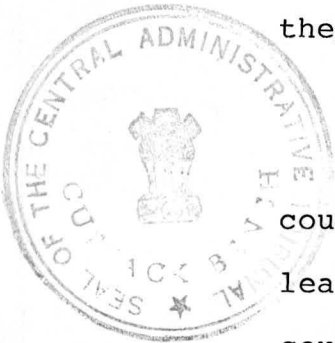
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office concerned. On the above grounds, the respondents have denied the statement of the applicants that the Assistant Engineer refused to receive their applications. The respondents have also denied that any assurance was given to the applicants after filing of OA No. 534 of 1996 that if the O.A. is withdrawn their case will be considered. The respondents have stated that in the O.A. No. 534 of 1996 the respondents had filed counter opposing the prayers of the applicants. It is also stated that no stay order was ever issued by the Hyderabad Bench of the Tribunal with regard to the recruitment. It is further stated that as the petitioners had not applied for the post their cases could not be considered. On the above grounds, they have opposed the prayers of the applicants.

4. No rejoinder has been filed.

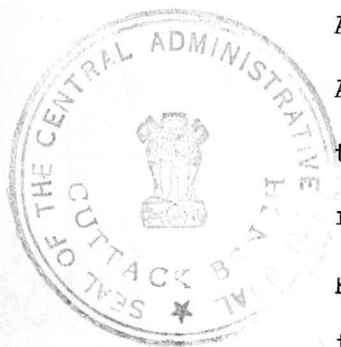
5. I have heard Shri S.S.Rao, the learned counsel for the petitioners and Shri D.N.Mishra, the learned Standing Counsel for the respondents. The learned counsel for the petitioner has relied on Inderpal Yadav's case, 1985 SCC (L&S) 526. The respondents have relied on the decision of the Tribunal in OA No. 29 of 1996 disposed of on 26.2.1997 (Annexure-R/1). I have perused this decision.

6. From the advertisement at Annexure-3 it appears that 737 casual labourers were proposed to be engaged for a period of 119 days for monsoon track patrolling. Of these 100 hands were due to be engaged in Rayagada Section and 70 in Koraput Section. As the casual labourers in Rayagada and Koraput were proposed to be engaged, it is clear that the Tribunal has jurisdiction to consider the grievances of the applicants. This is mentioned because in order dated 2.7.1999 it was noted that



J. Jom.

question of jurisdiction raised by the learned Standing Counsel is kept open. But the question of jurisdiction has not been raised by the respondents in their counter. In paragraph 13 of the notice at Annexure-3 it has been clearly mentioned that no application will be received directly by Assistant Engineers' offices, D.R.M.'s office or Personnel Department. Applications received directly by these offices or any other officer shall stand automatically rejected without any notice. In paragraph 12 of the notice at Annexure-3 it has been mentioned that applications in sealed envelope should be dropped in the sealed box provided at A.E.N.'s offices at Rayagada, Koraput, etc. From this it is clear that the applicants were not required to submit their applications to the Assistant Engineer. As a matter of fact, in the notice at Annexure-3 they were clearly prohibited from submitting the applications to the Assistant Engineer. They were only required to drop the applications in the sealed box provided in the office of Assistant Engineer. In view of this, the averment of the petitioners that they gave applications to the Assistant Engineer in response to the notice at Annexure-3 and the Assistant Engineer refused to receive the same and thereafter they submitted the applications without noting the past service cannot be accepted. Even if it is a fact that they did submit the applications to the Assistant Engineer, these applications are liable to be rejected summarily in terms of the advertisement at Annexure-3. Thus, the net effect of the above finding is that the petitioners did not apply for the posts advertised at Annexure-3. As such their prayer for



J. J. Sam.

staying further selection or interview and for giving preference to them as retrenched casual labourers is held to be without any merit and is rejected.

7. The second aspect of the matter is that in the advertisement at Annexure-3 it has been clearly mentioned that the engagement of casual labourers through this advertisement is only for a period of 119 days for track maintenance presumably during the monsoon period. The Railways do engage casual workers for monsoon track patrolling. Such engagement is done during the monsoon period. In the advertisement it is clearly mentioned in paragraph 2 that the engagement is for a period of 119 days or upto 31.10.1996 whichever is earlier and is for the purpose of execution of track maintenance work. As the period of 119 days and 31.10.1996 are long over, the O.A. has also become infructuous.

8. The applicants have stated that they are retrenched casual workers. The respondents have denied this and have stated that they were engaged as jungle cutters. In view of my finding that the petitioners not having applied for the post are not entitled to the relief claimed by them, it is not necessary to go into the question of status of the applicants.

9. In the result, therefore, the O.A. is held to be without any merit and is rejected but without any order as to costs. The interim order stands vacated.

(SOMNATH SONI)

VICE-CHAIRMAN

AN/PS