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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 341 OF 1999
cuttack, this the 23rd day of ~~March~~ April, 2003.


DIPTI KUMAR MAHANTA. APPLICANT.

VRS.

UNION OF INDIA & ORS. 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? *yes.*


(B.N. SOM)
VICE- CHAIRMAN

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 341 OF 1999
Cuttack, this the 23rd day of ~~March~~ April, 2003.

C O R A M

THE HONOURABLE MR. B.N. SOM, VICE- CHAIRMAN

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Dipti Kumar Mahanta, Aged about 32 years,
S/o. Rai Mehan Mahanta, At: Bada Brahmanmara,
PO: Pathar Chakuli, Via: Deuli, Dist. Mayurbhanj
and at present working as Casual Labourer for
Escorting Mails Baripada-Deuli Line under
S.D.I(P) Baripada (West) Sub-division, Baripada,
District: Mayurbhanj.

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APPLICANT.

By legal practitioner: M/s. Pradipta Mohanty,
D.N. Mohapatra,
G. Satapathy,
J. Mohanty,
Advocates.

: Versus :

1. Union of India represented through its
Director General (Posts) Dak Bhawan,
Ashoka Road, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, At/PO: Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Offices,
Mayurbhanj division,
At/PO: Baripada,
Dist. Mayurbhanj.
4. S.D.I (Postal) West Sub division,
Baripada, At/PO: Baripada,
Dist. Mayurbhanj.

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RESPONDENTS.

By legal practitioner: Mr. U.B. Mohapatra,
Additional Standing Counsel.

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O R D E R

MR. B.N. SOM, VICE CHAIRMAN:-

This Original Application has been filed by Shri Dipti Kumar Mahanta, who has been engaged in the Department of posts to escort Mails in Baripada-Deuli Line in Private mail motor Service w.e.f. 27-06-1988. His grievance, in this Original Application U/s.19 of the A.T. Act, 1985 is that he is working continuously since his engagement till today, but has not been given the benefit of regular service; inspite of the Respondents having framed a scheme for regularisation of service of casual labourers under Director General of posts' letter dated 12-04-1991. It has further been stated by the Applicant that his case of regularisation alongwith three others was the subject matter in Original Application No.80/97 decided by this Tribunal that and the Tribunal was pleased to order that the Applicant including three others; namely, Bhabani Sankar Samal, Radha Kanta Das and Sanatana Naik should be considered for regularisation by the Respondents in the light of the scheme prepared by the Respondents in pursuance of the judgment of the Hon'ble Apex Court. The grievance of the Applicant is that the Respondents have not complied with the directions of this Tribunal and, that vide Annexure-9 they had informed the applicant that as he was engaged as casual labourer after 7-6-1988 and, as that he was not

a candidate sponsored through employment exchange, he could not be considered for regularisation under the scheme. Being aggrieved by that order, the Applicant has approached this Tribunal to quash the impugned order vide Annexure-9 dated 15-04-1998 and to pass other appropriate orders as deemed fit and proper.

2. I have heard Mr. Pradipta Mohanty, Learned Counsel for the Applicant and Mr. U.B. Mohapatra, Learned Additional Standing Counsel for the Union of India, appearing for the Respondents and have also perused the records placed before me.

3. The substantial question to be decided in this case is whether the case of the Applicant is covered under the scheme prepared by the Respondent No.1 for grant of temporary status and regularisation of casual labourers and, whether the condition set forth in the Ministry of Personnel, Public Grievances and Pensions letter dated 8th April, 1991 (Annexure-7) fixing a cut-off date for regularisation of casual labourers not sponsored through employment exchange under the scheme is discriminatory in nature.

4. I have given my anxious thought to the facts of this case as also the law governing the field in this matter. On the factual side and as admitted by the Respondents, the

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Applicant has been working as Mails Escort in Baripada-Deuli Line w.e.f. 27-06-1988. The stretch of this Mail line, as deposed by the Learned Counsel for the Applicant, during oral submission, is 80 KM both ways, and, that the Applicant is engaged whole day in this work of Mail escorting. Thus, it appears that the Applicant has been engaged by the Respondents for over 11 years on the day he filed this Original Application. It has been confirmed during the oral argument that he is still continuing. During this period, on the direction of the Hon'ble Apex Court, the Respondent Department introduced a scheme for conferring temporary status on the casual labourers with certain terms and conditions, two most important being:

- (1) that a casual labour, who is in employment as on 29-11-1989 and who continues to be currently employed and has rendered continuous service of at least one year and during which period he must have been engaged for a period of 240 days (206 days in the case of offices observing five days weeks);
- (2) that such casual workers engaged for full working hours viz. 8 hours including 1/2 hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Gr.'D' official including DA, HRA and CCA.

According to the facts of this case, admitted by both the sides, there is no doubt that the Applicant fulfills all the conditions to have been conferred with temporary status. However, he was denied the benefits of the scheme on the ground as brought out in Annexure-5 and also in the counter filed by the Respondents that as the Applicant was engaged directly by the Appointing Authority without the intervention

of the Employment Exchange, he was not eligible for conferment of temporary status. They further, referring to Annexure-7, stated that the Ministry of Personnel, Public Grievances and Pensions had directed all the Ministries/departments vide their OM dated 07-06-1988 that for allowing relaxation in the conditions of upper age limit and sponsorship through Employment Exchange for regularisation of such casual employees against Gr. D posts, who were recruited prior to 07-06-1988 i.e. the date of issue of guidelines would alone be considered. In otherwards, if any casual labourer who ² was recruited after 7-6-88 without consulting the Employment Exchange, such a person should not be considered for regularisation against Gr.D posts. By applying the ratio, of this Circular, the Applicant has been denied temporary status by the Respondents. To settle the matter, it is worthwhile to answer the issues involved in this matter, as mentioned earlier. The moot question as to whether the Applicant is covered under the scheme framed by the Res. No.1 at Annexure-A/2, the answer is in the affirmative. The eligibility of a casual worker to be considered for temporary status are given at para-1 of the scheme. For the sake of clarity, para-1 of the scheme is quoted herein below:-

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- *1. Temporary status would be conferred on the casual labourers in employment as on 29-11-1989 and who continue to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days weeks) *.

5. The applicant, as stated earlier, had put in over 11 years of service on the day he filed this Original Application, was in employment on 29.11.1989, had rendered continuous service of minimum one year as on 29.11.1989, and, lastly, during the year he had been engaged on all days. He was, therefore, eminently eligible for grant of temporary status. In the Scheme nowhere it has been mentioned that those who have not been sponsored through the Employment Exchange shall not be considered for temporary status nor the Scheme stipulates that for relaxation of employment procedure the appointing authority will follow the conditions as laid down under Annexure-7. In fact, the scheme provides that "further action may be taken in regard to casual labours by each unit as per the above said scheme". Apparently, the Respondents have erred in applying the conditions laid down in the instructions issued by the Ministry of Personnel & Pensions in regulating the recruitment of casual workers in Central Govt. offices. The Respondents had ~~framed~~ ^{framed} a special scheme for casual workers engaged by it in its service ^{and that} ~~which~~ was for the benefit of the casual workers who were in their roll on 29.11.1989. To deny the benefits of the Scheme to any one by applying any conditions of recruitment from outside the scheme is violative of the principle of natural justice and would constitute hostile discrimination. The Scheme has to be operated strictly within the 17 conditions stipulated therein. Any deviation therefrom would create discrimination and would be bad in law, as I find it to be the case in hand.

6. Further the law is also now settled by the

Hon'ble Apex Court that a recruitment made without consultation with the Employment Exchange ^{cannot} be termed as bad in law. This is based on the simple logic that if a person is recruited without the intervention of Employment Exchange that could not be held against him; because that decision was taken not by him but by the recruiting authority concerned. To deny him the opportunity for getting temporary status on the ground that the initial recruiting authority had committed some technical or procedural error would be illogical, unfair and therefore, bad in law.

7. Learned counsel for the applicant, in support of his argument that the cut off date fixed in the Circular is irrational and unjust and that his regularisation should have been considered by the Respondents, relied on the following decisions.

- a) AIR 1986 SC 1907 - State Govt. Pensioners' Association & Ors. vs. State of Andhra Pradesh
- b) AIR 1983 SC 130 - D.S. Nakara & Ors. Vrs. Union of India
- c) 1994(1) OLR - 439 - Bhimasen Prusty & Ors. vs. State of Orissa & Ors.
- d) 78(1994) CLT 453 - Miss. Kalpanamayee Devi vs. (OJC No. 6322/1993) IGNOPU & Ors.
- e) AIR 1987 SC 2342 - Daily Rated Casual Labour Employed under P&T Deptt., vs. UOI
- f) AIR 2000 SX 3287 - Hindustan Machine Tools and Ors. Vs. M. Rangareddy & Ors.
- g) Vol. 79(2002) (1) - Nagina Kumar vs. Central SLJ 179 Public Works Deptt. & Ors.
- h) 77(1994) CLT - 70

Relying the above decisions, it has been argued by the learned Counsel for the Applicant that denial of temporary status to the applicant constitute hostile discrimination and, that if a casual labourer is ^{continued} / for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person.

8. I agree with the submissions made by the learned Counsel for the Applicant and I am of the opinion that the Applicant ought not to have been denied the benefits of the scheme which came in operation w.e.f. 12.4.1991 to regularise those casual labourers, who were in employment on 29.11.1989. As the Applicant was in employment on the crucial date and as the scheme does not differentiate between the casual labourers who were recruited through Employment Exchange and those recruited / without intervention of the Employment Exchange, it was unfair on the part of the Respondents to have kept the case of the applicant, out for conferring the temporary status. I, therefore, direct the Respondents to take immediate action to mitigate the hardship of the Applicant, grant temporary status on the applicant from the date it was due, as per the scheme and to give him the benefit of seniority according to the date of his initial appointment as casual labourer and all other consequential service benefits, wages

etc.as due and admissible under that scheme.

9. In the result,therefore, this Original Application
is allowed by leaving the parties to bear their own costs.


(B.N.SOM)
VICE CHAIRMAN