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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.42 OF 1999
Cuttack, this the 28th day of November, 2000

Sri Srichandra Behera

Applicant

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.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOMI)
VICE-CHAIRMAN
28.11.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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Cuttack, this the 28th day of November, 2000

CORAM:

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

Sri Srichandra Behera, aged about 30 years, son of Sri Bidyadhara Behera, At-Chanchedi, P.O-Sarangada, Dist.Kandhamala (Phulbani), at present working as Temporary/Casual Mazdoor, in the office of Sub-divisional Officer, Telegraphs, Rayagada-765 001... Applicant

Advocates for applicant - M/s S.N.Sahoo
R.K.Mohanty

Vrs.

1. Union of India, represented through its Secretary, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Orissa Circle, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda.
3. Telecom District Manager, Koraput, At/PO/Dist.Koraput.
4. Sub-Divisional Officer, Telegraphs, Rayagada, At/PO/Dist.Rayagada, Pin-765 001... Respondents

Advocate for respondents - Mr.S.B.Jena,
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has asked for a direction to the respondents to regularise his service within a stipulated period and to disburse his salary on par with the employees working in regular establishment.

2. His case is that he joined as Casual Mazdoor under Telecom District Manager, Koraput (respondent no.3) and Sub-Divisional Officer, Telegraphs, Rayagada (respondent no.4) in March 1986 and has been working from that date till June 1996. In support of this,

has enclosed at Annexure-1 a certificate dated 24.6.1996 issued by the Sub-Divisional Officer, Telegraphs, Rayagada, certifying that the applicant has worked from March 1986 to June 1996 as Temporary Casual Mazdoor on no work no pay basis. The applicant has stated that services of Radhakanta Gouda and Satyanarayan have been regularised against regular Group-D posts. But even though the applicant is senior as Casual Mazdoor to those two persons, his case has been ignored. The applicant has represented but without any result. The applicant has further stated that in accordance with the decision of the Hon'ble Supreme Court in the case of Bharatiya Dak-Tar Mazdoor Manch v. Union of India and others, AIR 1987 SC 2342, he is entitled to be regularised, and in the context of the above he has come up in this petition with the prayer referred to earlier.

3. The respondents in their counter have opposed the prayer of the applicant. They have stated that on scrutiny of the working particulars of the applicant it has been found that he was engaged under Muster Roll from September 1986 to March 1987 with intermitten breaks for only 109 days in 1986 and 66 days in 1987, and thereafter he abandoned his engagement. They have stated that the certificate at Annexure-1 has been given by the Sub-Divisional Officer, Telegraphs, unauthorisedly and the applicant not having worked from 1986 to 1996 the certificate cannot be relied upon moreso when the applicant has not given any document in support of his engagement after March 1987 when he abandoned his engagement voluntarily. It is stated that the petitioner having come up in 1999, twelve years after his last

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engagement, the petition is barred by limitation. They have further stated that the Department of Telecom has completely banned engagement of Casual Mazdoor with effect from 30.3.1985 and the scheme for grant of temporary status and regularisation of Casual Mazdoors at Annexure to the counter does not cover the case of the applicant. They have further stated that the letter of the Telecom District Engineer, Koraput addressed to Sub-Divisional Officer, Telegraphs, Rayagada, at Annexure-3 is only for the purpose of calling for information regarding engagement of the applicant and this does not prove that the applicant has worked from 1987 to May 1996. The respondents have further stated that Radhakanta Gouda and S. Satyanarayan, whose cases have been cited by the petitioner, are much senior to the applicant and they have been regularised strictly in terms of the scheme enclosed to the counter. On the above grounds, they have opposed the prayer of the applicant.

4. The petitioner in his rejoinder has given certain service details of Radhakanta Gouda and urged that while he was initially engaged in March 1986, Radhakanta Gouda was initially engaged on 6.4.1987. On this amongst other grounds, the applicant has reiterated his prayer in his OA.

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5. We have heard Shri S.N. Sahoo, the learned counsel for the petitioner and Shri S.B. Jena, the learned Additional Standing Counsel for the respondents and have perused the records.

6. The first controversy in this case is the period of engagement of the applicant. According to the applicant, he has worked on intermittent basis from March

1986 to June 1996. The respondents have stated that on the basis of copy of the Muster Roll enclosed by the applicant himself at Annexure-2 and on verification of the records, it is found that the applicant has worked for 109 days during September 1986 to March 1987 and for 66 days in 1987, in total 175 days. Besides the certificate at Annexure-1, the applicant has not enclosed any document showing that he has worked from April 1987 to May 1996. The letter of the Telecom District District Engineer, Koraput at Annexure-3 enclosed by the applicant clearly shows that the working particulars of the applicant are wanting for the period from April 1987 to May 1996. Besides this, the applicant has enclosed no other document in support of his contention. In view of this, it must be held that the applicant has worked for 175 days with intermittent breaks in 1986 and 1987.

7. We have also gone through the Scheme for grant of temporary status and regularisation of Casual Mazdoors circulated by the Department of Telecommunication in their letter dated 7.11.1989. This circular has come into force with effect from 1.10.1989 and in the scheme it is clearly provided that casual labourers who are currently employed and who have rendered 240 days of service during one year or 206 days in case of offices observing five-day week, are entitled to be conferred temporary status. As we have held that the applicant was not engaged after 1987 he was not employed on 1.10.1989 as a casual labourer and therefore, he cannot be conferred temporary status. Moreover, from the circular it is also clear that as engagement of casual labourers was completely banned with effect from 30.3.1985, temporary

status cannot be conferred on casual labourers who are engaged after 30.3.1985 and in case of any such engagement of a person who comes within the four corners of the scheme, such case has to be referred to the Telecom Commission along with proposal for taking action against the concerned official for engaging casual labourer unauthorisedly. From the above, it is clear that the case of the applicant is not covered under the scheme.

8. Moreover, under the scheme a casual labourer, who is covered under the scheme, cannot get regularised immediately. He has to be first conferred temporary status and thereafter regularised in his turn. A casual labourer cannot pray for straightaway regularisation even on the basis of long length of service started prior to 30.3.1985.

9. As regards the cases of Radhakanta Gouda and S.Satyanarayan, the respondents have stated that they are senior to the applicant. In his rejoinder the applicant has tried to prove that Radhakanta Gouda is junior to him because his initial date of engagement is 6.4.1987 whereas the applicant was initially engaged in March 1986. In support of his contention, the applicant has enclosed a certificate given by Assistant Engineer, Telecom, showing the engagement of Radhakanta Gouda from 6.4.1987 to 2.8.1988 for 464 days. This letter does not indicate that 6.4.1987 is the date of initial engagement of Radhakanta Gouda and therefore, it cannot be said that Radhakanta Gouda joined later than the applicant initially and was therefore junior to the applicant. As regards S.Satyanarayan, besides the bland assertion that S.Satyanarayan is junior to him and besides enclosing the

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regularisation order of S.Satyanarayan, the applicant has not brought any record even in his rejoinder in support of his contention that S.Satyanarayan is junior to him. Therefore, the contention that these two persons are junior to the applicant as casual labourers is held to be without any merit and is rejected.

10. In the result, therefore, we hold that the applicant is not entitled to the relief claimed by him. The petition is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

November 28, 2000/AN/PS