

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 495 & 496 OF 1999
Cuttack, this the 15th day of January, 2001

Sri M.Dharma Rao (OA 495/99)
Sri Padma Charan Dalabehera (OA 496/99)...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.*

L. S.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

S. Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 495 & 496 OF 1999
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CORAM:

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

OA 495/99

Sri M.Dharma Rao,
aged about 30 years, son of M.China Babu,
Village Ganjalam,
Post-Janjangi, Via-Khadamali, Dist.Srikakulam,
at present working as Temporary Casual Mazdoor in the
office of Sub-Divisional Officer, Telegraphs,
Rayagada-765 001....
.....Applicant

OA 496/99

Sri padma Charan Dalabehera, aged about 34 years, son of
Laxman Dalabehera, Village-Chanchedi, P.S-Sarangada,
Dist.Kandhamal, at present working as Temporary Casual
Mazdoor, office of Sub-Divisional Officer, Telegraphs,
Rayagada-765 001.....

.....

Applicant

Vrs.

In Both the cases:

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

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

Advocate for respondents-Mr.J.K.Nayak
ACGSC

ORDER
(ORAL)

SOMNATH SOM, VICE-CHAIRMAN

In these two applications, the petitioners
are almost similarly situated. They are represented by
the same counsel and they have asked for identical
reliefs. The respondents in these two cases have filed
almost identical counters and points for decision are
also the same. In view of the above, these two

applications are being disposed of by a common order. Facts alleged by both the sides in these two cases are, however, set out separately.

2. The learned lawyers have abstained from court work for more than a month expressing their protest against imposition of professional tax by the State Government and there is no indication when they will return to court work. The petitioners are absent. There is no representation from the side of the respondents. The Hon'ble Supreme Court in the case of Ramon Services Pvt. Ltd. v. Subhash Kapoor and others, 2000 AIRSCW 4093, have deprecated the action of the courts in adjourning cases because of abstention from court work by the learned lawyers. Their Lordships have observed that by such adjournment the defaulting courts would be contributing to the contempt of the Hon'ble Supreme Court. In view of this, these matters cannot be adjourned indefinitely. We have, therefore, perused the records.

S. J. S. M.
3. In OA No.495 of 1999 the applicant has prayed for regularisation of his service with effect from 7.11.1995 and for payment of arrears from that date. His case is that he has been working as a Temporary Casual Mazdoor from 1985 till date as per continuation certificate issued by Sub-Divisional Officer, Telegraphs (respondent no.4) on 6.6.1996 at Annexure-1. He has stated that Sub-Divisional Engineer, Microwave Project, Berhampur, Divisional Engineer, Telecom, Microwave Project, Berhampur, Ganjam, and Accounts Officer in the office of Telecom District Engineer, Berhampur, have maintained a Muster Roll from February 1985 to May 1987 showing the applicant's engagement, and this is at

Annexure-2 showing that during the above period he has worked for 495 days. He has further alleged that for the purpose of conferring temporary status the Telecom District Engineer, Koraput, had called for some wanting particulars about engagement of the applicant during the period from June 1987 to May 1995 in his letter dated 14.6.1996 at Annexure-3. He has further stated that he has a right to get regularised, but his services have not been regularised and services of two other persons, namely, Radhakanta Gouda and S.Satyanarayan, who are junior to him, have been regularised in orders at Annexures 4 and 5. In the context of the above, the applicant has come up with the prayers referred to earlier.

Sum.
4. In OA No. 496 of 1999 the applicant has made identical prayers as that of applicant in OA No.495 of 1999. In support of his case the applicant in OA No. 496 of 1999 has relied on the certificate dated 24.6.1996 given by Sub-Divisional Officer, Telegraphs, Rayagada, at Annexure-1 and the abstract of Muster Roll showing the engagement of the applicant from September 1986 to March 1987 for 175 days at Annexure-3, the letter of Telecom District Engineer,Koraput, calling for wanting particulars of engagement of the applicant from March 1987 to May 1996. The applicant has stated that he has been working as Casual Mazdoor from March 1986 till date. He has also stated that two other persons Radhakanta Gouda and S.Satyanarayana, who are junior to him, have been regularised in orders at Annexures 5 and 6 without considering his case. The applicant has filed representations but without any result and that is why he has come up in this petition.

5. Respondents have filed almost identical counters in both these cases. In the case of applicant in OA No.495 of 1999 the stand of the respondents is that on detailed scrutiny of Annexure-2, i.e., the working particulars of the applicant, it was found that he was engaged for 264 days in 1985, 126 days in 1986, and 105 days in 1987 with intermittent breaks. They have stated that the applicant left the work on his own after May 1987 and he has never been in continuous engagement till date. The applicant has never completed 240 days. As regards the certificate given by Sub-Divisional Officer, Telegraphs (Annexure-1) it is stated that Rayagada Telegraph Sub-Division was created only in July 1988. The Sub-Divisional Officer, Telegraphs, is not authorised to issue such certificate, and the certificate might have been issued as a good conduct certificate. There is no record available in the office in support of the certificate. The respondents have stated that for conferring temporary status and regularisation the Department of Telecommunication has introduced a Scheme and persons can be regularised only in terms of the scheme. They have indicated that the applicant's case is not covered by the scheme. As regards Radhakanta Gouda and S.Satyanarayana, it has been indicated that they are much senior to the applicant and have been rightly regularised. It is further stated that the applicant not having made these two persons as respondents, cannot claim that he should have been regularised along with them. It has also been urged that the petition is hopelessly barred by time.

6. In their counter to OA No.496 of 1999 the respondents have taken the stand that the applicant therein had worked only for 175 days during the period from September 1986 to March 1987 and thereafter left the engagement on his own. They have made the same averments about the certificate given by Sub-Divisional Officer, Telegraphs, regularisation of Radhakanta Gouda and S.Satyanarayana, and the eligibility of the applicant to get regularised under the scheme as in the earlier case. On the above grounds, they have opposed the prayer of the applicant.

7. In these two applications, the petitioners have claimed regularisation of their services on the ground that two other persons junior to them, Radhakanta Gouda and S.Satyanarayana have been regularised. Firstly the applicants have not made these two persons as respondents in this case. Moreover, under the departmental rules and instructions, a casual labourer cannot be straightaway regularised against a Group-D post. He has to be first conferred with temporary status and then under the scheme he has to be regularised. From the orders of regularisation of services of Radhakanta Gouda and S.Satyanarayana, enclosed by the applicants themselves, it is seen that both these persons were temporary status mazdoors whereas the applicants have not yet been conferred with temporary status. In view of this, the prayer of the applicants for getting regularised straightaway is held to be without any merit and is rejected.

S. S. Gouda

8. The second question which arises for consideration is whether they are entitled to be conferred with temporary status. The relevant

instructions have been enclosed by the respondents to their counter. In the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, it is provided that the scheme will come into force with effect from 1.10.1989 and temporary status will be conferred on all casual labourers who are currently employed and who have rendered a continuous service of one year, meaning 240 days of work, which is reduced to 206 days in case of offices observing five-day week. The forwarding letter specifically provides that no casual labourer who has been recruited after 30.3.1985 can be conferred with temporary status. In both these cases, the applicants by their own averment, have been engaged after 30.3.1985 and therefore, they are not covered under the scheme.

S.J.M.
9. The applicants have stated that they are continuing till date. The respondents, on the other hand, have stated that they have given up engagement on different dates as mentioned earlier long before coming into force of the scheme with effect from 1.10.1989. Therefore, on the relevant date, i.e., 1.10.1989, these two applicants were not in employment under the respondents and therefore, on this ground also their cases are not covered under the scheme for grant of temporary status. We also uphold the contention of the respondents with regard to regularisation of the services of Radhakanta Gouda and S.Satyanarayan.

10. In the result, therefore, we hold that the applicants are not entitled to the reliefs claimed by them. The Original Applications are accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
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15.1.2001
VICE-CHAIRMAN

January 15, 2001/AN/PS