

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 526 OF 1999

Cuttack, this the 16th March, 2001

Dukhishyam Sethi

....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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.3.2001

V
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 526 OF 1999
Cuttack, this the 16th day of March, 2001

CORAM:

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

.....

Dukhishyam Sethi,
son of Benudhar Sethi,
At/PO-Binayakpur, Via-Pipili
Dist.Puri Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through Chief Post Master General, Orissa Circle, Bhubaneswar.
2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, District-Khurda.
3. Sub-Divisional Inspector (Postal), Bhubaneswar South Division, Bhubaneswar, Dist.Khurda....Respondents

Advocate for respondents-Mr.A.K.Bose
Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application, the petitioner has prayed for a direction to the respondents to bring him to common panel for appointment to Group-D post and also for a direction to engage him as a full-time casual labourer.

2. The respondents have filed counter opposing the prayer of the applicant. For the purpose of considering the petition it is not necessary to go into too many facts of this case.

3. The petitioner's case is that he has been working as full time contingent paid worker in B.J.B.Nagar Sub-Post Office from 2.3.1994 to 2.6.1997 continuously with breaks only when he worked as substitute against leave vacancy of regular ED staff. While working as such he applied and was selected for the post of ED

Stamp Vendor in Udayan Marg S.O. and was appointed to that post in order dated 30.5.1997. The applicant has stated that this order at Annexure-1 specifically provided that appointment is on provisional basis and his services will be terminated if the regular incumbent who is under put-off duty is allowed to join his post. The applicant joined as ED Stamp Vendor in Udayan Marg S.O. on 2.6.1997 and his services were terminated in order dated 12.8.1999 (Annexure-2) when the permanent incumbent came back to service. The applicant has stated that in accordance with Director General, Posts' circular dated 4.8.1970 (Annexure-3) part-time contingent paid employees are to be treated as part-time casual labourer for the purpose of recruitment to Class IV (presently Group-D cadre). He has also relied on Director General, Posts' letter dated 20.10.1984 (Annexure-4) in which part-time casual workers have been ordered to be brought over to common panel for the purpose of recruitment to Group-D post. The applicant has further stated that fresh people are being allowed to work as casual workers disregarding his claim to work as such and in the context of the above he has come up in this petition with the prayers referred to earlier.

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4. The respondents in their counter have stated that the applicant was engaged as a contingent worker for sweeping and supplying water in BJB Nagar S.O. on a monthly allowance payable from contingencies and he worked as such from 2.4.1996 to 2.6.1997. The respondents have mentioned that the applicant was selected as ED Stamp Vendor in the put-off duty vacancy of regular incumbent one G.N. Biswal. They have stated that the applicant's

appointment as ED Stamp Vendor was only during the pit-off duty vacancy and on the reinstatement of G.N.Biswal, the applicant's service as ED Stamp Vendor has been terminated. The respondents have stated that the applicant was never appointed as casual worker and no order has ever been issued. He was engaged as contingent paid worker and his engagement is for one or two hours a day. They have stated that the applicant was never removed from his engagement as contingent paid worker but he left the job on his own. In the context of the above, the respondents have opposed the prayer of the applicant.

5. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioner has relied on the decision of the Tribunal in OA No. 483 of 1992, disposed of in order dated 6.8.1997 and the decision of the Hon'ble Supreme Court in the case of Secretary, Ministry of Communication v. Sukubai, reported in 1998 SCC (L&S) 119. These two decisions have also been perused.

6. The first point to be noted from the pleadings of the parties that the applicant himself has stated that he had worked as contingency paid worker in BJB Nagar S.O. since 2.3.1994 to 2.6.1997. The respondents have also admitted this. The only point of difference is that the applicant has stated that he had been working as full-time contingency paid worker whereas the respondents have stated that he was working as a part-time contingency paid worker and his engagement was for one to two hours per day. The applicant has relied on the circular dated 4.8.1970 of Director General, Posts (Annexure-3). The

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respondents have made no averment with regard to this circular. In this circular, the Director General, Posts, had ordered that part-time contingent menials who are paid for specified hours of work may be treated as part-time casual labourers for the purpose of recruitment to Class IV cadre. This circular was also taken note of in the Tribunal's decision dated 6.8.1997 in OA No.483 of 1992. In view of this, it is clear that during the period of his engagement as contingent paid worker he is to be treated as part-time casual labourer and it is ordered accordingly.

7. The second aspect of the matter is that in Director General, Posts' circular dated 20.10.1984 (Annexure-4) directions have been issued to bring part-time casual workers in the common panel for the purpose of recruitment to Group-D post. Paragraph (c) of this circular is quoted below:

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(c) Parttime casual labour and full time casual labour may be brought on to a common panel for the purpose of recruitment to Group-D posts. According to the present orders, full time casual labourers are eligible for recruitment to Group-D posts, if they have put in 240 days of service in each of the preceding two years and part-time workers are eligible if they have put in 240 days of service in each of the preceding four years. Subject to these orders, the service rendered by part-time casual workers may be divided by two and thereafter full time casual workers and part-time casual workers may be listed out in the order of their length of service."

From this it is clear that part-time casual workers are to be brought on to a common panel and accordingly, the applicant, had he been still engaged as a part-time casual worker, is entitled to have his name included in the common panel. But the applicant is not working either as ED Stamp Vendor or as contingent paid worker after

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12.8.1999. The respondents have stated that the applicant left the job of contingent paid worker on his sweet will. This is not correct. Admittedly, he applied and was selected for the post of ED Stamp Vendor in Udyan Marg S.O. and worked there in that post in pursuance of the order dated 30.5.1997 till he was relieved on 12.8.1999. In view of this, it cannot be held that the applicant left his engagement as contingent paid worker in BJB Nagar S.O. on his own. He left that engagement on being selected for a regular ED job. The instructions are very clear that a contingent paid worker or a casual worker can be disengaged when there is no need for his engagement. But such disengaged casual workers will have a right to be considered for re-engagement and they have to be given preference over fresh faces. The applicant has stated and this has not been denied by the respondents that outsiders are being engaged as contingent paid workers and part-time casual labourers by the respondents. In case such contingent paid workers and part-time casual workers are being engaged in BJB Nagar SO where the applicant was earlier working as part-time contingent paid worker, then for the purpose of engagement of such contingent paid worker, the applicant will have to be given preference over fresh faces or over those whose initial engagement was after the date of initial engagement of the applicant as contingent paid worker. Respondents nos. 2 and 3 are accordingly directed to consider the case of the applicant as a retrenched contingent paid worker or part-time casual worker and give him preference over fresh faces. T

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8. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in Sukubai's case (supra). In that case the Hon'ble Supreme Court have overruled the Full Bench decision of the Tribunal holding that part-time casual workers can be conferred with temporary status and will be entitled for regularisation. In the light of the law as laid down by the Hon'ble Supreme Court in the above case, it is held that the applicant is not entitled to be conferred with temporary status which in any case he has not asked for and regularisation.

9. The circular dated 6.6.1998 of the Director General, Posts, the gist of which has been printed at page 98 of Swamy's Compilation of Service Rules for Postal ED Staff (7th Edition) lays down an order of preference amongst various segments of eligible employees for recruitment to Group-D post. In this order of preference part-time casual labourers get the lowest position. The applicant has not claimed regularisation in Group-D post. He has only prayed that his name should be included in the common panel and we have already ordered to include his name in the common panel. In this circular the Director General, Posts, has noted that as number of vacancies in Group-D post is limited and the number of eligible ED employees, who occupy a higher order of preference is large, casual labourers and part-time casual labourers hardly get any chance of being absorbed in Group-D post. In view of this, in this circular it has been ordered that casual labourers, whether full time or part-time, who are willing to be appointed to ED posts, should be given preference in the matter of recruitment to

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ED posts provided they fulfil the eligibility criteria and have put in minimum service of one year. In the light of this circular, the respondents are directed that in case the petitioner applies for an ED post and in case he has the eligibility for the post, his case should be considered and he should be given preference in the light of the circular dated 6.6.1998 of Director General, Posts.

10. In the result, the Original Application is disposed of in terms of the observations and directions as above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

16.3.2001

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