

8
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS. 592 OF 99 & 614 OF 99
CUTTACK THIS THE 22nd DAY OF June 2001

In O.A. 592 of 99

Dibakar Das & Others Applicants

- V e r s u s -

Union of India & Others Respondents.

In O.A. 614 of 99

Subash Chandra Dash Applicant.

- V e r s u s -

Union of India & 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 Central Administrative Tribunal or not? No

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

22.6.01
(G.NARASIMHAM)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS. 592/99 OF 614/99

CUTTACK THIS THE 22nd DAY OF June 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

In O.A.592/99

1. Shri Dibakar Das,
aged about 34 years,
S/o. Bansidhar Das,
of Godasahi, Kanas,
Puri.
2. Mitra Bhanu Prusty,
aged about 32 years,
S/o. Harihar Prusty,
of Nuapatna,
Town/Dist.Cuttack.
Orissa.
3. Golekha Patra,
aged about 34 years,
S/o-Panchu Patra,
Vill-Sanagorada,
Keshar Pur,
Dist-Nayagarh.

By the Advocates

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Applicants.
M/s A.K.Misra
J.Sengupta.
D.K.Panda
P.R.J.Dash
G.Sinha.

- V e r s u s -

1. Union of India represented through
its Secretary to Government of India
Department of Posts, Dak Bhawan,
New Delhi.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar.
3. Manager,
Postal Printing Press, Gadagopinath Prasad,
Rasulgarh, Bhubaneswar.
4. Akshya Kumar Mohapatra.

- 10
5. Basudev Sahoo
 6. Narayan Pradhan,
 7. Bikram Kumar Sahoo

(Sl Nos. 4 to 7, notices may be sent through
C/o.MANAGER, Postal Printing Press, Gadagopinath
Prasad, Rasulgarh, Bhubaneswar, Dist-Khurda).

.... Respondents.

By the Advocates

Mr. A.K.Bose
A.S.C

In O.A.614 of 99

1. Subash Chandra Dash,
aged about 28 years,
son of Chandramani Dash,
a permanent resident of
Balarampur-Talabala
District-Jajpur.

.... Applicant.

By the Advocates

M/s A.K.Misra
B.B.Acharya
J.Sengupta
D.K.Panda
P.R.J.Dash
G.Sinha.

- Versus -

1. Union of India, represented through
its Secretary to Government of India,
Department of Posts, D K Bhawan,
New Delhi.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar.
3. Manager,
Postal Printing Press,
Gadagopinath Prasad,
Rasulgarh, Bhubaneswar.
4. Akshya Kumar Mohapatra
5. Basudev Sahoo
6. Narayan Pradhan
7. Bikram Kumar Sahoo.

(Sl.Nos. 4 to 7, notices may be sent through
C/o. Manager, Postal Printing Press,
Gadagopinath Prasad, Rasulgarh, Bhubaneswar,
Dist.Khurda)

..... Respondents.

By the Advocates

Mr.A.K.Bose
Mr.C.A.R.Dora
J.K.Lenka
S.F.Misra
G.Ramidora

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): This order will dispose of these two O.As wherein prayers are identical and respondents are common.

2. The applicants were in casual engagement as security guards on daily wage basis under Respondent No.3 from 1.7.92 to 14.1.93. In response to an advertisement issued by Respondent No.3 in news paper dtd.7.8.93 to fill up eight posts of labourers, one Chawkidar and one Peon, the applicants applied for the same. There was no progress in the selection process because ^{more} employees under Respondent No.3 through ^{that} Union filed O.A.13/94 before this Bench and obtained stay order till 1.2.94. Apparently the Respondents were under mistaken impression as to continuance of the stay order. They filed M.A.78/95 for vacation of the stay, By order dtd.6.2.95, this Bench clarified that beyond 1.2.94 order of stay did not continue. Thereafter the applicants filed O.A.620/95 for direction to fill up the Group 'D' posts advertised after considering their ^(C.A.S.) and further direction to allow them to continue on casual basis till the posts are regularised. During the pendency of this O.A. Respondent No.3 made another newspaper advertisement on 8.5.96 this time to fill up ten posts in group 'D' i.e, seven posts of labourers, one post of Sweeper and one post of Chowkidar. While disposing of O.A.620/95 on 29.5.98, this Bench directed the Respondents to consider the applicants and other who might have applied in response to advertisement dtd.7.8.93, ^{person} who were within the age limit prescribed in that advertisement for filling up

the posts advertised on 8.5.96. By order dtd.15.10.99 (Annexure-2) Respondent No.3 selected Respondents 4 to 7 and ~~there~~ other for the posts of Labourer on the basis of the recommendation of the Selection Committee. These facts are not in controversy.

3. In their O.A.s praying for quashing of the select list dtd.15.10.99 so far, ^{on} selecting ^{of} to Respondents 4 to 7 and for direction to Respondent No.3 to appoint the applicants in their places, the grievance of the applicants is that in terms of G.I. Department of Postal dtd.17.5.91 (Annexure-3) in recruitment of Group 'D' posts casual labourer rank in priority over direct recruits and that in terms of D.G. Posts Circular dtd.12.4.91 (Annexure-4) and the scheme drawn up there under no recruitment from open market for group 'D' posts except compassionate appointments should have been ^{made} done till Casual Labourers with the requisite qualifications are available to fill up the posts in question. Further on an application made by one of the applicants before the Regional Labour Commission and in response to notice issued by such Commission, Respondent No.3 filed written statement where in at para 7 he was categorically mentioned that recruitment for filling up of some posts of Postal Printing Press may be held after lifting of ban by the Chief Post-Master General, Orissa Circle and the applicant, may be given preference on the age and experience.

4. Despite due notice Private Respondents had not filed the counter. But in O.A.614/99 Respondent 5 to 7 entered appearance. Respondents 1 to 3 in counter maintain that

13

as per the direction of this Bench age relaxation was given to the applicants to appear for the selection along with others. Among the Casual Labour, one Bijay Kumar Sahoo alone was found suitable. The applicants were found unsuitable and hence not selected. Moreover they had not completed 240 days as Casual Labourers and as such cannot be empanelled for casual status. They were engaged time to time as Casual Guards to watch the quarters of GGP Postal Colony before the quarters were handed over to the allottees. This arrangement being very temporary in nature, they were disengaged after the quarters were handed over to the allottees. Further applicant Dibakar Das raised disputes before the Industrial Tribunal in I.D. Case 114/99 for the some relief.

5. In the rejoinder while reiterating their stand the applicants introduced a new factual aspect stating that as per oral order of Respondent No.3 they worked as part time Casual Labourers from February 93 to January 93 in the Store Section of the press.

6. As an interim measure, on the prayer of the applicants, by order dated.1.12.99 it was made clear that selection of Respondents No.4 to 7 is subject to the final out come of there O.A.

7. We have heard Sri A.K.Mishra, learned counsel for the applicants and Shri A.K.Bose, learned Senior Standing Counsel for Respondents 1 to 3, and Sri G.A.R.Dora Learned Counsel appearing in O.A.614/99 for Respondents 5 to 7. Also ^{perusal} ~~persual~~ the record of O.A.620/95.

8. Admittedly, applicants were in Casual engagement from

1.7.92 to 14.1.93. Even if they were in engagement on all the days inclusive of Sundays and holidays during this $6\frac{1}{2}$ month period, the total number of days of engagement would be only 198 days. Hence by this engagement, they having not completed required 240 days or 206 days (in case of five working days in a week) of eligible service as mentioned in clause III of the G.I. Department of Posts dated.17.5.89 (Annexure-3 of both the O.As), cannot claim priority in selection over direct candidates. Similarly they cannot have the benefit of conferment of temporary status and cannot claim that ^{even} they are appointed in regular Group 'D' posts no recruitment can take place as provided in the D.G's Circular dated 12.4.91 (Annexure-4). Moreover this Circular had been issued only in favour of the Casual Labourers who were in engagement by them and also completed 240 days or 206 days of engagement and not in respect of Casual Labourers to be engaged in future. It is clear from the expression "Currently employed" occurring in para 2.

9. It is true that in the rejoinder the applicants took the stand that they were also in engagement on Casual basis from February 1993 to June 1993. There is no explanation as to why they had not averred so in the Original Application filed under Section 19 of the A.T.Act, though they could have very well ^{used} ~~used~~ so. Even they had not taken this stand in the earlier O.A.620/95. This is an after thought. They introduced this story of oral engagements from February 93 to June 93 for the first time in the rejoinder after being aware of the weak ^{point} ~~spot~~ in their case as pointed out in the

counter. An applicant gets opportunity to file rejoinder under C.A.T. Rules of practice, 1993 to clarify some points urged in the counter of the respondents and certainly not for introducing altogether new materials which could have been urged in the Original Application. Introduction of altogether new materials is permissible through amendment of the Original Application if the same are essential to arrive at just decision. Under the Rules of practice, though there is right for an applicant to file rejoinder, no such right exists for respondent to file reply to the rejoinder. This being so new set of facts for which there is neither any hint or indication in Original Application should not be taken note of if introduced in the rejoinder. We are therefore not inclined to place reliance on this stand of the applicant.

10. In the earlier O.A. also the applicants prayed to be ^{appointed} approved to the posts advertised. This was not acceded to in para 7 of the judgment (Annexure-1) where in it was clarified that ^{these} cases should be considered along with other candidates applying for the posts. Selection Committee considered them and found them not suitable. By this process direction of this Bench in O.A. 620/95 was in no way flouted. We do not see any infirmity in non-selection of the applicants.

11. Dispute before the Industrial Tribunal is in regard to non reinstatement of applicant Dibakar Das apparently as a Casual Labourer (Annexure R/1) which is not relevant to decide the issue before us as to ^{his} why entitlement for appointment to one of the Group 'D' posts advertised.

12. In the result, we do not see any merit in these O.A.
which are dismissed. No costs.

Sd/- Somnath Som.
Vice-Chairman.

Sd/. G. Narasimham
Member (J).

STAMPED BY (J)

8-01