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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

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

In O.A.592 of 99

Dibakar Das & Others ..... Applicants

- Versus -

Union of India & Others ..... Respondents.

In O.A.614 of 99

Subash Chandra Dash ..... Applicant.

- Versus -

Union of India & Others ..... Respondents.

For Instructions

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not?

*S. N. S.*  
(SOMNATH SOM)  
VICE-CHAIRMAN

5/22/01  
(G. NARASIMHAM)  
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS. 592/99 OF 614/99  
CUTTACK THIS THE 22<sup>nd</sup> 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

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. Rose  
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,  
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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. Rose  
Mr. C.A.R. Dora  
J.K. Lenka  
S.P. Misra  
G. Ramidora

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): This order will dispose of these two O.A.s 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 <sup>case</sup> 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 Chawkidar. 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, 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 the 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.614 praying for quashing of the select list  
dt.15.10.99 so far selecting 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  
dt.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 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 has 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 outcome of these O.A.s.

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 <sup>present</sup> ~~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 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~~ 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 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 ~~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 ~~this~~ 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 ~~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/- Sonnath Som.  
Vice-Chairman.

Sd/- G.Narasimhan  
Member (J).

MEMBER (J)

b.o.

CRB