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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 358 OF 2000.
Cuttack, this the 22nd day of September, 2000.

Govinda Behera. Applicant.

Vrs.

Union of India & Ors. 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)
VICE CHAIRMAN
22.9.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 358 OF 2000.
Cuttack, this the 22nd day of September, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

Govinda Behera, S/o. Fagu Behera,
At. Alisha Bazar, PO: Chandinichowk,
Dist. Cuttack.

... Applicant.

By legal practitioner: Mr. D. P. Dhalsamant, Advocate.

-Versus-

1. Union of India represented through
Development Commissioner, Department of
Industrial Development, Ministry of Industry,
Nirman Bhawan, 7th floor, New Delhi-11.
2. Director, Small Industries Service Institute,
Vikash Sadan, College Square,
At/PO/Dist. Cuttack-3.

... Respondents.

By legal practitioner: Mr. A. K. Bose, Senior Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents for conferment of temporary status on him with effect from the date the applicant completed 240 days of continuous service and ^{also} to regularise the services of the applicant in the post of Sweeper alongwith all consequential service benefits. By way of interim relief, applicant has prayed that the post of Sweeper at Rourkela Branch Office, shall not be filled up.

2. Respondents have filed show cause as also the counter opposing the interim prayer of the applicant. We have heard Mr. D. P. Dhalsamant, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records. Learned counsel for the Applicant has filed written note of submission with copy to other side. He has also submitted a copy of the decision of the Ahmedabad Bench in the case of V. K. Solanki vrs. Union of India and others printed in Swamy News, June, 2000, at page 77, Sl. 105. These have also been taken note of.

3. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. The undisputed position is that the applicant has been engaged as Sweeper since September, 1989, initially at the daily wage of Rs. 20/- per day which has also been increased to Rs. 30/- per day in the office of the Director, Small Industries Service Institute (in short SISI), Vikash Sadan, College Square, Cuttack. Applicant has stated that as he has completed 240 days of service as casual

labour, he is entitled to the reliefs claimed for.

4. For conferment of temporary status on casual labourers, Departmental of Personnel have circulated a scheme, terms of which has also subsequently been clarified. Respondents in their counter have pointed out that the applicant has been engaged as a Sweeper with limited hours of work from 1989 but he was not sponsored through employment exchange and he has not been engaged through any process of selection. Hon'ble Supreme Court in the case of Passport Officer, Trivendrum vrs. Venugopal, decided on 21.7.1997 had held that casual labourers, who have been engaged otherwise than by way of sponsoring through employment exchange, can not be conferred with temporary status. In that case, casual labourers were conferred temporary status but in consideration of the subsequent clarification, temporary status order was cancelled. The matter coming before the Hon'ble Supreme Court, they have held that if the scheme of conferring of temporary status requires that such casual labourers can only be conferred ^{with temporary status} who have been sponsored by the employment exchange, then no fault can be found with such instructions/circulars. As in this case Respondents have stated that applicant at the time of his initial engagement, had not been sponsored through employment exchange and this assertion has not been denied by the applicant by filing any rejoinder, it must be held that in terms of the above decision of the Hon'ble Supreme Court and in terms of the scheme for conferment of temporary status, the applicant is not entitled to be conferred with temporary status. This prayer is accordingly rejected. Second prayer of the applicant is for regularisation. According to the temporary status scheme, the two out of every three vacancies arising in Gr.D posts has to be filled up by casual labourers who have been conferred with

temporary status and the third one can be filled up by way of direct recruitment. In the instant case, applicant has stated that one vacancy has arisen in the post of Sweeper in the Rourkela Branch Office on the death of the existing incumbent one A Mahar. Applicant has represented for regularisation against that post and the matter was referred to the Development Commissioner, Department of Industrial Development, Ministry of Industry who has in his letter dated 14.6.2000, at Annexure-2 directed Respondent No. 2 to consider the representation of the applicant in accordance with rules. Applicant has stated that inspite of such a direction his case has not been considered for regularisation. On the contrary he has been told that after the death of the original incumbent in May, 2000 which has given rise to the vacancy, the son of the original incumbent has applied for compassionate appointment in July, 2000 and the applicant's case for appointment against the post of Sweeper will be considered only after the case of previous incumbent's son is disposed of. It is submitted by learned counsel for the petitioner that the scheme for compassionate appointment provides for giving appointment to a family member of the deceased Govt. employee who has passed away in harness provided the family is in indigent condition. The scheme does not provide that by way of compassionate appointment a member of the family should be given an appointment to the very same post which was held by the deceased Govt. servant. It is further submitted by learned counsel for the applicant that in case the deceased sweeper's son is adjudged to be appointed under compassionate ground then he can be given compassionate appointment against any other post and the case of the applicant should be considered for appointment against the post of Sweeper as he has been working as such on daily wage basis from 1989. We have considered the above submissions

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of the learned counsel for both sides carefully. This is a small organisation and it is submitted by learned counsel for the applicant that only one post has fallen vacant. In consideration of this, we dispose of the Original Application with a direction to the Respondent No. 2 that a final view in the case of compassionate appointment should be taken within a period of sixty days from the date of receipt of a copy of this order and in case the son of the deceased employee is not considered for compassionate appointment against that post of Sweeper, then the candidature of the applicant shall be considered strictly in accordance with Rules and appropriate orders be passed within a period of 90 (ninety) days thereafter.

5. With the above observations and directions, the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.