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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 401 & 402 OF 2000
Cuttack, this the 3rd day of August, 2001

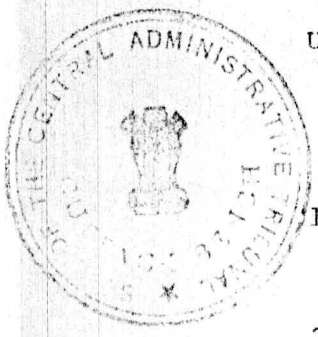
B.B.Naik (OA 401/2000)
Netrananda Naik (OA 402 of 2000)....Applicants.

Vrs.

Union of India and others...

Respondents

FOR INSTRUCTIONS

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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.NARASIMHAJI)
MEMBER (JUDICIAL)

S. N. S. V. S.
VICE-CHAIRMAN
3.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 401 & 402 OF 2000
Cuttack, this the 3rd day of August, 2001

CORAM:

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

In OA 401/2000

Bipin Bihari Naik,
aged about 40 years,
s/o Bansidhar Naik
Vill-Butupali, P.O-Kirmira,
Dist.Jharsuguda, Ex-Sweeper-Waterman-Cum-Farash in the
O/O District Telegraph Office,
At/PO/Dist.Jharsuguda Applicant

In OA 402/2000

Netrananda Naik,
aged about 39 years,
s/olate Bhikari Naik
Vill-Kirmira, P.O-Kirmira,
District-Jharsuguda, at present
working as Night Watchman,
O/o Telegraph Officer, Jharsuguda,
At/PO/Dist.JharsugudaApplicant

Advocates for applicants - M/s B.B.Acharya
J.Sengupta
P.R.J.Dash
D.K.Panda
G.Sinha

Vrs.

In Both the cases:

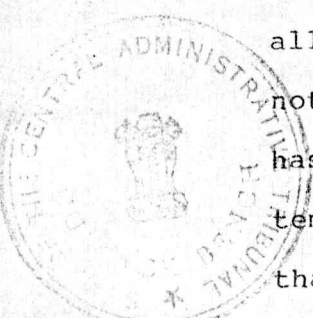
1. Union of India, represented through its Secretary,
Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunication, Orissa,
At/PO-Bhubaneswar, District-Khurda.
3. General Manager, Telecom District, Sambalpur,
At/PO/Dist.Sambalpur.
4. Sub-Divisional Engineer E/T, Sambalpur, At/PO/Dist.
Sambalpur.
5. S.D.O., Phone, Jharsuguda, At/PO/Dist.Jharsuguda.
6. Telecom Master Operative (I/C, Jharsuguda,
At/PO/Dist.Jharsuguda.....Respondents

Advocate for respondents - Mr.S.B.Jena
ACGSC
.....

SO'NATH SO', VICE-CHAIRMAN

These two O.As. have been heard separately. But as the applicants in both these applications are similarly situated and they have come up with similar grievance and same prayers and the respondents have filed similar counters and the points for adjudication are the same, one order will govern both these cases. However, facts of both the cases are set out separately.

2. In OA No.401 of 2000 the applicant has prayed for a direction to the respondents to regularise his service as Farash-Sweeper-Waterman and to give him all financial and service benefits from the date he has not been allowed to perform his duties. Alternatively, he has prayed for a direction to the respondents to confer temporary status on him. The case of the applicant is that he was initially appointed as Farash-Sweeper-Waterman as a contract labour from 2.1.1995 in the order dated 30.12.1994 (Annexure-1) in which it was mentioned that consequent upon engagement of contract labour Netrananda Naik (applicant in the O.A. 402) against the sanctioned post of Night Watchman, the petitioner is engaged as Farash-Sweeper-Waterman till necessary arrangement is made by S.T.I. Sambalpur Division. The applicant has stated that he has been performing his duties from 2.1.1995 and getting wages. From 12.5.2000 he was not allowed to perform his duties on verbal orders of Telegraph Master (Operative) I/C, Jharsuguda. The applicant has further stated that according to the terms of his engagement he has worked as a casual labour and got his wages as per receipts at Annexure-2 series. Even though his counterparts in



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regular establishment are getting regular salary, he was only paid Rs.1000/- per month. it is further stated that the Department of Personnel & Training's circular dated 16.7.1990, as clarified in circular dated 22.10.1990 (Annexure-3) provides that a casual labour shall be considered for regularisation if he has completed 240 days in each of the two immediately preceding calendar years. This period is reduced to 206 days in offices observing five-day week. It is stated that Telecom Commission in their order dated 12.2.1999 (Annexure-4) sanctioned posts of regular Mazdoors for regularisation of temporary status casual Mazdoors. In Eastern Telecom Project 318 posts were created. As against the 318 posts 38 casual labourers working in Microwave Project, Bhubaneswar, were granted temporary status in order dated 21.9.1999 at Annexure-5. The applicant has stated that from the list of casual labourers who have been so granted temporary status it appears that Chakradhar Behera shown against serial no.9 in the enclosure to Annexure-5 was engaged in June 1997, much after the applicant. In view of this, the applicant has stated that he should have been at least conferred with temporary status and he has been subjected to discriminatory treatment. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. It is not necessary to refer to the averments made by the respondents in their counter because these will be referred to while considering the submissions made by the learned counsel of both sides.

4. No rejoinder has been filed.

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10 5. Applicant in OA No. 402 of 2000 has made prayer similar to the prayer in the earlier OA. His case is that he was initially appointed as a contract labour on 31.3.1992 as Sweeper-Waterman-Farash. This order is at Annexure-1. In order dated 30.12.1994 he was engaged as contract labour against the sanctioned post of Night Watchman and in his place the applicant in OA No.401 of 2000 was engaged as Farash-Sweeper-Waterman. The applicant got his wages from 30.3.1992 vide receipts at Annexure-3 series. The applicant has stated that while regular incumbents were getting normal scale of pay he was only given a consolidated amount of Rs.1000/- per month. The applicant has stated that he was continued as contract labour till 12.5.2000. He has mentioned that the departmental instructions provide conferring of temporary status for persons who have completed 240 days (206 in offices holding five-day week) in two immediately preceding calendar years. The applicant has stated that he is thus entitled to be conferred with temporary status. He has also made averment about creation of 318 posts of casual labourers and conferring of temporary status on 38 labourers under Microwave Project. He has stated that many amongst those 38 have been engaged much after the applicant. The applicant has further stated that for non-conferment of temporary status, he has filed representations but without any result. In the context of the above he has come up in this petition with the prayer referred to earlier.

Sd/-

6. It is not necessary to refer to the averments made by the respondents in their counter because these will be taken into account while considering the submissions made by the learned counsel

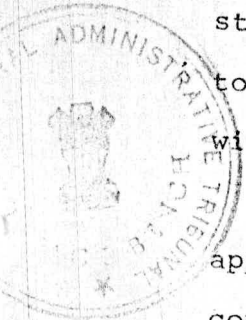
of both sides.

7. No rejoinder has been filed by the applicant in OA No.402 of 2000.

8. We have heard Shri B.B.Acharya, the learned counsel for the petitioners and Shri S.B.jena, the learned Additional Standing Counsel for the respondents separately on these two O.As.

9 The first prayer of the applicants is for a direction to the respondents to regularise them in the post of Farash-Sweeper-Waterman and Night Watchman respectively. Admittedly, the applicants have not been conferred with temporary status and only casual labourers with temporary status can be considered for regularisation. A casual labourer cannot be regularised straightaway. In view of this, the prayer for a direction to the respondents for their regularisation is held to be without any merit and is rejected.

10. The alternative prayer of the applicants is for a direction to the respondents to confer on them the temporary status. The respondents in their counter have stated that the applicants have not worked as casual labourers. They have themselves mentioned in the O.A. that they were engaged as contract labour. Secondly, it has been submitted that engagement of casual labourer has been completely banned with effect from 30.3.1985 and the guidelines dated 7.11.1989 of the Department of Telecommunication, which is at Annexure-R/3, provide that no casual labourer, who has been recruited after 30.3.1985, can be granted temporary status without specific approval of the Telecom Commission. The respondents have pointed out that as these two applicants have been engaged as contract



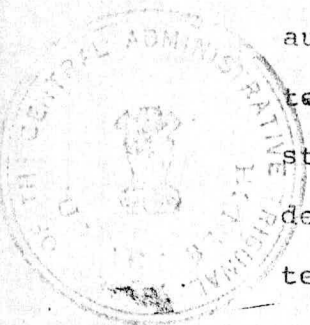
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labour, they are not entitled to be conferred with temporary status. It is further stated that they were engaged for specific work and no appointment order was issued to them as casual labourer. It is also stated that they were not paid Rs.1000/- per month. They were paid daily wages as the receipts enclosed by the applicants themselves would show. The respondents have also challenged the veracity of the orders at Annexure-1 in both the O.As. They have stated that from Annexure-1 of both the O.As. it is seen that these orders have been issued from File Nos. ST-16/91-92 and ST-16/94-95. But as per record, no such files were maintained and the person who has purportedly issued these orders is also not authorised to issue such orders. As regards granting of temporary status to the 38 casual labourers, it has been stated that the Telecom Commission as a one time measure delegated powers to the Circle Head for conferring temporary status to those casual labourers who have completed 10 years of service as on 31.3.1997. The applicants had not completed 10 years of service. From the circulars enclosed by the respondents along with their counters, particularly the circular at Annexure-R/3, it is clear that in the circular dated 30.3.1985 at Annexure-R/1 fresh engagement of casual labourer was completely stopped. The circular dated 7.11.1989 at Annexure-R/3 also provides that casual labourers, who have been engaged prior to 30.3.1985 and have fulfilled the eligibility for conferment of temporary status and are currently under engagement can be considered for conferment of temporary status. Both the applicants have been engaged as contract labour much



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after 30.3.1985 and therefore, they are not entitled to be considered for conferment of temporary status. As regards conferment of temporary status on the 38 persons mentioned in the enclosure to Annexure-6, from Annexure-6 itself it is clear that this has been done in respect of a different project and the applicants' case does not get any support from this.

11. In consideration of all the above, we hold that the O.As. are without any merit and the same are rejected. No costs.

Sd/- G. Narasimham
Member (J).

Sd/- Somnath Som
Vice-Chairman

VICE-CHAIRMAN

CAT/Cutt.B/3-4 August, 2001/AN/PS