

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

**O.A.NOS.470 & 471 OF 2000
Cuttack, this the 1st day of January, 2002**

CORAM:

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI N.PRUSTY, MEMBER(JUDICIAL)**

In OA No.470/2000

Dhabaleswar Naik, aged about 33 years, son of Gajapati Naik, Village Kundarsingha, PO& PS-Kolabira, District-Jharsuguda, Last employed in the office of the Sub-Divisional Officer, Telegraphs, Jharsuguda (Rourkela Telecom District)

In OA No.471 of 2000

Sri Dara Singh Kishan, aged about 32 years, son of Lalu Kishan, At-Muradipali, P.O-Bhatlaida, P.S-Laikera, Dist.Sambalpur.

....

.....Applicants

**Advocates for applicants - M/s S.J.Pradhan
S.N.Satpathy**

Vrs.

1. Chief General Manager, Telecom, Department of Telecommunication, Orissa Circle, Bhubaneswar-1, Dist.Khurda.

2. Telecom District Engineer, Rourkela-2.

3. Union of India, represented through the Secretary, Ministry of Communications, Department of Telecommunication, Sanchar Bhavan, New Delhi.

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....Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two applications have been heard separately. But as the applicants are similarly situated and have come up with the same prayer and the respondents have filed almost identical counters and the points for decision are same, one order will govern these cases.

Facts of the two cases are, however, set out separately.

2. In OA No.470 of 2000 the applicant has prayed for a direction to the respondents to engage him as Casual Mazdoor and to continue him as such till his service is regularised. His case is that he was employed as Casual Mazdoor on 18.11.1985 and worked as such upto 27.3.1987. It is stated that regularisation of his service was taken up for consideration and a seniority list was prepared, which is at Annexure-2 where his name appears against serial no.3. The applicant has stated that his case for regularisation is pending consideration. It is submitted that even though he has worked as casual worker and has been disengaged he has not been re-engaged whereas the respondents are continuing to engage casual labourers and towards wage of such casual labourers in the first three months of 1994 substantial sum, details of which have been mentioned, has been spent by the respondents. It is further stated that every time a casual worker is engaged and the case of the applicant is ignored cause of action persists and in the context of that the applicant has come up with the prayer referred to earlier.

3. In OA No. 471 of 2000 the applicant has made the similar prayer for re-engagement and continuation till regularisation. The applicant's case is that he was engaged as casual mazdoor on 16.10.1985 and worked as such upto 30.4.1987. It is stated that respondent no.1 has considered the case of the applicant for absorption in regular establishment as he is a senior Casual Mazdoor, but

no final decision has been taken. It is further stated that while the applicant has not been re-engaged, the respondents are engaging casual workers every month ignoring the case of the applicant. The applicant has mentioned in paragraph 4.5 the money spent towards wages of casual workers in the first three months of 1994. It is further stated that the application is within time on the same grounds urged by the petitioner in the earlier OA.

4. The respondents in their counters have stated that with effect from 30.3.1985 engagement of casual labourers has been banned. It is further stated that the period of engagement given by these two applicants is not correct because during this period they have been engaged with intermittent breaks. They have also come up after passage of more than thirteen years for re-engagement. It is stated that a large number of casual workers who have been engaged prior to 30.3.1985 and are currently working are awaiting regularisation. In view of this, the cases of the applicants cannot be considered for granting of temporary status or re-engagement. On the above grounds, the respondents have opposed the prayer of the applicants.

5. No rejoinder has been filed.

6. We have heard Shri S.S.Mohanty, the learned counsel for the petitioners and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents.

7. It has been submitted by the learned counsel for the petitioners that similar matter has been disposed of by the Tribunal in OA Nos. 653, 654 and 482 of 1994. We have called for the records of these three cases and have perused the same. The earlier three O.A.s. were disposed of in common order dated 10.8.2000. The prayers

made by the applicants are being considered in the context of the above pleadings of the parties as also the decision of the Tribunal, dated 10.8.2000, in the three earlier cases. Law is well settled that a person can be regularised only against a vacant post and so far as casual workers are concerned, only such casual workers who have been granted temporary status can be regularised against regular Group-D posts. The applicants have worked as casual workers from 1985 to 1987. They are currently not under engagement nor have they been granted temporary status. In view of this, the question of regularising them against vacant post does not arise. This prayer of the applicants is held to be without any merit and is rejected.

8. The other aspect of the prayer of the applicants is for re-engagement. The respondents have stated that with effect from 30.3.1985 the engagement of casual workers has been banned. Notwithstanding this these two applicants have been engaged as casual workers intermittently from 1985 to 1987 according to the averments made by the respondents themselves in their counters. In other words, they have been engaged as casual workers after 30.3.1985 in violation of the ban order. Admittedly after 1987 they have not been re-engaged. But as disengaged casual workers they have a right to be considered for re-engagement on priority basis against fresh hands. In consideration of this, we dispose of the prayer of the applicants for re-engagement with a direction to the respondents that in case in the offices where these two applicants were working at the time of their disengagement there is need for engagement of any casual worker, then the applicants must be given priority over fresh hands.

9. In the earlier batch of O.As. the learned counsel for the petitioners had filed a set of documents after the hearing was over. Even though those documents were not taken into consideration in the earlier cases because the respondents did not have any opportunity to re-act to these documents, the Tribunal noted in their order dated 10.8.2000 that in letter dated 7.1.1993 it has been mentioned that according to Department of Telecommunication's letter dated 8.4.1991 casual workers engaged before 7.6.1988 and who are in service as on 8.4.1991 may be considered for regular appointment to Group-D post. This letter dated 8.4.1991 had not been filed in the earlier cases nor is it before us in the present cases. In view of this, it is not possible to know the exact contents of the letter dated 8.4.1991. We, however, make it clear that ^{if} the applicants are entitled to re-engagement in terms of the letter dated 8.4.1991 and subsequent regular appointment, the respondents will consider these two applicants for the above benefits.

10. With the above observation and direction, both the O.As. are disposed of. No costs.

N. PRUSTY
MEMBER (J)

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SOMNATH SOM
VICE-CHAIRMAN