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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.120 OF 2001

Cuttack, this the 1st day of January, 2002

Bharat Chandra Nayak and othersApplicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*

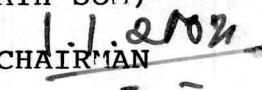
2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? *No.*


(N. PRUSTY)

MEMBER (JUDICIAL)


(SOMNATH SONI)

VICE-CHAIRMAN


1.1.2002

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....

1. Bharat Chandra Nayak, aged about 37 years, son of Sarbeswar Nayak, At-Qr.No./6, A.G.Colony, Unit-IV, Bhubaneswar, District-Khurda.
2. Ajaya Kumar Sarangi, aged about 35 years, son of Baidyanath Sarangi, At-L.C.Q.R.No.139pl4, Sailashree Vihar, Chandrasekharpur, Bhubaneswar, District-Khurda.
3. Braja Kishore Jena, aged about 31 years, son of Ananta Jena, At-New A.G.Colony, Type-III, 346,C/o G.C.Panda, At-Nayapalli, Bhubaneswar, District-Khurda.
4. Jaya Krushna Mishra, aged about 29 years, son of late Padmanava Mishra, At-Qr.No.G/6, A.G.Colony, Unit-IV, Bhubaneswar, District-Khurda.
5. P.Simanchala Rao, aged about 28 years, son of P.Nandesh Rao, At-Qr.No.B/9, Unit-1, Bhubaneswar, District-Khurda.
6. Debendra Jena, aged about 23 years, son of Bhaskar Jena, At-Qr.No.H/92, A.G.Colony, Unit-IV, Bhubaneswar, Dist.Khurda.
7. Prabhakar Hota, aged about 27 years, son of Udayanath Hota, At-Qr.No.H/14, C/o Gananath Pati, Old A.G.Colony, Unit-IV, Bhubaneswar, Dist.Khurda.
8. Sujit Kumar Dash, aged about 26 years, son of Subash Chandra Dash, At-Qr.No.H/14.
C/o Gananath Pati, Old A.G.Colony, Unit-IV, Bhubaneswar, District-Khurda.....Applicants

Advocates for applicants - M/s P.K.Nayak-1
P.Mohanty
P.K.Sahoo

Vrs.

1. Union of India, represented through Secretary, Department of Finance, At/PO-New Delhi, New Delhi.
2. Accountant General (Audit-1), Orissa, At/PO-Bhubaneswar, Dist.Khurda.
3. Senior Deputy Accountant General(Administration), in the office of Accountant General, Orissa, At/PO-Bhubaneswar, District-Khurda.

4. Branch Officer, Record-I(Audit), In the office of the Accountant General,Orissa, At/PO-Bhubaneswar, District-Khurda.
5. Union of India, represented by Comptroller & Auditor General of India, At-10 Bahadur Saha Jafar Marg, New Delhi.
6. Accountant General (Audit 2), Orissa, At/PO-Bhubaneswar, Dist.Khurda

..... Respondents

Advocate for respondents - Mr.A.K.Bose, Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the eight applicants have prayed for a direction to the respondents to allow the applicants to work as Casual Labourers/Contingent Mazdoor as they were working previously. The respondents have filed counter opposing the prayer of the applicants, and the applicants have filed rejoinder.

2. The case of the applicants is that they were working as Contingent Mazdoors on daily wage basis in the office of Accountant General (Audits 1 and 2), Bhubaneswar. In paragraph 4(iv) they have mentioned that they have been continuing from 1995 and 1998. They have also mentioned that they have been appointed in the year 1999. Be that as it may, their grievance is that they were working as such till January 2001 with the full satisfaction of the authorities. But suddenly from first week of January 2001 they were disengaged without any written order. The applicants have stated that under the Scheme dated 10.9.1993 circulated by Government of India, Department of Personnel & Training, the applicants are entitled to be conferred with temporary status. But

temporary status has not been conferred on them nor have they been taken back in engagement again. In the context of the above they have come up with the prayer referred to earlier.

3. Respondents in their counter have stated that none of the applicants has worked for 206 days or more and therefore, they have no substantive right to claim engagement on casual basis by virtue of their earlier engagement. It is stated that the applicants were engaged as casual workers on daily wage basis for work of casual or intermittent nature. They have stated that the applicants were not selected through interview. It is submitted that the call letters annexed to the application relate to interview for regular Group-D posts and not for engagement on daily wage. For engagement on daily wage basis no interview was held and the applicants didnot come through any process of selection. It is stated that no formal order of enyagement was issued to them and therefore there is no need for issuiny a written order of disenagement. It is also stated that as the applicants by their own averment have been engayed after 10.9.1993 they are not entitled to the benefit of the scheme. In support of their contention the respondents have relied on a decision of Chandigarh Bench of theTribunal enclosed at Annexure-R/1 and the decision of the Hon'ble High Court of Punjab & Haryana which is an appeal from the above decision of Chandigarh Bench, at Annexure-R/2. It is further stated that there is no concept of seniority and juniority amongst the contingent workers.The petitioners have submitted applications for re-engayement, but these were not considered as there is no such requirement. It is further

stated that engagement cannot be considered as a matter of right and in the context of the above the respondents have opposed the prayer of the applicants.

4. In their rejoinder the applicants have stated that they were called for interview for Group-D posts and even though they were successful in the interview they were engaged as casual workers arbitrarily. It is stated that from the date of their engagement in 1994 they were working satisfactorily without any interruption. It is stated that date of initial engagement of the applicants is much earlier than the casual workers who have now been engaged. While their juniors have been engaged as casual workers, the applicants have not been engaged. It is further stated that if there is not enough work for all the casual workers, the principle of last come first go should be followed, which has not been done. The applicants in their MA No. 656 of 2001 have mentioned that after filing of the OA they were called upon to resume work on 30.4.2001 and after working for about two months they were again disengaged while their juniors are continuing.

5. We have heard Shri P.K.Nayak, the learned counsel for the petitioners and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioners has relied on the following decisions:

(i) Air India Statutory Corporation Ltd. v.
United Labour Union, AIR 1997 SC 645;

(ii) Hindustan Machine Tools Ltd. v.
M.Rangareddy, AIR 2000 SC 3287; and

(iii) Gaziabad Development Authority v. Vikram Chaudhury, AIR 1995 SC 2325.

Before proceeding further it is to be noted that Air India Statutory Corporation Ltd.'s case (*supra*) deals with Contract Labour (Abolition & Regulation) Act and this decision is not relevant for the present purpose. In Hindustan Machine Tools Ltd.'s case (*supra*) the Hon'ble Supreme Court noted that casual workers have been working under different Departments of the Government Company for about ten years continuously and discharging duties similar to those of regular employees of the Company. In that case, the Hon'ble Supreme Court directed the Company to frame a scheme for absorption of casual labourers as regular employees. In the instant case, the Department of Personnel & Training have already promulgated a Scheme in their letter dated 10.9.1993, but the applicants are not covered under that Scheme. In any case, in this O.A. the petitiones have not prayed for either granting of temporary status or regularisation. Their sole prayer is for re-engagement, taking into account their date of initial engagment as also number of days of work put in by them. It is submitted by the learned counsel for the petitioners that on both these grounds the applicants have got priority for re-engagement. But they have not been re-engaged whereas persons whose dates of initial engagment are later than the applicants and who have put in less number of days of work over the years as casual workers compared to the applicants are being engaged. The learned counsel for the petitioners has relied on Gaziabad Development Authority's case (*supra*) in which Hon'ble Supreme Court have held that if there is no work the casual workers can be disengaged. But while disengaging them the principle of "last come first go" should be followed and in the event of need for re-employment, preference should be

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given to displaced casual workers. On the basis of this decision, it has been submitted by the learned counsel for the petitioners that the applicants have a prior right of re-engagement compared to the persons whose dates of initial engagement are later than that of the applicants and who have also put in less number of days of work as casual workers than the applicants. It has been submitted by the learned Senior Standing Counsel for the respondents that the work in which casual workers have been engaged by the respondents is casual and intermittent in nature and depending upon the need, the requirement of casual workers undergoes change. During summer season more casual workers are engaged and considering this, the respondents have made an arrangement to engage all the casual workers for some days in a month. The applicants themselves have mentioned in paragraph 4 of MA No.656 of 2001 that the respondents have published one worksheet chart from July to December of the applicants in which each applicant has been allotted only seven to 10 days of work in a month and also in some months there is no work for the applicants. It is stated that such action of the respondents is illegal and involves harassment of the applicants. From the submissions made by the learned counsel of both sides it appears that number of persons who have been engaged from time to time as casual workers in the concerned office of the respondents is more than the requirement which changes from time to time. When requirement for engagement of casual workers is less, the respondents are giving work to all casual workers on a rotational basis. This is only an arrangement which is logical and reasonable. The casual workers have no right to re-engagement because if there is no need for casual or

intermittent work, the respondents are under no obligation to engage any casual worker. But when there is work and when casual workers, the applicants and others have worked for many years, it is not unreasonable for the respondents to provide engagement to all of them on rotational basis to the extent work is available. This arrangement being logical, we find no illegality in this.

6. In view of all the above, we dispose of this O.A. with direction to the respondents that the applicants be re-engaged as casual workers from time to time depending upon the need for engagement of such casual workers and their date of initial engagement and the total number of days of work put in by them. We make it clear that the respondents will be free to operate a work chart in the manner mentioned above providing engagement to the applicants and other casual workers. The above direction is subject to the important condition that the applicants report themselves for engagement before the respondents at the appropriate time.

7. With the above observation and direction, the O.A. is disposed of. No costs.

(N.PRUSTY)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

AN/PS