

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 795/02 & 621/2001
Cuttack this the 2nd day of December/03

IN O.A.No.795/2001

Niranjan Pradhan ... Applicant(s)

-VERSUS-

Union of India & Ors. ... Respondent(s)

IN O.A.No.621/2002

N. Rabi Kumar ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

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

22/12/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

22/12/03
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 795/02 & 621/01
Cuttack this the 22nd day of Dec./2003

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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IN O.A.No.795/2002

Shri Niranjan Pradhan, aged about 32 years,
Son of Sri Janardhan Pradhan, resident of
Village - Bangursamelak, PO-Rench, PS-Balang
Dist-Puri

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Applicant

By the Advocates

M/s.K.C.Kanungo
S.Behera
R.N.Singh

-VERSUS-

1. Union of India represented through Secretary,
Communications-cum-D.G.Posts, Dak Bhawan, New Delhi-1
2. The Chief Postmaster General, Orissa, Bhubaneswar-1
3. The Sr.Superintendent of Post Offices, Bhubaneswar
Division, Forest Park, Bhubaneswar-9, Dist-Khurda
4. The Sub Divisional Inspector(Postal), Bhubaneswar
South Sub Division, Bhubaneswar-1, Dist-Khurda
5. The Sub Post Master, Rench Sub Post Office, Rench
Dist-Puri

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Respondents

By the Advocates

Mr.A.K.Bose, S.S.C.

AND

IN O.A.No.621/2001

Shri N. Rabi Kumar, aged about 25 years,
S/o. N.Jogmaikulu Dora, Village-Podgan,
Post-Odaba, Dist-Gajapati - at present
working as Part-time Sweeper, Odaba
Sub Post Office under Administrative Control
of the Sr.Suptd. of Post Offices, Berhampur
Postal Division

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Applicant

By the Advocates

M/s.K.C.Kanungo
S.Behera
R.N.Singh
B.D.Das

-VERSUS-

1. The Secretary-cum-Director General, Posts, Dak Bhawan, New Delhi
2. The Director of Postal Services, Berhampur Region, Office of the Postmaster General, Berhampur Region, Berhampur, Dist-Ganjam
3. The Sr.Superintendent of Post Offices, Berhampur (Ganjam) Division, Berhampur, Dist-Ganjam
4. The Sub Divisional Inspector (Postal), Digapahandi Sub Division, Digapahandi, Dist-Gajapati

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Respondents

By the Advocates

Mr.A.K.Bose, S.S.C.

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Since the main thrust of both the Original Applications is one and the same, for the sake of convenience, we decide these OAs through this common order. In the above background, we think it proper to deal with O.A. No.795/2002 for reference.

2. Applicant, Shri Niranjana Pradhan in O.A.795/02 has assailed the order dated 7.8.2002 (Annexure-5) passed by Respondent No.3 on the ground that it is contrary to the instructions issued from time to time by the Respondent No.1 under Annexures-3 and 4 to this Original Application.

3. The grievance of the applicant is that by virtue of Annexure-5, Respondent No.3 has effectively denied the applicant's legitimate expectation for recruitment to the post of Group 'D'. He has also assailed termination of his engagement with effect from 1.9.2002 being violative of provisions laid down in Annexures-3 and 4 and being in violation of the principles of natural justice; thus

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the applicant stands discriminated and prejudiced.

4. The case of the applicant is that he had been engaged by the Sub Post Master, Rench Post Office as part-time casual labourer for the purpose of supplying water to the Post Office with effect from 24.5.1995 on an allowance of Rs.120/- per month. It is submitted that in terms of the instructions issued by the Department of Posts dated 17.5.1989, being a part-time casual labourer, the applicant was entitled for recruitment to the post of Group 'D' on completion of 480 days in a period of two years. It is the case of the applicant that although he has worked for about 3/4 years, he has not been given the benefit of the aforesaid instructions. The applicant has cited four instances where regular jobs have been given to part-time casual labourers on preferential basis against E.D.Post in terms of D.G.Posts' letter dated 6.6.1988 (Annexure-2), but the same treatment has not been provided to him. The applicant has alleged that in order to deprive him of the benefit of the Govt. instructions referred to above, Respondent No.3 issued Annexure-5, by virtue of which Res. No.5 disengaged him and put him into the lurch although there is a vacancy of E.D.D.A. in Renghalo B.O. under the administrative control of Res. No.4, against which his candidature was not considered. While putting forth the complaint as referred above, the applicant has prayed for declaring Annexure-5 ultra vires in the face of Annexures-3 and 4. The applicant has also prayed that Res.No.4 be directed to appoint him as E.D.D.A., Renghalo B.O. under preferential category as provided/laid down under Annexure - 2.

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5. Respondents - Department have denied all the allegations made by the applicant and have contested the Original Application on all counts by filing their counter. They have denied that the applicant was ever engaged as a part-time casual labour. By way of clarification, Respondents-Department have submitted that Respondent No.5, under his own arrangement had actually engaged the applicant on part-time basis for storing and supply of water in the Post Office. They have further clarified that under the procedure laid-down, the Department, soon-after issuing the order for grant of temporary status to the casual workers, had banned fresh engagement of casual labourers and had given direction to the field Units that for carrying out the non-postal works, like, gardening, water supply, sweeping etc., workers should be engaged under the arrangement of the respective Post Masters, who would be paid contingent allowance by the Department to enable them to compensate the labourers engaged for the purpose. The Respondents have, therefore, admitted that there is no denying to the fact that the applicant had been engaged as Waterman having a workload of one hour or so by the Sub Post Master, Rench S.O.. but that was not done by way of recruitment for the Post Office work. They have added that since the applicant was never recruited as a casual labourer, the question of maintaining records of his engagement and/or offering him preferential treatment did not arise. Respondents-Department have also refuted the allegation brought by the applicant that one Shri Janardan Pujari was engaged as a part-time contingent worker and then appointed as G.D.S. Packer. They have clarified that the fact of the matter is that

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Shri Pujari was appointed as G.D.S.Packer of Rench S.O. by way of normal process of selection. They have further submitted that a parti-time worker can only be given preference in recruitment to Group D/G.D.S. post had he been engaged prior to 29.11.1989 and if his name was sponsored by the Employment Exchange at the time of his initial engagement as contingent worker as per provision contained in Para-4 of Annexure-2. But in the instant case, the applicant is not fulfilling any of the requisite criteria nor was he appointed as a casual/contingent worker in the Department in accordance with the procedure as referred to above. On these grounds the Respondents-Department, while opposing the prayer of the applicant, have prayed for dismissal of this Original Application.

6. We have heard the learned counsel of both the sides and perused the materials placed before us.

In course of arguments, the learned counsel for the applicant Shri K.C.Kanungo articulated that the present Original Application revolves round three issues. Firstly, whether a daily wagger rendering duty for one hour daily can be termed as a part-time casual labourer and is eligible for recruitment to G.D.S. as a preferential candidate in terms of D.G. Posts' letter dated 6.6.1988 (Annexure-2); secondly, whether the word 'preference' used in the context of recruitment of full-time/parti-time casual labourers would mean considering this category of candidates before considering outsiders in the field of selection when both the categories are equally poised

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so far as their eligibility conditions are concerned; and lastly, whether the conditions of sponsorship by the Employment Exchange is statutory.

Shri Kanungo pleaded that any daily rated worker working less than eight hours is to be termed as part-time casual labourer. With regard to second point, he submitted that the word 'preference' means - "Having priority". According to him; in the matter of selection, part-time casual labourers are to be considered by placing them at a higher place in the consideration sheet, so that they are considered first for filling up the vacancies before the outsiders are considered, no matter that the outsiders might be educationally more meritorious. With regard to the third issue, Shri Kanungo stated that after the pronouncement of judgment by the Hon'ble Apex Court in the case of Excise Superintendent, Malakpatnam Krishna District, Andhra Pradesh vs. K.B.N. Visweshwara Rao & Ors. (reported in 1996 (7) Supreme 210) sponsorship of candidates by the Employment Exchange is no longer a mandatory condition.

7. We have carefully considered the issues raised by the learned counsel for the applicant during oral argument (he has also made a written submission) and the relief sought by the applicant in the present Original Application. Our answers to the issues raised are as follows.

8. With regard to the first issue, we would like to point out that the Respondents-Department have no problem in treating a daily wager rendering one hours' duty daily as a part-time casual labour. In fact

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along with their counter, they have annexed a document at Annexure-R/2 giving a gist of various instructions issued by them in respect of casual labourers and under Item-11, which we quote as follows - they have stated;

"Daily wagers working in Post Offices, RMS Offices, Administrative Offices, PSDS, MMS working with different designations are to be treated as Casual Labourers who are engaged with 8 hrs. a day are described as full time casual labourer and for less than 8 hours a day as part-time casual labourer. All other designations should be discontinued".

Thus it is clear that daily wagers, who are engaged for less than eight hours a day are treated as part-time casual labourers. So this point is answered in the affirmative.

9. With regard to ^{the} second issue also the Respondents vide Item-12 of Annexure-R/2 have admitted that the part-time casual labourers who have worked for 480 days in a period of two years will be given preference for recruitment to Group 'D'; and by virtue of another order of 6 June, 1988 placed at Annexure-2, concession/preference has been granted in the matter of recruitment to G.D.S. Posts to full-time/part-time casual labourers. However, whether the (^{2.}) term 'preference' should mean giving priority or to consider first the case of a part-timer in exclusion of others who are also eligible by treating him as an exclusive category, we would like to deal with it later as in the backdrop of the instant case, we are to first determine whether the applicant falls within the scope and ambit of preferential category. However, we would like to point out here that the meaning

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of the term 'preference' in the matter of recruitment of E.D./G.D.S. has already been clarified by the Apex Court in the case of Bibhudutta Mohanty vs. Union of India & Ors. (2002(3) SLJ (SC) Page-9.

10. With regard to the last issue about sponsoring of candidates through the Employment Exchange, the Govt. of India order of June, 1988, in which it was stipulated that casual employment ^{not} recruited through the Employment Exchange would not be considered for regularisation was issued long before the pronouncement of the judgment by the Apex Court in Excise Superintendent case (supra) to the effect that it was not necessary to sponsor names only through the Employment Exchange; but recruitment to public offices should be made through open advertisement. Therefore, decidedly, the ratio of the judgment of the Apex Court (supra) will apply to the recruitment cases arising after the pronouncement of that judgment specially with reference to the recruitment cases of all India nature.

11. ^{now to be answered} The sole question/in this O.A. revolves round the status of the applicant whether he was a casual labourer or not. It is the submission of the applicant that he was working as a part-time casual worker being engaged directly by the Sub Post Master without getting his name sponsored by the Employment Exchange. The learned counsel for the applicant has time and again canvassed the point before us that the Respondents-Department arbitrarily and fancifully called him contingent worker and not casual worker although they have been admitting that the applicant had been engaged by the Sub Post Master to work as a part-time

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Waterman in that S.O. for about 3/4 years. And this has resulted in denial of legitimate expectation of the applicant in so far as granting preferential treatment for recruitment against Group D/G.D.S. posts to him is concerned.

12. In support of his contention as made above, the learned counsel for the applicant relied on the following case laws:

1. Surendra Kumar Sahoo vs. Union of India & Ors. SLP(C) 14096/2000
2. O.A.No.615/98 (Ashok Kumar Sethi vs. Union of India & Others.
3. O.A.No.333/2002 (Dukhispyam Sethi vs. Union of India & Others
4. Bibhudatta Mohanty vs. Union of India & Ors. (Civil Appeal No. 267/2000
5. Anjali Thakuria vs. Union of India & Ors., Swamy News 58, Guwahati (O.A.No.138/98)

13. We have gone through all these case laws and our findings are as under.

14. The issue raised before the Hon'ble Supreme Court in the case of Surendra Kumar Sahoo (supra) is not exactly the issue to be decided in the instant O.A. What the Hon'ble Supreme Court in that case opined is that when no other criteria was stipulated in the matter of educational qualification for selection of EDSPM consideration of the fact that the appellant was an OBC while the other candidate was not would be in consonance with the provisions of Article 46 of the Constitution of India.

15. With regard to the decision in the case of Ashok Kumar Sethi (O.A.No.615/98) we would like to observe that

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we are bound by that decision of ours. But that has no application to the facts of the instant case, because, we had ruled there that whether a casual labourer, whole time or part-time, "is entitled to be considered strictly in accordance with the rules and instructions of D.G.Posts for appointment to E.D.Post". The applicant in this case was not recruited as casual labourer.

16. In so far as the cases of Dukhishyam Sethi and Bibhudatta Mohanty (supra) are concerned, the facts being different to the facts of the instant case will be of no avail to the applicant.

17. As regards the decision in the case of Anjali Thakuria (supra) this will not be of great help to the applicant as the Respondents are not denying consideration of the applicant for regularisation on the ground that his name was not sponsored by the Employment Exchange but that he was never recruited by the Respondents-Department.

18. The Respondents-Department, on the other hand, through their repeated submissions have denied that the applicant was ever recruited as a casual labourer, because, there was complete ban on engagement of casual labourer with effect from 29.11.1989. The Respondents have also submitted that Sub Postmaster not being a competent recruiting authority, the applicant cannot claim to have been recruited in the Department. They have stated, "The Sub Postmaster has no Statutory Power and he is not the appropriate authority to make any appointment". In addition to this, the Respondents have stated that as there exists need for obtaining manpower supply for carrying out non-postal/ancillary jobs in the Post Offices

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and those jobs though perennial in nature are always of very short duration, depending upon the size of the Post Office. Those jobs are like, Sweeping, Water supply, Gardening etc. In a small post office the job of a Waterman or a Sweeper may be of half an hour or one hour duration and not more ; and in Ranch Post Office, it is of one hour duration. To meet these requirements of short time assignments, the Department has authorised the head of the Operative Offices, like, Sub Post Master to engage a suitable person under his own arrangement to carryout the job. The Department on their part compensates the Post Master by paying him contingent allowance, so that he could defray the expenditure for engaging labourer for such purposes. Respondents have stated that this arrangement the Department has introduced in order to meet the exigencies of service after introduction of the temporary status scheme in 1989 to cater to the day to day house-hold requirements of the office. They have also clarified that the order of the DOPT dated 7.6.1988 is meant for guidance of the Administrative Ministries and not meant for Departments which are operative in nature, the one like the Respondents-Department, for which they have their own rules and regulations framed in this regard.

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19. From the above discussions of the various issues raised in this O.A. and during the oral arguments by the learned counsel for the applicant, we agree that casual labourers whether full time or part-time as defined by the Respondents-Department are entitled to preferential

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treatment in the matter of recruitment to Group D/GDS posts. This point has been conceded by the Respondents-Department also. But this does not help the case of the applicant, because, he has not been declared as a part time casual labourer by the Department. The applicant has also not been able to refute the averments of the Respondents that he was never recruited as a casual labourer by the Department. What the Respondents have submitted is that they have not authorized the Sub Postmasters to act as a recruiting authority for employment of person(s) as the applicant in the instant case; however, they have granted an allowance, called, contingent allowance, to the respective Post Masters to defray expenses which they incur for carrying out the house keeping jobs of the office. They have, therefore, submitted that this category of workers engaged by the respective Post Masters to meet the house keeping jobs cannot be construed to have been appointed/recruited by the Department and therefore, the applicant, in the instant case does not have any indefeasible right to claim any benefit from the Department. We find no fault with this argument of the Department and we agree that if an individual is not recruited under any of the statutory rules framed by the Department/Government, he cannot claim any benefit available under such statutory rules. In other words, as we find that the applicant was never recruited by the Department either as a part-timer or a full-time casual labourer, we are unable to grant him any relief as sought for by him in this Original Application.

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20. Having regard to the facts and circumstances of the case, we reject both the Original Applications(O.A. Nos.795/02 and 621/01) being devoid of merit. However, there shall be no order as to costs.

For out 22/12/03
(M.R. MOHANTY)
MEMBER(JUDICIAL)

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN

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