

6
ORDER DATED 07-07-2004.

O.A. Nos. 656, 657 & 658 of 2003

Though these three Original Applications have been heard one after the other, for the sake of convenience this common order is passed which will govern in these three cases.

2. These three Applicants faced a regular process of selection (for the posts of Driver) and were selected as per the recommendation (made by the Selection Committee) under Annexure-1 dated 06.05.1995. In absence of regular sanctioned posts, they were engaged on casual basis under the Station Director of All India Radio at Bhawanipatna (in Kalahandi revenue District of Orissa) during March, 1995. Two others were also selected with them. As against three motor vehicles, the requirement of Drivers being five, all the five selected candidates were engaged on casual basis. Later two posts of Driver (for AIR, Bhawanipatna) were sanctioned as against three Motor Vehicles. Thus, total five candidates were not only recommended (in the selection that was held on 4.5.95) but all

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL (B)

Ver 27.3.04

Applicant is about
call. Mr. B. Dash, L.A.S.C. submit
one M.A. properly
over of which the
the counter, heard,
is granted till
04.04.04 counter.
M.A. is disposed of
advisory.

29.3.04
REGISTRAR

Counter no 612

Regr.

Ver 19.4.04

Applicant is about
call. L.A.S.C. submit
counter has
only been filed
16.04.04 after services
copy. Heard. Registry
ordered to bring
counter on record.

call on 18.5.04
filing of rejoinder.

19.4.04
REGISTRAR

Rejoinder

Regr

of them were engaged on Casual basis.

Out of them, two were regularised in
the newly sanctioned posts of Driver and
the three Applicants having not been
regularised, have preferred this Original
Application under section 19 of the
Administrative Tribunals Act, 1985 seeking
direction to the Respondents to regularise
them as Drivers, retrospectively, with all
consequential service benefits.

3. By filing separate counters, the
Respondents have taken the stand that since
there are no sanctioned posts available under
the Respondents, the services of the
Applicants have not been able to be
regularised as yet. But they have admitted
in their counter, with regard to the factual
avertments made by the Applicants in these
three Original Applications, and, therefore,
it is needless to record here the same.

4. Heard Mr. D. P. Dhalebant, learned
Counsel appearing for the Applicants and
Mr. B. Dash, learned Additional Standing
Counsel appearing for the Respondents in
these three cases (that were heard one
after the other) and perused the materials
placed on records of all the three cases.

5. It has been admitted by the learned
Counsel for the Applicants that since the
Applicants have been regularly selected
through a regular selection process, they
ought not to have been engaged on casual
basis and that even though they have been

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL (C)

11.18.5.04

Learned Counsel for
Applicants pray for
regularisation to file
order. Heard.
is allowed.
Adjourned to
10.04 for filing of
order.

2
407m
REGISTRAR

Rejoinder not

Reg.

11.29.6.04

Applicant is absent
all and stops
to file rejoinder.
after availing
vacation and opportunity
is presumed that he
has no rejoinder to
presenting as
before deemed to be
rejected.

Let this matter
be Bench on 30.6.04
final hearing.

28/6/04
REGISTRAR

for hearing

Bench

engaged on casual basis, since they are
continuing under the Respondents
continuously since March, 1995, they
are entitled to be regularised; as law
is very clear that long continuance of
an employee is itself sufficient to
hold that there are need of regular
man power. Further it has been pointed
out by the learned Counsel for the
Applicants (by drawing attention to
Annexure-12 dated 20/12.8.2002) that
since there are posts lying vacant in other
stations, the Applicants can be appointed/
adjusted/regularised as against those
vacancies. It has been argued by the learned
Counsel for the Applicants that if at this
stage the Applicants are thrown out of the
job/engagement, then not only the Applicants
but also their entire family members will be
ruined/deprived of their rights under Art. 21
of the Constitution of India and this will be
against the law of legitimate expectation
also, because the Applicants have been working
since March, 1995 with hope that they will
be regularised one day or the other.

6. To counter the submissions made by
the learned counsel for the Applicants, Mr. Dash,
Learned Additional Standing Counsel emphatically
submitted that a casual worker has no right
to claim regularisation more so when there is
no sanctioned post. Since only two posts were
sanctioned, persons placed above the Applicants
in the recommended list were preferred and were

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21.6.57/2

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ORDERS OF THE TRIBUNAL (D)

regularised. Since there are no sanctioned posts under the Respondents, No. 3, the services of the Applicant cannot be regularised.

For further
may be seen
in para. 4 above

7. After considering the various submissions made by the learned counsel for the Applicants and on perusal of the materials placed on record, it is seen that the Respondents have taken positive steps to find out ways and means to regularise the Applicants but in absence of the sanctioned posts at Bhawanipatna AIR Centre, the services of the Applicants have not yet been able to be regularised. There is also no adverse remarks against the Applicants with regard to their performance as Driver. No doubt, law as stands today, requires that if a regularly selected casual labourer is continued for a fairly long spell (say for two or three years) a presumption may arise that there is regular need for his services and, in such a situation, it becomes obligatory for the concerned authority to examine the feasibility of regularisation. It appears from various inter Departmental Communications that for the rest O.P. coverages, Transmitter trips for taking shift staff and other office work, all the three vehicles were required and for all the three vehicles, as per SIO norms, five drivers are required. From the record, it is also seen that while replying to a query made by the Hon'ble Minister of Information and Board casting dated 5.4.51, the Superintending Engineer of All India Radio,

in his letter under Annexure-12 dated 20/12/2002 (addressed to Director General, All India Radio, New Delhi) informed that at that time there were three vacancies at different places (Cuttack, Bhubaneswar and Jeypore/Koraput) and accordingly, he sought permission to finalise the matter of regularisation of the Applicants against those posts. But it seems that since no communication was received, the matter of regularisation of the Applicants could not be finalised. It is also seen that the Applicants are now over-aged. They have also been continuing on such casual basis. At one point of time, there was also recommendation for giving them the regular scale of pay but as per the averments of the applicants they are now only getting Rs.151/- per day.

3. In the above view of the matter, since the Applicants have been continuing on casual basis since March, 1995 (almost 10 years by now) on being selected through regular process of selection and since the Respondents are willing to regularise the services of all the three Applicants (on availability of posts/after receipt of permission from the Director General, New Delhi), the Respondents are hereby directed to consider the cases of the Applicants for regularisation as against the three vacant posts at Cuttack, Bhubaneswar and Jeypore/Koraput (as mentioned in letter

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ORDERS OF THE TRIBUNAL (F)

under Annexure-12) by transferring the Applicants to those places or by transferring these posts to Bhawanipatna (Kalahandi) or by creating three more posts (of Driver) at Bhawanipatna AIR Centre in Kalahandi District of Orissa. It is also pertinent to mention here that by now there might be many more vacancies, which the learned ASC is unable to disclose on the query of the Bench. Therefore, if there are no vacancies for the present to regularise the Applicants, they should be allowed to continue, as it is, till they are regularised/adjusted against regular posts of Drivers under the Respondents.

9. In the result, therefore, these three Original Applications are allowed. No costs.

(MA) M. R. Mohanty
M. Member (C)
(JUDICIAL)