

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Counter not
filed.

15.1.04

Regs

Order dt. 16.1.04

Applicant is absent
on call, Mr. B. Dash, Ld.
ASC files one M.A.
praying therein 04
weeks time to file
counter. Heard, Time
is granted as a last
chance till 25.2.04 to
file counter.

M.A. is disposed of
accordingly.

Dom 2
16.1.04
REGISTRAR

Counter not filed

24/2

Regs

Order dt. 25.2.04

Applicant is absent
on call, Ld. A.S.C. files
one M.A. praying therein
04 weeks time to file
counter. Heard, Time is
granted till 29.3.04 to
file counter.

M.A. is disposed of
accordingly.

Dom 2
25.2.04
REGISTRAR

Counter not filed

24/2

Regs

01.07.2004.

How to Post
Call this matter on 07.07.04.

before ~~Hand~~ V.C.

Member B

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, Bhawani-
patna) 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

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Order dt. 29.3.04

Applicant is absent on call. Mr. B. Dash, Ld. A.S.C. files one M.A. praying there-on or week time to file counter. Heard. Time is granted till 19.4.04 to file counter. M.A. is disposed of accordingly.

Domini
29.3.04
REGISTRAR

Counter not filed

h
16/4

Regn.

Order dt. 19.4.04

Applicant is absent on call. Ld. A.S.C. submits that counter has already been filed on 16.4.04 after service of copy. Heard. Registry is directed to bring the counter on record.

Call on 18.5.04 for filing of rejoinder, if any.

Domini
19.4.04
REGISTRAR

For Rejoinder

h

19/4/04

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 averments made by the Applicants in these three Original Applications, and, therefore, it is needless to record here the same.

4. Heard Mr. D. P. Dhalsamant, 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

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ORDERS OF THE TRIBUNAL ©

Order dt. 18.5.04

Learned Counsel for the applicant prays for 02 weeks time to file rejoinder. Heard. Prayer is allowed.

Adjourned to 29.6.04 for filing of rejoinder.

[Signature]
2
REGISTRAR

Rejoinder not
bnw.

h
29/6

Reg.

Order dt. 29.6.04

Applicant is absent on call and no steps taken to file rejoinder even after availing sufficient opportunity. It is presumed that he has no rejoinder to file. Pleadings are therefore deemed to be completed.

List this matter before Bench on 30.6.04 for final hearing.

[Signature]
28/6/04
REGISTRAR

for hearing

RS
29/6/04

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 20/19.8.2002) 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

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

For further
hearing as per. heard

h
6/7

bench

Cr. No. 7.7.04

Copy of common
order prepared for
counsel on both
sides.

h
23/7

Dr. 24/7/04
Sd (S)

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

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 Communication 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 SIU 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 5.4.01, the Superintending Engineer of All India Radio,

in his letter under Annexure-12 dated 20/19.08.2002 (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.

8. 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, Bhawanipatna and Jeypore/Koraput (as mentioned in letter

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.

Manoranjan Mohanty
07/03/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)