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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 Kalamandi revenue District of Gissa) 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 (P)

for dt. 29.3.04

Applicant is absent  
call. Mr. B. Dash, L.A.S.C.  
one M.A. praying  
for or would take  
the counter, heard.  
it is granted. Call  
04 to take counter.  
M.A. is disposed of  
separately.

29.3.04  
REGISTRAR

Counter not filed

Regr.

for dt. 19.4.04

Applicant is absent  
call. L.A.S.C. submit  
counter has  
already been filed  
16.04.04 after service  
copy, heard. Registry  
ordered to bring  
counter on record.

call on 18.5.04  
for filing of rejoinder.

19.4.04  
REGISTRAR

for Rejoinder

Bw

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. Dhalsant, 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

18.5.04

Learned Counsel for  
Applicants prays for  
regularisation to take  
under. Heard.  
is allowed.  
Adjourned to  
04 for filing of  
order.

REGISTRAR

Rejoinder not

Reg.

29.6.04

Applicant is absent  
all and to steps  
in to file response.  
after availing  
vacation opportunity.  
is presumed that he  
is not in order to  
proceedings are  
therefore deemed to be  
closed.

Let this matter  
be Bench on 30.6.04  
for final hearing.

REGISTRAR

Bench

## ORDERS OF THE TRIBUNAL (C)

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

## NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL <sup>(B)</sup>

10 02.6.57/2

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

For further  
any as per item  
bunch

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 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 5.4.51, the Superintending Engineer of All India Radio,



In his letter under Annexure-12 dated 20/10.08.2002 (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 ₹151/- per day.

3. In the above view of the matter, since the Applicants have been continuing on casual basis since March, 1995 (almost 18 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

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) Say. M. R. Mohanty  
M. JUDICIAL Member (J)