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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 248, 252 AND 253 OF 2004
CUTTACK, THIS THE 19th DAY OF January, 2006

IN O.A.NO.248 OF 2004

S.K.Boity.....APPLICANT

VS

Union of India & othersRESPONDENTS

IN O.A.NO.252 OF 2004

P.K.Nayak.....APPLICANT

VS

Union of India & othersRESPONDENTS

IN O.A.NO.253 OF 2004

S.S.Guru.....APPLICANT

VS

Union of India & othersRESPONDENTS

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


(B.N.SOM)
VICE-CHAIRMAN



CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 248, 252 AND 253 OF 2004
CUTTACK, THIS THE 19th DAY OF January, 2006

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Shri Saroj Kumar Boity, aged about-33 years, son of Nabakishore Boity, residing at Plot No.2, Ganga Nagar, Bhubaneswar, Dist.-Khurda.

..... Applicant (IN O.A.NO.248/04)

Shri Pramod Kumar Nayak, aged about-29 years, son of Padmanabu Nayak, Qr.No.EB-633, At/P.O.-Badagada Brit Colony, Bhubaneswar-18, Dist.-Khurda.

..... Applicant (IN O.A.NO.252/04)

Shri Sasanka Sekhar Guru, aged about-26 years, son of Jayant Kumar Guru, residing in front of Gadagada High School, Srichandan Colony, Badagada, Bhubaneswar-18, Dist.-Khurda.

..... Applicant (IN O.A.NO.253/04)

Advocate(s) for the Applicants - M/s. K.C.Kanungo, S.Behera, C.Padhi.

VERSUS

1. Secretary, Ministry of External Affairs, Patiala House Annexe, Tilak Marg, New Delhi-1.
2. Passport Officer, Passport Office, Plot No.A-17/2, Suryanagar, Bhubaneswar, At/PO-Bhubaneswar, Dist.-Khurda.

..... Respondents.

Advocate(s) for the Respondents - Mr. U.B.Mohapatra (Sr.S.C.).

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

Since the O.A.Nos. 248, 252 and 253 of 2004 pertain to common question of facts and law, I am disposing of all the above-mentioned three O.As. through this common order. For the sake of reference, I am discussing O.A. 248/04.

2. Shri S.K.Boity has filed this Original Application being aggrieved by the order dated 5.4.04 passed by Respondent No.2 disengaging ~~him~~ the service with effect from 5.4.04. He has assailed the order being arbitrary and in-contravention of the procedure laid down in this regard.

3. The applicant's case is that the order of his engagement at Annexure-3 did lay down the condition of termination, i.e. no work no engagement, but the same reason was conspicuously absent in the order at Annexure-A/1 as the Respondents have not given the reason that he was disengaged because there was no work and that as the matter stands, vacancies are existing. It was bad on the part of the Respondents to have denied him engagement. In doing so, his argument is that, the Respondents have over-reached the order of the Tribunal dated 25.2.04 wherein the Tribunal directed the Respondent Department that " if the posts held by the applicant herein, are extended by the Ministry, then they may be allowed to continue in such casual engagements. So far as their payer for regularization/absorption is concerned, it is held that their cases should be considered (in preference to other outside candidates) as they have already

been selected for casual engagements through Employment Exchange, if at all sanctioned/regular posts are there.....”

4. The Respondents have opposed the application both on facts and on merit. They have submitted that the engagement of casual labourers was continued for some time beyond three months as the pendency took time to be cleared. They have, however, reiterated that the casual labourers, i.e. the applicants in these cases, were not recruited against any sanctioned post. They were paid pay and allowances on daily rate basis in tune with the guidelines applicable to engagement of casual labourers. They have also by referring to the letter dated 17.10.03, para iii (Annexure-4), letter dated 14.11.03, para 3 (Annexure-5) and letter dated 30.4.04, para 2 (Annexure-6) reiterated that the casual labourers were not recruited against any sanctioned post. They have further submitted that their services were terminated with effect from 7.5.02 but were reengaged on 27.5.02 on the direction of the Tribunal dated 7.5.02 and continued till 5.4.04. However, the Ministry of External Affairs had not approved the engagement of casual labourers in the Respondent Department and, since, there is no pressure of work, they have not been engaging any new hands from outside. Relying on a decision of the Lucknow Bench of this Tribunal, they have submitted that the aforesaid decision of the Ministry of External Affairs, Respondent No.1, i.e. not to extend the term of casual employment, has been upheld by order dated 12.3.97 in O.A.no.194/93 filed by Shri Upendra Kumar Mishra, Ex-Casual Labourer in Passport Office, Lucknow. They have also denied that there is any post of night watchman to be filled up. Having regard to the above facts

of the case and also the decision of the Lucknow Bench, they have urged that the O.A. deserved to be dismissed.

5. The sole point in this O.A. is whether there is work available in the office of Respondent No.2 for which services of the applicants could be utilized. The Respondents by giving detailed information have submitted that there is neither vacant sanctioned post nor there is accumulation of work justifying engagement of outsiders as casual worker. As the employer (the Respondent-Department) is insisting that there is no accumulation of work nor there is any sanctioned post, it is difficult to accept the argument of the applicant that the applicant is eligible and entitled to work as casual worker against any vacant Group-C and Group-D cadre.

6. In our earlier order dated 25.2.2004, we had made it clear that the cases of the applicant could be considered for selection 'if at all' sanctioned/regular posts are there, against which they are suitable to be absorbed/regularized. As the Respondents have repeatedly denied the existence of any sanctioned/regular post, it would be futile to move further in the matter. That apart, another coordinating Bench of this Tribunal, i.e., Lucknow Bench, having already upheld the decision of the Respondent-Ministry not to engage casual laborer by their order dated 12.3.1997, I am bound by the said order and, accordingly, dispose of this O.A. being without merit. No costs.

Arora
(B.N.SOM)
VICE-CHAIRMAN