

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 232 & 233/02
Cuttack this the 15th day of January/2004

Surendra Nayak & ...
Durga Prasanna Biswal

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

Y
(M.R. MOHANTY)
MEMBER (JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NOS.232 & 233 OF 2002
Cuttack this the 15th day of January/2004

CORAM:

THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

IN O.A.NO.232/02

Surendra Nayak, aged about 27 years, (SC)
S/o. Sri Duryodhan Nayak, At-Jemadeipurpatna,
PO-Manadhatapur, PS/Dist-Nayagarh - at present working
as Safaiwala, Office of Asst.Defence Estate Office,
Plot No.131,Suryanagar,Unit-VII,Bhubaneswar-7

IN O.A.233/02

Durga Prasanna Biswal, aged about 30 years, S/o. Sri Bansidhar Biswal, At-Garagora, PO-Kusipur, PS-Gop, Dist-Puri - at present working as Chowkidar, Office of Asst.Defence Estate Office, Plot No.131, Suryanagar, Unit-VII, Bhubaneswar-7

... **Applicants**

M/s.B.Sahoo
M.K.Misra
D.K.Mohanty

-VERSUS-

IN BOTH THE OAS

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi
2. The Director General Defence Estate Ministry of Defence, West Block-IV R.K.Puram, New Delhi-110066
3. Principal Director Defence Estate Ministry of Defence Central Command, Laknow Cantt, 17 Carriappa Road, Uttar Pradesh, PIN-226002
4. The Defence Estate Officer, Bihar and Orissa Circle Danapur Cantt, Bihar-810503

5. Assistant Defence Estate Officer,
Plot No.131, Suryanagar, Unit-VII
Bhubaneswar-751003

... Respondents

By the Advocates(in both the OAs)

Mr.S.B.Jena, ASC

O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL): Since a common cause of action is to be decided in both the above numbered Original Applications, this common order will govern both the OAs.

2. The Applicant in O.A.232/02(Shri Surendra Nayak) was engaged as casual Safaiwala on 89 days basis with effect from 28.12.1993 and the Applicant in O.A. No.233/02 (Durga Prasana Biswal) was engaged as a Chowkidar on Casual basis with effect from 1.5.1994 under the Respondent No.5ieAsst.Defence Estate Officer, Bhubaneswar. With a view to fill - up the posts, held by them, on regular basis; the Respondent No.5 made a requisition to the Employment Exchange (at Bhubaneswar) and, in response thereto, the Employment Exchange sponsored the names of candidates. The selection/test of these candidates were to be conducted on 2.5.2002 (by ignoring the candidature of the Applicants; for their names having not been sponsored by the Employment Exchange) and it is, in the said background, both the Applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985; praying therein for direction to Respondents to regularise the services of the Applicants in the respective posts

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held by each of them.

3. Both the matters came up before the Bench on 24.4.2002 for hearing on the question of admission and interim stay. After hearing the learned counsel for the Applicants, as well as the learned counsel appearing for the Respondents, this Tribunal, while directing issuance of notices to the Respondents, directed the Respondents, as an interim measure, not to hold/conduct any test on 02.05.2002, in pursuance of the requisition received from the Employment Exchange, without the leave of the Tribunal. The Tribunal also directed that the services of the Applicants should not be dispensed with until further orders. The said interim order is in force till date.

4. Respondents have filed detailed counters, in both the cases, by opposing the prayer of the Applicants. However, they have not denied the engagement and continuance of the Applicants, on casual basis, with effect from the respective dates they have been engaged. They have urged that steps are being taken to engage persons through the Employment Exchange; because of the instructions issued (with respect to engagement of casual labourers) under Annexure-R/1 dated 16.3.1993. The Respondents have stated in the counter that the candidates sponsored by the Employment Exchange would be interviewed and the selected candidates will only be engaged as casual Chowkidar/Safaiwala but not on regular basis. It is the case of the Respondents that the names of the Applicants having not been sponsored through the Employment Exchange,

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their cases cannot be considered for regular engagement

5. Heard Mr. B.Sahoo, the learned counsel for the Applicants and Mr.S.B.Jena, learned Addl. Standing Counsel appearing on behalf of the Respondents and perused the materials available on record.

6. Even admitting the case of the Respondents that they do not have sanctioned posts and they are only considering the cases of open market candidates (sponsored by the Employment Exchange) for the purpose of casual engagements only; they are, under law, estopped to do so;

because law has been well settled that "one casual/ad hoc employee cannot be substituted by another casual/ad hoc employee". Thus the entire attempt of the Respondents are futile, if, as per their own version, they are actually considering the candidates sponsored through the Employment Exchange for the purpose of engaging them "on casual basis". That apart, the Applicants being engaged under the Respondent No.5, their names could not have been in the Live Register of the Employment Exchange available for being sponsored and, thus, on that ground they could not have been kept out from being considered. Rather, they are available to be considered as "in service candidates".

7. For the reasons discussed above, the Respondents are hereby directed to allow both the Applicants (in both the OAs) to continue in service as before.

8. So far as the prayer of the applicants for direction to Respondents regularise their services is concerned; since there are no sanctioned posts of Safaiwala and Chowkidar, the Respondents are well advised to

sanction/create such posts for their local office(at Bhubaneswar); as such posts(of Safaiwalla and Chowkidar) are essential segments for any Government Office; and take appropriate steps to regularise the services of the Applicants; after granting them temporary-status etc.

9. Both the Original Applications, with the above observations and direction, are disposed of accordingly.

No costs.

Manoranjjan Mohanty
15/6/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

BJY.