

22

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.NO. 112 of 2005  
Cuttack, this the 31st July 2008

Hemanta Kumar Behera	.....	Applicant
Vrs.		
Union of India and others	.....	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to the Principal Bench or not?

(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)  
JUDICIAL MEMBER

23

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.NO. 112 of 2005  
Cuttack, this the 31st July, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER  
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

.....

Hemanta Kumar Behera, aged about 33 years, son of Kailash Chandra Behera, resident of Angarjodi, P.O.Agrahat, P.S.Choudwar, Dist.Cuttack, at present working as Electrician under Aviation Research Center, Charlantan, P.S.Choudwar, District Cuttack .....Applicant

For applicant - M/s Amiya Kumar Mishra (2)  
B.B.Behera & S.R.Debata

Vrs.

1. Union of India, represented through the Cabinet Secretary, Cabinet Secretariat, Room No.8, E.South Block, New Delhi.
2. The Special Secretary, Aviation Research Center (in short ARC), East Block – 5, Level V, R.K.Puram, New Delhi 110066.
3. The Deputy Director, Aviation Research Centre, Charlantan, Choudwar, Dist.Cuttack.
4. The Assistant Director (A), Aviation Research Centre, Charlantan, Choudwar, Dist. Cutback.
5. The Assistant Engineer, A.R.C., Charbatia, Choudwar, Dist.Cuttack

..... RESPONDENTS

For Respondents - Mr.R.N.Mishra, ACGSC.  
.....

ORDER**K.Thankappan, Judicial Member**

The applicant having been engaged under the 2<sup>nd</sup> respondent on casual basis, continued for more than 15 years, i.e., from 1989 onwards. The work entrusted to him, rather performed by him, was on a daily rated nature, initially for maintenance of swimming pool and attending works of Complaint Cell. Thereafter the applicant was entrusted with the work of watching and warding Public Health Section No.1 office and R.W.S. and S.Section No.1 office, Charbatia and some other allied works. While he continued so, during 1995 the work of the applicant was again changed to that of maintenance of street lights on his obtaining the Electrical Workman's Permit. However, the applicant was paid at the rate of Rs.82.50 per day for his work and he has been continuing as such. With the above background, the applicant filed an application for regularization of his service in any of the Group D posts under the 2<sup>nd</sup> respondent. For the above purpose, the applicant was also called upon to appear at an interview along with others. However, he could not come out successful in the test due to an accident occurred just prior to the test. The applicant filed representations for getting his services regularized and for his absorption in the permanent service under the 2<sup>nd</sup> respondent. To substantiate this claim, the applicant relies on Annexures A/1 to A/4 certificates which would show his service records within the office of the 2<sup>nd</sup> respondent. It is also the case of the applicant that as per Annexure A/6 he was called upon to attend the



interview to be absorbed in a Group D post. However, his ever cherished wish has not yielded any result. Hence the applicant has approached this Tribunal. The applicant also relies on a judgment of the Hon'ble High Court of Orissa reported in 2004(1) OLR 447 (*Sri Rajanikanta Pattanayak and others v. Sri R.S.Bedi and another*).

2. In spite of the above background, the representations of the applicant dated 1.11.2004 and 15.2.2005 have not been attended to by the respondents. These are the immediate reasons for filing this application by the applicant.

3. Against the claim of the applicant a counter affidavit has been also filed for and on behalf of the respondents. The stand taken in the counter affidavit is that though the applicant was engaged in different capacities on casual basis, he was not assured regularization of his services as his engagement was on casual basis. It is also stated in the counter affidavit that in order to regularize the services of the applicant, the approval of the concerned Ministry is necessary as per the rules and procedure followed in the 2<sup>nd</sup> respondent's office. Further it is stated that the statement of the applicant that some other persons engaged in the like nature of the applicant have been regularized in service is not correct.

4. With the above averments made in the O.A. and the stand taken in the counter affidavit, this Tribunal has to consider whether the applicant is entitled for regularization of his service or not.



5. This Tribunal heard the learned counsel on either side in extenso and perused the records produced along with the O.A.

6. Admittedly, the applicant was engaged under the 2<sup>nd</sup> respondent from 1989 onwards and he was paid daily rates. The work of the applicant, as claimed by him, was actually not denied by the respondents. Further the respondents have only stated that the applicant was engaged on daily rate basis and his services could not be regularized without approval of the Ministry concerned. In this connection, this Tribunal has noted that a matter of similar situation was considered by the Hon'ble High Court of Orissa in the case of *Sri Rajanikanta Pattanayak and others (supra)*. The Hon'ble High Court considered the case of 14 petitioners who were engaged on daily wages rather on casual basis in the same Department, viz., in Aviation Research Centre. The Hon'ble High Court though in a contempt proceeding observed in the judgment as follows:

"8. In such view of the matter, without entering into the question as to whether the opposite parties have committed any contempt in not complying with the orders passed by this Court, in the peculiar facts and circumstances of the case, we dispose of this application by directing the opposite parties to consider the cases of the petitioners for appointment and appoint the petitioners to any Group D posts as available now and for future vacancies, keeping in view the observation of this Court and the fact that these petitioners have rendered service to them for quite a considerable period, have become overage and now in a precarious financial distress with their family in accordance with their suitability in the respective posts within a period of three months from the date of communication of this order."

NS



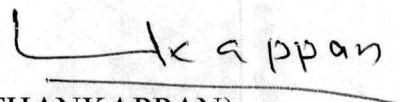
27

5

Considering the above direction given by the Hon'ble High Court of Orissa and the nature of work being done by the present applicant, viz., "looking after the maintenance of swimming pool and complaints pertaining to water supply in ARC premises" and the fact that the work of the applicant is of perennial nature, he being competent to do the work, we are of the view that the request rather the representation of the applicant requires earnest consideration by the respondents. It is also established before this Tribunal that the applicant has actually spent the lion's part of his life by serving the respondent-authorities though on part-time or daily rate basis and has now become over-aged and is not in a position to seek his livelihood in any other concern. In the above circumstances, the Original Application is allowed by directing respondent nos. 2 to 5 to consider Annexure A/5 representation dated 1.11.2004 and pass appropriate orders thereon as early as possible, at any rate within 60(sixty) days from the receipt of copy of this order.

7. With the above direction, the Original Application is allowed to the extent indicated. No order as to costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K. THANKAPPAN)  
JUDICIAL MEMBER