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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04.03.2008

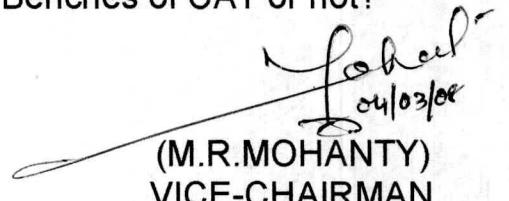
O.A. No. 87 & 88 of 2006

Prafulla Ku. Mishra & Anr. Applicants
Vs.
Union of India & Others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of CAT or not?


(C.R. MOHAPATRA)
MEMBER(ADMN.)


04/03/08
(M.R. MOHANTY)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04.03.2008.

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

In the Matter of:

1. O.A. No .87 of 2006

Prafulla Ku. Mishra Applicant
Vs.
Union of India & Others Respondents

2. OA No. 88 of 2006.

Souri Shankar Acharya Applicant
Vs.
Union of India & Others Respondents

(For Full details, see the enclosed cause title)

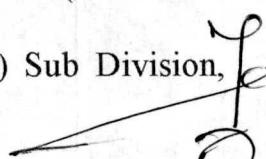
For Applicant : Mr. Dillip Ku. Mohanty, Counsel
For Respondents : Mr.U.B.Mohapatra, SSC.

(ORAL) O R D E R

Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

We have heard Learned Counsel appearing for the parties in these cases, one after the other, but for the sake of convenience this common order is passed which would govern all the cases.

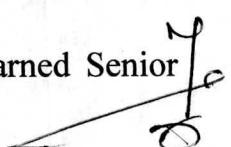
Memo Nos.A/130/05 dated 9th January, 2006 (both these OAs) of the Assistant Superintendent of Post Offices (North) Sub Division,



Bhubaneswar replacing the applicants (a casually engaged GDS Mailman) by other persons have been called in question by the Applicants in both the Original Applications filed U/s.19 of the Administrative Tribunals Act, 1985; on the ground that it offends the law of the land that '**one casual hand should not be replaced by another casual hand.**'

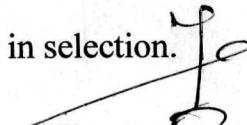
3. Respondents in their counter (filed in both the OAs separately) have pointed out that the Applicants have neither been recruited through a regular process of selection nor their initial casual engagements were made in consultation with the Employment Exchange. It has been stated that persons (who have been engaged in place of Applicants) are regularly selected EDDAs. But, according to the Respondents, as they were found surplus, due to drastic reduction of mail, they were directed to manage the work of GDS Mail man temporarily. It has also been stated by the Respondents that mere prolonged and extended casual/provisional engagement does not confer any right on them to claim regularization de hors the recruitment Rules. In the above back grounds, they have opposed the prayers of the Applicants in both the OAs.

4. Learned Counsel appearing for the Applicants, on the strength of some of the judicial pronouncements, has tried to persuade us that since the Applicants have already worked for a long time, against sanctioned posts, they have a right to be regularized; which was opposed by the Learned Senior Standing Counsel appearing for the Respondents. However, Learned Senior



Standing Counsel has fairly conceded that the Applicants are continuing to work on casual basis.

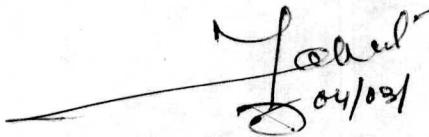
5. Jurisdiction of the Courts/Tribunal to issue direction for regularization of casual/temporary/ad-hoc employee is no more *res integra* and it would suffice to rely on the decision of the Hon'ble Apex Court rendered in the case of **Punjab Water Supply and Sewerage Board v Ranjodh Singh** (reported in (2007) 1 SCC (L&S) 713) and **Punjab State Warehousing Corporation v Manmohan Singh**, [(2007) 9 SCC 337]; wherein it has been held by the Hon'ble Apex Court that where appointments were void *ab initio*, for having been made in utter disregard of the existing recruitment rules and/or constitutional scheme adumbrated under article 14 and 16 of the constitution of India, the continuance would be wholly illegal. The Hon'ble Apex Court have also negatived the claim of regularization; if the initial recruitment were not made (a) in consultation with the Employment Exchange and (b) by a properly constituted Selection Board, after issuing public advertisement, as has been held in the case of **National Fertilizers Ltd and others v Somvir Singh** reported in 2007 (1) AISLJ 151. It is also settled position of law that no Courts/Tribunal can direct for filling up of any post; which is entirely the discretion of the authorities. However it has been held in the case of **Pankaj Gupta v State of J&K** (reported in 2005 (1) AISLJ 110) that at best direction can be given for giving age relaxation while appearing in selection.



6. Aforesaid being the position of facts and law, we find no merit in both the Original Applications. However, in view of the submission of the Learned Senior Standing Counsel, appearing for the Respondents, that both the Applicants are continuing to work on casual basis as against regular sanctioned posts, the Respondents are hereby directed that they should allow the Applicants to continue (in the present status) until the posts are filled up on regular basis and whenever they intend to fill up the post(s) on regular basis, the cases of Applicants should be considered by giving them necessary age relaxation to the extent of their period of work and due weightage to their past experiences.

7. With the above observations and directions, both the OAs stand disposed of.


(C.R.MOHAPATRA)
MEMBER(ADMN.)


04/08/1
(M.R.MOHANTY)
VICE-CHAIRMAN

KNM/PS.