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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 847 OF 2006
Cuttack, this the 5th Day of December, 2007

Ganeswar Mohapatra and others Applicants

vs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *— not*
2. Whether it be circulated to all the Benches of the *not* Central Administrative Tribunal or not?


(GAUTAM RAY)
MEMBER (A)


(G. SHANTHAPPA)
MEMBER (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 847 OF 06

CORAM:

HON'BLE SHRI G. SHANTHAPPA, MEMBER (J)
AND
HON'BLE SHRI GAUTAM RAY, MEMBER (A)

IN THE CASES OF:

1. Shri Ganeswar Mohapatra, CEI-I, aged about 56 years, Son of late Lokanath Mohapatra.
2. Shri S. Dakua, CEI-I, Aged about 47 years, S/o Shri Arjuna Dakua.
3. C. Chakrabarty, CEI-I, Aged about 48 years, S/o Mr. Pervaz Arora.
4. Shri P.K. Lenka, CEI-I, Aged about 42 years, S/o Shri Rama Chandra Lenka.
5. Shri M.K. Patnaik, CEI-I, Aged about 46 years, S/o late S.Ch. Patnaik.
6. Shri S.N. Acharya, CEI-I, Aged about 45 years, S/o late H.K. Acharya.
7. Shri B.C. Mishra, CEI-I, Aged about 47 years, S/o late Jagannath Mishra.
8. Shri R.N. Sahu, CEI-I, Aged about 47 years, S/o late Basudev Sahu.
9. Shri B.Mohapatra, CEI-I, Aged about 44 years, S/o late K.M. Mohapatra.
10. Shri B.N. Mishra, Lib & Inf. Assistant, Aged about 51 years, S/o late Arbabendhu Mishra.

At present all are working in the Office of the Education Department, I.N.S. Chilka, P.O.Naval Base, Dist.-Khurda, Orissa-752 037 ... Applicants

Advocates for the applicant ... M/s. S.R. Nayak,
M.K. Parida
F.R. Mohapatra

Versus

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1. Union of India, represented by its Secretary to the Government of India, Ministry of Defence, New Delhi-110 001.
2. Chief of Naval Staff, Naval Headquarters, New Delhi-110 001.
3. Flag Office Commanding-in-Chief, Eastern Naval Command, Visakhapatnam District, Visakhapatnam.
4. Commanding Officer, INS Chilka, PO.Naval Base, Dist.-Khurda.
5. Administrative Officer-II, INS Chilka, PO-Chilka Base, District-Khurda, Orissa-752 037.

...Respondents

Advocate for the Respondents ... Mr. G. Singh

ORDER

HON'BLE SHRI G. SHANTAPPA, MEMBER (JUDL) :

The above OA is filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

"That in view of what have been stated in paragraph-4 and submissions made in Paragraph-5, it is humbly prayed that the orders under Annexure A/4 be quashed and the services rendered by the applicants from the date of their first appointment till regularization be declared as continuous and the artificial breaks occurred within the said period be declared to be non-existence in the eyes of law and the Respondents be directed to give all consequential service benefits like, increment, leave, seniority, promotion, retirement, etc., treating such period as continuous, to declare that the applicants are entitled to the benefit of the ACT scheme of the Govt. of India on the basis of the date of regularization and/or to pass any other order/orders granting appropriate and proper relief to the applicants as your Lordships deem fit."

2. The applicants in this OA are all working in the office of the Education Department, INS, Chilka, Naval Base. Applicants 1 to 9 are working as CEI-I and the

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Applicant No.10 is working as Library and Information Assistant. Initially they were appointed on 22.6.1981 in a temporary (casual) from 1.7.1981 to 30.9.1981 in accordance with the terms and conditions mentioned in the offer of appointment dated 22.6.1981 (Annexure A-1). Thereafter the services of the applicants were terminated and fresh orders of appointment were issued and finally they were regularized with effect from different dates mentioned below:

<u>Sl.No.</u>	<u>Name & Rank</u>	<u>Date of initial Appointment</u>	<u>Date of regularization of Service</u>
1.	G.Mohapatra, CEI-I	6 July 1981	1 Aug 1982
2.	S. Dakua, CEI-I	9 Dec 1982	10 Jan 1984
3.	C.Chakraborty, CEI-I	2 May 1984	1 May 1985
4.	P.K. Lenka, CEI-I	5 Nov 1984	7 Apr 1986
5.	M.K.Patnaik, CEI-I	20 June 1986	1 Jan 1987
6.	S.N. Acharya, CEI-I	1 July 1986	1 Jay 1987
7.	B.C. Mishra, CEI-I	13 Mar 1987	10 Sept 1987
8.	R.N. Sahu, CEI-I	27 Mar 1987	23 Sept 1987
9.	B.Mohapatra, CEI-I	20 Aug 1987	1 Apr 1989
10.	B.N.Mishra, Lib&Inf	25 Aug 1983	23 Aug 1984

3. The first applicant submitted his representation dated 4.4.2006 (Annexure A/3) to the Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam to treat his entire period of service as regular. If he is regularized he will get the benefit of ACP Scheme. The learned counsel submits, similar applications were submitted by other applicants. The request of the first applicant was turned



down vide order dated 10.10.2006 (Annexure A-4) which is impugned in this OA. While considering the representation, the letters of Ministry of Defence -

- (i) No.2(17)-51/10085/D (Civ) dated 10.9.1963
- (ii) No.3(3)/65/11828/D(Civ-ii) dated 6.9.1966
- (iii) No.VO-18636/D.Appts dated 29.12.1966
- (iv) No.83482/EC-4/13574/D(Civ-ii) dated 24.11.19067
- (v) No.79962/BLO dated 18.2.1989

and directions of Army Headquarters issued on 18.3.1972, 3.1.1974 and NHA letter No.CP(A)5107 dated 22.2.1974 have not been followed. All the said orders relate to regularization of the services of those who are appointed on casual basis. Applicants are working in a regular and substantive post. There was an artificial break in between where Saturdays and Sundays being holidays. Such artificial breaks have only been made in order to deprive the applicants of their continuous service.

4. Similarly placed employees have approached various High Courts and CAT and given the benefit of treating the similar period and the respondents have implemented the orders. The applicants are treated equals as unequals and shown discrimination which is violative of Article 14 of the Constitution and as such the impugned order are liable. Copies of the orders in O.A.No.197/93 and 754/00 are produced as Annexure A-5 series. The said order is illegal, without jurisdiction and discriminatory. The same is liable to be quashed and there shall be a direction to treat the respondents from the date of their fresh

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appointment as the date of entry into regular service and grant of consequential service benefits as prayed for in the OA.

5. Per contra the respondents have filed their reply statement denying the relief of the applicants. The applicants have been appointed initially on casual basis for specific period and on completion of specific period when there was no sanctioned post being available they are ceased with the employment. The applicants were given further employment on casual basis for another specific period, then on availability of sanctioned posts, the applicants have been appointed against the regular posts. The applicants are not regularly appointed initially and their casual service was regularized. This OA is filed for regularization of their services from the date of their initial appointment. The applicants are not entitled for the reliefs in view of the judgment of the Hon'ble Apex Court in K.C.Joshi's case (AIR 1991 SC 284), M. Dharani's case (1997 SCC(L&S) 1484), K.Trimurthulu's case [1998(2) ATJ 623] and Direct Recruit Class II Engineering Officers Association v. State of Maharashtra [1990(2) SCC 715]. The applicants are seeking the benefit of directions of the Tribunals as per Annexure A-5 and asking for regularization by counting casual service as qualifying service for purposes of granting ACP. The ACP scheme was formulated to those employees who could not get regular promotion. The respondents state that the technical breaks between the initial date of appointment and date of regularization of

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the applicants have been condoned by grant of leave as due and admissible and all consequential and other benefits have been granted to the applicants with retrospective effect under compulsion although such directive is against the provision of the Constitution as held by Hon'ble Supreme Court in K.C.Joshi's case while being not holding regular post, the applicant cannot claim for casual service as qualifying service for grant of ACP. However, the technical breaks between the initial date of appointment and date of regularization of the applicants have been condoned by grant of leave and service treated as having rendered in regular capacity under compulsion.

6. The contention of the applicant that there was technical break in service of casual employment, is no longer valid in view of the law set by the Constitution Bench of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and others v. Uma Devi and others reported in [2000(4) Scale 197] in which it was held that when the court is approached for relief by way of writ, the court has necessarily to ask itself whether a person before it had any legal right to enforce. Considered in the light of very clear constitutional scheme it cannot be said that employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Article 14 and 16 of the Constitution. The applicants do not have an enforceable right since they cannot seek any redressal against the provision.

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7. The reliance placed by the applicants in O.A.No.197/93 is no longer valid in view of the law set by the Hon'ble Supreme Court judgment in Uma Devi's case [2006(4) Scale 197] and in K.C. Joshi and others AIR 1991 SC 284. Since the applicants have not been appointed to a substantive capacity initially they cannot claim regularization and claim ACP benefits. The applicants can claim ACP benefits on becoming a member of service i.e. on regularization in substantive capacity. The applicants cannot claim any rights against the provisions of Constitution and law set by the Hon'ble Supreme Court. The applicants have been given counting of the casual service under compulsion under the directions of the Hon'ble Tribunal. The applicants No.4, 9 and 10 have filed O.A.No.232/95. They were allowed to withdraw the OA as reliefs sought by them was already granted and the applicants have been paid arrears in difference of pay and allowances from the date of initial appointment to the date of regularization. As per the ACP scheme issued by DOP&T vide O.M. dated 35034/1/97-Estt.(D) dated 9.8.1999 (Annexure R-6), cannot be the basis for claiming that benefit which is not in consonance with the provisions of the Constitution and law set by Apex Court in the above mentioned judgments. Accordingly the applicants have no legal right to ask for relief as prayed for in the OA and the OA is liable to be dismissed.

8. We heard Shri S.R. Nayak, Shri Parida and Shri F.R. Mohapatra for the applicants and Shri G.Singh, Additional

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Standing Counsel for Central Government for the respondents. We perused the pleadings and arguments and the judgments of the Apex Court. It is an admitted fact from either side that as per Annexures A-1 and A-2 the applicants were appointed as Civilian Educational Instructor in a temporary (casual) capacity from 1.7.1981 to 30.9.1981. Subsequently on 4.4.2006 the first applicant submitted his representation with a request to commute his service seniority from the date of initial appointment on the ground that the judgment of CAT, Cuttack Bench in O.A.No.63/06 dated 20.1.2006 and direction may be given to the respondents to commute casual period as qualifying service for grant of ACP. The other applicants are also asking for the same relief since the services of the applicants are similar. They refer only to the representation of the first applicant at Annexure A-3. In respect of the services of the applicants the respondents have mentioned in the reply statement that the applicants are not regularly appointed initially and their casual services was regularized against the provisions of the Constitution. Such casual services cannot be claimed by the applicant as qualifying service as the applicants were not holding the post for grant of ACP. The applicants are eligible only when they started holding the post on substantive capacity. The relief of the applicants that the service rendered by the applicants from the date of their first appointment till regularization be declared as continuous and the artificial break occurred with the said period be declared to be non-existent in the eyes of law.



Based on the said statement of the applicants and the respondents we presume that there was a break in service; that has been regularized by the respondents against the provisions of the Constitution as per the law laid down by the Hon'ble Apex Court in the case of K.C. Joshi reported in AIR 1981 SC 284. When the respondents have stated that the applicants are not regularly appointed initially and their casual service was regularized against the provisions of the Constitution, that order of regularization has not been withdrawn. Nowhere in the reply statement they have stated that they have withdrawn the order of regularization. Their specific stand is that the applicants' services were regularized against the provisions of the Constitution. When the services of the applicants were regularized then the applicants are eligible for grant of APC if they satisfy the ingredients of the scheme issued by the DOP&T dated 9.8.1999 (AnnexureA-6). In para 10 of the reply statement the respondents have mentioned that the applicants have been paid arrears in difference of pay and allowances from the date of initial appointment to the date of regularization.

9. Now the question arises for our consideration whether the applicants are entitled to the benefit of ACP scheme. For the said scheme the applicants are relying on the judgment of the Ernakulam Bench of this Tribunal in O.A.No.197/93 and O.A.No.755/2000. The main contention of the respondents that since the Apex Court has held in the case of Uma Devi [2006(4) SCALE 197] and K.C. Joshi, there

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is no fundamental right for those who have been employed on daily wage or temporarily or on contractual basis to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since a regular appointment can be made only by making appointments consistent with the requirement of Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wage basis, cannot be entitled to claim for equal treatment with those who were regular employees. That would be treating unequals as equals. They cannot also be related on a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules. As per the ACP scheme introduced vide OM dated 9.8.1999 Group B, C and D employees on completion of 12 years and 24 years of regular service subject to certain conditions are eligible for financial up-gradation. As per para 3.2 of the said scheme, regular service for purpose of ACP scheme shall be interpreted to mean that the eligibility service counted for regular promotion in terms of regular recruitment/service rules. Accordingly the period of service rendered by the applicants on casual basis cannot be reckoned for granting ACP benefit on account of the fact that this period has not been counted for seniority.

10. We carefully examined the judgment of this Tribunal in O.A.No.197/93 dated 1.12.1993 which is produced as Annexure Annexure A-5 series. In the said case the applicants were appointed for 89 days on different dates and have been

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continuing as such after their services have been regularized with effect from the dates shown against each of them in the chart. Their services were not taken to be continuous for purpose of their seniority, leave, etc., The said judgment was based on the judgment of this Tribunal in O.A.No.122/93 dated 12.11.1993 and the judgment of the Hyderabad Bench of this Tribunal in O.A.No.145/87 disposed of on 28.3.1989. The Hyderabad Bench of this Tribunal had disposed of the said OA taking note of the position of the Apex Court in W.P. No.1689/85 and relief was granted in the said O.A.No.197/93.

12. In similar circumstances, Ernakulam Bench of this Tribunal in O.A.No.755/2000 dated 20.9.2002 has granted the relief. Facts of the said OA were that the second applicant joined the service as casual clerk on 1.11.1982 and she was absorbed only on 9.3.1989. The third applicant started her career as casual clerk on 21.3.1983 and later absorbed on 1.8.1990. Similarly 4th applicant started working as casual clerk on 17.5.1983 and absorbed on 2.5.1988. Most of the persons who have been recruited on casual basis and were subsequently regularized on the basis of various Tribunals directing the respondents to condone the artificial break imposed on them. Accordingly, they have been granted consequential benefits like fixation of pay, annual increment, etc., like regular employees. Ernakulam Bench of this Tribunal in O.A.No.434/89 and 609/89 were granted all the benefits to such employees except the seniority. The respondents in the said OA have



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taken the objection that once the specific job or leave period is over the persons employed on those vacancies ceases to be in employment. But they were reengaged on fresh recruitment. They have been regularized on the basis of their inter-se seniority and occurrence of regular vacancies. The relief was granted for grant of benefit under the said ACP scheme. Dispute has been decided by the Ernakulam Bench that whether the period of service rendered as causal service would be considered as eligible service for regular promotion. According to the respondents the period of service rendered by the applicants on casual basis cannot be reckoned for grant of ACP scheme on account of the fact that this period has not been counted for seniority. The dispute in respect of eligibility criteria for the purpose of giving benefit of ACP was also decided. While deciding the OA the Ernakulam Bench has relied upon the judgment of another OA No.434/89 and 609/89 of Ernakulam Bench. As per para 20 of the said judgment

in accordance with the findings of the larger bench they are entitled to the benefit of seniority from the date of their initial appointment on casual basis. Accordingly in continuation of our judgment dated 20.8.1990 by which the applicants were directed to be regularized from the date of their original appointment on casual basis by condoning the break for all the benefits except that of seniority, we direct now the benefit of seniority should also be given to them as from the date of their original appointment on a casual basis. The aforesaid two applications were disposed of on the above lines. There will be no order as to costs.

12. Finally it was held that casual engagements have been regularized by condoning the break in service except for seniority for purpose of eligibility to appear in departmental examination, their service should also be

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counted. For the purpose of granting ACP scheme the seniority with retrospective effect for other employees who are in line for regular promotion. Therefore the seniority can be considered for promotion purposes but not all come in the way of granting upgradation under the ACP scheme. This is not a promotion but upgradation for the next higher grade with the same responsibility of work.

13. In the impugned order the respondents have not considered the judgment of the Hon'ble Apex Court though the Department is a party before the Ernakulam Bench. The applicants are relying on the judgment of O.A.No.63/06 dated 20.1.2006 which is mentioned in the representation, but a copy of the said judgment is not supplied or enclosed. But the respondents in their order dated 10.10.2006 (Annexure A-4) have referred that the judgment in the case of P.K. Parimanaik, LDC of NAI, Sunabeda, is not relevant to their cases. We carefully examined the impugned order and find that it is not a speaking order and no reasons are assigned and the judgments of the Ernakulam Bench were also not considered. The relief in the OA that the applicants are asking for regularization of the period by condoning the artificial break and after regularization they are asking for consequential benefits like increment, leave, seniority, promotion, retirement, etc. Treating such period as continuous to declare that the applicants are entitled to the benefit of ACP scheme. The request in the representation at Annexure A-3 that the services counted only for the purpose of seniority from the date of



initial appointment and to grant second ACP. The representation of the applicant is also not so clear and specific, there is no request in respect of the relief sought in the OA. When there is no demand of the applicants, accordingly mandamus cannot be issued. Hence, the applicants are directed to submit fresh representations in continuation to the earlier representation dated 4.4.2006.

14. Since the impugned order is not a speaking order, no reasons are assigned and hence we treat the impugned order is not a speaking order. While deciding the request of the employees the respondents have to consider the request of the applicants and pass a considered and reasoned order in accordance with the judgment of Ernakulam Bench in O.A.No.755/2000 dated 20.9.2002. Reasoned order should be in accordance with the directives of the Hon'ble Apex Court in the case of Union of India v. Jaiprakash Singh AIR 2007 SC 1363 wherein at para 8 of the judgment it was held

"8. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union [1971(1) All E.R. 1148] observed 'The giving of reasons is one of the fundamentals of good administration'. In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: 'Failure to give reasons amounts to denial of justice.' Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at'. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least

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sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quashi-judicial performance."

15. Since the impugned order is not a speaking order and which is not in consonance with the Hon'ble Apex Court judgment we quash the said order. The respondents are directed to consider the representation of the applicants in view of the judgment of the Ernakulam Bench of this Tribunal which are referred to above. It is further directed the respondents to consider whether the judgment of the Apex Court in the case of Umadevi supra is applicable to the facts of the present case.

16. The applicants are directed to submit their individual representations afresh in continuation to the earlier ones dated 4.4.2006 mentioning there facts of their case from the date of initial appointment till the date of regularization. If such representations are filed by the applicants the respondents are directed to consider the same subsequently.

17. With the above observations this OA is disposed off. No costs.


(GAUTAM RAY)
MEMEBR (A)


(G. SHANTHAPPA)
MEMBER (J)