

O.A.No.83/2003 & C.P.(Civil)No.07/2004

ORDER DATED 04-03-2005.

Applicant, a Computer Data Entry Operator of the Central Excise and Customs (Cuttack Division) organization, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking regularisation of his service.

2, Respondents have filed a counter contesting the case of the Applicant; wherein they have disclosed that the Applicant was engaged on Contract basis during the period when regular staff members of the Respondents' Organization were deputed for being trained in Computers. It is the case of the Respondents that there are no vacancies as against which the Applicant can be regularized and that since the very temporary engagement of the Applicant was done without following the rigors of the recruitment rule, there are no scope for regularizing him as against any

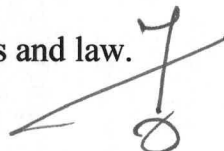
post.



3. Heard Mr. Subrat Kumar Mohanty, learned counsel appearing for the Applicant and MR. Uma Ballav Mohapatra, learned Senior Standing Counsel appearing for the Respondents Department and perused the materials placed on record.

4. It is undisputed that no vacancies are presently available as against which the Applicant can be regularized. It is the case of the Learned Counsel for the Applicant that certain vacancies are being released in All India level and some vacancies may fall to the shire of the Orissa segment of Central Excise and Customs in near future and that as against those vacancies, the case of the Applicant can be considered for regularization.

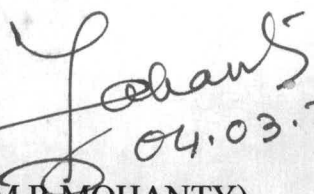
5. Since, undisputedly there are no vacancies, there is no scope in the present case to issue a direction for regularization of the Applicant in the services of the Respondents Department. It is also not in dispute that no court/Tribunal can direct the Executive/Government to create any post. However, liberty is always available for the Applicant to seek appointment under the Respondents Department as and when vacancies will be available as per the rules and law.



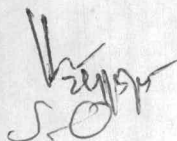
6. In the said premises, this Original Application is disposed of with direction to the Respondents to give due consideration to the case of the Applicant, as due and admissible under the Rules, as against the future vacancy; for which the Applicant may offer his candidature. No costs.

7. Since this Original Application has been disposed of; as aforesaid, there remains nothing to continue with the Contempt Petition (Civil) No. 7 of 2004; which is accordingly, dropped. Notice is discharged.

Send copies of this order to both the parties (Applicant and Respondents) and free copies of this order be given to learned counsel for both sides.


04.03.2005
(M.R. MOHANTY)
MEMBER (JUDICIAL)

ny. n Common dt. 4/3/05
last issued to
counsel for
Rg side.


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