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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 556 of 2010

Cuttack, this the 07th day of August, 2012

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

Benudhara Singha, aged about 33 years, S/o.Late Gajendra Nath Singha, At/Po/Gududa Patna, Via/Ps-Remuna, Dist. Balasore working as Technician (Casual) Electrician, HPT, Balasore, At/Po/Dist. Balasore.

....Applicant

By legal practitioner- M/s.Brajaraj Dash, M.Mohapatra,
U.R.Padhi, S.B.Das, Counsel.

-Versus-

- 1) Union of India represented through its Secretary, Information and Broadcasting, Sastri Bhawan, New Delhi-110 001.
- 2) Director General, Doordarshan, Copernicus Marg, Mandi House, New Delhi-110 001.
- 3) Station Director, Door Darshan Kendra (Prasarbharati), Bhubaneswar, PO. Sainik School, Bhubaneswar-5, Dist. Khurda.
- 4) Superintending Engineer, Doordarshan Kendra Po-Sainik School, Bhubaneswar-5, Dist. Khurda.
- 5) Station Engineer, H.P.T. Balasore, At-Bhimpura, Balasore, PO. Haripur, Via-Motiganj, Dist. Balasore.

....Respondents

By legal practitioner – Mr.P.R.J.Dash, ASC

ORDER

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

Alleging non consideration of his grievance as raised in representation dated 28-11-2008 for conferment of temporary status followed by regularization, in pursuance of the DOP&T instruction dated 10.09.1993, the Applicant had earlier approached this Tribunal in OA No.186 of 2009. The said Original Application [186/2009] was disposed of on 21-

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07-2009 by calling upon the Respondents No.2 to dispose of the pending representation dated 28.11.2008 in a well reasoned order, within a period of three months. Respondents rejected the contention of the applicant on the ground that his case did not come within the purview of the DOP&T instruction dated 10-09-1993. Full text of the order of rejection under Annexure-A/8 dated 04-08-2010 reads as under:

"The Hon'ble CAT, Cuttack by its order dated 21.7.2009 in OA No. 186/2009 directed to consider the representation dated 26.11.2008 within a reasonable time at any rate within 90 days from the date of receipt of copy of this order as per laws. The Hon'ble CAT, Cuttack also directed that applicant (Shri Benudhar Singh) shall send a copy of the OA along with a copy of the order of the Tribunal by registered post within acknowledgement to the respondents.

2.As directed by the Hon'ble CAT, Cuttack the applicant has not sent any documents. However, on the basis of a copy of OA having of the representation dt. 28.11.2008, annexure-5 and the copy of judgment available in office records, the case has been considered.

3.In his representation dated 28.11.2008 Shri Benudhar Singh, Casual Labour at HPT, Balasore has represented to regularize him against the post of Technician. The claim in his representation is that he was engaged on the post of Technician under HPT, Balasore on casual basis in the vacant post through valid recruitment with requisite qualification and experience is not

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correct. He was only engaged on casual basis without any designation.

The DOP&T Scheme dated 10.9.1993 states as follows-

“Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). **The scheme is applicable to casual laboruers in employment of the Ministry/Department of Govt. of India and their attached and sub-ordinate offices, on the date of issue of these orders i.e. 01.09.1993.**”

4. Shri Benudhar Singh, Casual labour was neither in engagement on 1.9.1993 nor prior to the date of 1.9.1993. He was engagement much later on the year 1999 and his case is not covered under the aforesaid DOP&T Casual Labours (Grant of Temporary Status and Regularization) Scheme, 1993. The Supreme Court in the order dated 29.4.2002 has also held in the case of Shri Mohan Pal that DOP&T Scheme of 1993 is not an ongoing scheme.

5. In view of facts explained above, the undersigned has come to the conclusion that Shri Benudhar Singh, Casual Labour is not eligible for grant of temporary status under the DOP&T Scheme 1993 and his request cannot be acceded to which is hereby communicated.”

Hence this OA with the prayers mentioned herein below:

“8.1. That the impugned speaking order vide Annexure-A/8 passed by the Respondent No.5 is otherwise bad in law, illegal and

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improper and the same may kindly be set aside;

- 8.2. That further be pleased to pass necessary direction to the competent authority to regularize the service of the applicant in the post of Electrician under DDMC, Balasore;
- 8.3. That further be pleased to pass any other order/order(s) as deemed fit and proper to give complete relief to the Applicant."

2. The Respondents contest the case of the Applicant by stating that the applicant was initially engaged in 1999 i.e. much after the Scheme of 1993. The scheme of DOP&T clearly provides that temporary status would be conferred on those casual laboruers who are in engagement as on 01.09.1993. As the applicant was not in engagement on the said date, his request was rightly rejected by the Respondents. Further it has been stated by the Respondents that the initial engagement of the applicant was not through due process of selection nor against any sanctioned post. There is no vacant post of Electrician Group C available in the HPT Balasore. The continuance of the applicant was purely on contractual basis to meet the day to day need of the HPT Balasore. Hence, the applicant is not entitled to the relief claimed in this OA.

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3. Heard Mrs.U.Padhi, Learned Counsel for the Applicant and Mr.P.R.J.Dash Learned ASC appearing for the Respondents and perused the documents available on record. As the engagement of the applicant is much after the cut off date fixed in the DOP&T Scheme 1993, Mrs. Padhi, Learned Counsel for the Applicant has rightly forsaken her prayer for conferment of temporary status on the applicant as per the scheme of the DOP&T. However, By placing reliance on the information obtained under RTI Act, 2005 with regard to availability of vacancies as placed at Annexure-A/9 and the decision of the Hon'ble Apex Court in the cases of **State of Karnataka Vrs Umadevi**, AIR 2006 SC 1806= 2006 (4) SCC 1 and **State of Karnataka Vrs M.L.Keshari**, AIR 2010 SC 2587 it has been contended by Mrs.Padhi, Learned Counsel for the Applicant that as the applicant has been continuing to discharge his duty on casual basis uninterruptedly since 1999, without intervention of any order of the Tribunal/Court, even if the case of the applicant does not come within the scope of the DOP&T instruction dated 1993, the Respondents ought to have considered the case of the applicant against one of the vacancies available in the

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Department as shown in Annexure-A/9. She contended that the applicant has by now become over age. Therefore, the case of the applicant needs sympathetic consideration in the light of the decision of the Hon'ble Apex Court quoted above. This was vigorously contested by the Learned ASC appearing for the Respondents on the ground that since the initial engagement of the applicant was not through due process of selection, direction for regularization would offend the provision of Articles 14 and 16 of the Constitution. Hence, he prayed for dismissal of this OA.

4. Having considered the arguments advanced by respective parties, I have no hesitation to hold that rejection of the grievance of applicant for conferment of temporary status as per DOP&T Scheme, 1993 is not unjustified as the scheme was a one time measure and not ongoing. But I find some force in the contention of the Learned Counsel for the Applicant that as the applicant has been undisputedly continuing to discharge duty on casual basis without any order of the Tribunal/ Court since 1999, his case would merit consideration for regularization by the Respondents as per the decision of the Hon'ble Apex Court in the case of State

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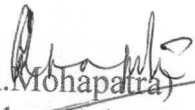
of Karnataka (supra). In this regard, relevant portion of the decision of the Hon'ble Apex Court is extracted herein below:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. (Emphasis supplied)

5. For the reasons discussed above, I am of the considered opinion that the case of the applicant for regularization needs sympathetic consideration in the light of the decision of the Hon'ble Apex Court quoted above.

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Accordingly, the Respondents are hereby directed to consider the grievance of the applicant in the light of the decision of State of Karnataka (supra) within a period of 60 days from the date of receipt of copy of this order. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


(C.R. Mohapatra)
Member (Admn.)