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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 227 OF 2011
Cuttack this the *8th* day of May, 2012

Narendra Kumar Parida & Others...Applicants
-VERSUS-
Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *x*
2. Whether it be referred to CAT, PB, New Delhi or not ? *✓*

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

AK
(A.K.PATNAIK)
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 227 OF 2011

Cuttack this the 8th day of May, 2012

CORAM:

1:
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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12. Sudhira Kumar Khandual, aged about 41 years, S/o. Jagannatha Khandual, At-Mirzapur, PO-Lankapara, Dist-Jagatsinghpur, At present working in Bhubaneswar, RMS as Casual Mazdoor under SRO "N" DVN., Bhubaneswar, Dist-Khurda

13. Sularat Chandra Das, aged about 47 years, S/o. Bhimsen Das, At/PO-Jarakani, PS-Balanga, Dist-Puri, now working as Casual Mazdoor in the office of SRO RMS N' DN., Bhubaneswar, Dist-Khurda

14. Prakash Chandra Sahoo, aged about 40 years, Son of Damodar Sahoo, At/PO-Sompur, Benahar, Via-Borikina, Dist-Jagatsinghpur, now working as Casual Mazdoor in the office of SRO RMS, "N"DN., Bhubaneswar, Dist-Khurda

15. Surendra Kumar Jena, aged about 41 years, S/o. late Dinabandhu Jena, At-Babalpur, Via-Dasrathapur, Dist-Jajpur, now working as Casual Mazdoor in SRO RMS "N" DN., Bhubaneswar, Dist-Khurda

...Applicants

By the Advocates:M/s.S.Pattnaik & B.R.Kar

-VERSUS-

1. Union of India represented through Director general of Posts, Dak Bhawan, New Delhi

2. Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda

3. Senior Superintendent, RMS 'N' Division, Cuttack-1

...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

ORDER

A.K.PATNAIK, MEMBER(J): Claiming to have been working as Casual Mazdoors under the Respondent-Department, fifteen applicants, who have been permitted to prosecute this O.A. jointly, have sought for the following relief.

- a) To declare the applicants as temporary status workers since 1989 or from the date they completed 240 days.
- b) To absorb/regularize/appoint the applicants against the Group-D vacancies exists in 'N' Division within a stipulated time
- c) Pass any other order/orders as deem fit and proper.

2. Earlier these applicants had moved this Tribunal in O.A.No.678/2010 praying therein to absorb/regularize/appoint them against the existing Group D vacancies in N Division under the Respondent-Department. Vide order dated 4.11.2010 this Tribunal disposed of the said O.A. at the stage of admission with direction to applicants to file

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representations individually within seven days and if such representations are filed,

Respondent Nos. 2 and 3 should consider and pass a reasoned order thereon.

3. In consideration of the representations aforesaid, Respondent No.3 issued reasoned order dated 28.1.2011 (Annexure-6) stating therein that "it is not feasible under the existing rules/instructions to give temporary status and regularize the service of the applicants working as Mazdoor in Bhubaneswar RMS as they were not recruited in normal manner, i.e., through employment exchange and their engagement was only from 01.05.1994".

4. Hence, this application with the aforesaid prayer.

5. Shorn of unnecessary details, it would suffice to note that the initially applicants were working as ED substitutes under the Respondent-Department in the year 1984. In the year 1994 they were engaged continuously as Mazdoor and worked for 5 hrs. a day. Having worked as such for seven years, applicants were granted basic pay of Gr. D with unusual D.A. on pro rata basis by the order of Respondent No.2. in the year 2001. According to applicants, as per Casual Workers (Grant of Temporary Status and Regularization) Scheme, 1989, casual workers who have completed 240 days service as on 21.11.1989, are to be conferred with temporary status and subject to availability of vacancies they should be absorbed against Group D posts. Based on this, applicants have laid their claim for conferment of Temporary Status and consequential regularization in Gr.D posts under the Respondent-Department.

5. Respondent-Department have filed their counter opposing the prayer of the applicants. While they have not disputed working of the applicants as Substitutes in the year 1984 and further engagement as Mazdoors since 1994, it has been submitted that

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none of the applicants was recruited through the Employment Exchange. Further, Respondents have submitted that as per Lr.No.65-24/88/SPB.I Dtd. 17th May, 1989 issued by the Department of Posts, substitutes engaged against absentees should not be designated as casual labourers. For the purpose of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. To substantiate their stand, they have submitted the rank of substitutes as under.

- i) NTC Group D officials
- ii) EDAs of the same division
- iii) Casual Labourers
- iv) EDAs of other division in the same region
- v) Substitutes
- vi) Direct recruits through Employment exchange

6. According to Respondents, there are 25 nos. EDAS(Now GDSMM) in Bhubaneswar RMS and total 93 EDAs(now GDSMM) in the Division are working and awaiting for regularization after serving more than 25 years as EDAs(GDSMM). Bringing to notice of the Tribunal G.I.Deptt. P & T OM No.49014/18/84-Estt© dated 7th May, 1985, it has been submitted that casual employees not recruited through Employment Exchange are not entitled to be bestowed with temporary status. In so far as grant of temporary status on part-time employee is concerned, it has been submitted that no such status could be conferred on part-time employee.

7. With these submissions Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

8. Applicants have filed rejoinder which is more or less reiteration of facts as in the O.A.

9. We have heard Shri S.Pattnaik, learned counsel for the applicants and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents and perused the

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materials on record. We have also given our anxious thoughts to the arguments advanced at the Bar.

10. Admittedly, applicants had been working as Substitutes EDs from 1984 onwards. It is also an admitted fact that they were engaged as Mazdoors in 1994 on daily wage basis for five hours per day in different sets of Bhubaneswar RMS with a view to meet the manpower and since then they have been continuing as such. G.I., Dept. of Posts, Lr.No.65-24/88-SPB.I dated the 17th May, 1989 lays down the ruling regarding Part-time and Full-time Casual Labourers. It has been clarified that all daily wagers working in Post Offices or in RMS Office or in Administrative Offices or PSDs/MMS under different designations(Mazdoor, casual labourer, contingent paid staff, daily wager, daily-rated mazdoor, outsiders) are to be treated as casual labourers. Thus, by the engagement of applicants as Mazdoors their status is deemed to be determined as casual labourers, part-time or full-time, subject to less than eight hours or eight work per day, as the case may be. It is an admitted fact that when the applicants had been working as Substitute EDs they were working as such against the leave vacancies. There is no instructions issued by the Department to the effect that for engagement as Mazdoors from Substitute EDs, names have to be sponsored through the Employment Exchange albeit, it is the sole criterion in so far as engagement of Casual Workers/Labourers under the Respondent-Department is concerned. Since by the instructions/clarification dated 17.5.1989 (supra) issued by the Department of Posts, which was in force when the applicants were engaged as Mazdoors in the year 1994, by the operation of above instructions, applicants' designation as Mazdoors ought to have been treated as casual labourers, Part-time or Full-time, as the case may be. Since it is an admitted position that

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the applicants' engagement is less than eight hours per day, nothing stands in the way to treat them as Part-time casual labourer from 1994. In so far as Regularization of part-time Casual Labourers as full time is concerned, it has been stipulated in GI Deptt. Of Posts.

Lr.No.45-14/92-SPB-I dated the 16th September, 1992 as under:

"If part-time casual labourers are working for five hours or more, it may be examined whether they can be made full time by readjustment or combination of duties. However, there should be no engagement of fresh casual labourers".

11. In the counter filed, Respondent-Department though have emphasized on the point that applicants' having not been sponsored through the Employment Exchange are not entitled to be bestowed with temporary status, yet, reading between the lines of the instructions issued by the Department of Posts as cited above, gives out a different impression that for engagement of Mazdoor or part-time casual labourer as if there is little scope of engagement as such otherwise than through the Employment Exchange. ~~If~~ Had it not been so, then, certainly, there would have been a condition attached to engagement of applicants from Substitute as that of Mazdoors. Having not done so, application of the criterion of engagement as casual labourers through the Employment Exchange in case of the applicants herein is out of place by the reason that the applicants, as observed above, are deemed to have been engaged as part-time casual labourer since 1994 and to this extent, there is no instructions issued by the Department for engagement of part-time casual labourer through the Employment Exchange.

For the reasons discussed above, we make the following orders.

- (i) To treat the applicants as part-time casual labourer from 1994 having due regard to instructions/clarification issued by Department of Posts vide letter dated 17.5.1989.

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- ii) To examine whether the applicants could be made full time by readjustment or combination of duties as per stipulation in DI Dept. of Posts letter dated 16.9.1992.
- iii) To examine whether the applicants have served for 480 days in a period of 2 years so as to treat them, for the purposes of recruitment, to have completed one year of service as full time casual labourers, as per Department of Posts vide letter dated 17.5.1989.
- iv) Accordingly, rank them in priority at Sl.No.(iii) as has been indicated in letter dated 28.1.2011 (Annexure-A/6).

The entire exercise shall be completed within a period of 120 days from the date of receipt of this order. In the result, the O.A. succeeds to the extent stated above. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER
BKS


(A.K.PATNAIK)
JUDICIAL MEMBER