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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application Nos.379 & 532 of 2011
Cuttack, this the 24th day of October, 2014

C.R. Mohanty & N.R. Sahoo

... Applicants


-Versus-

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be referred to PB for circulation? *yes*


(R.C. MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application Nos.379 & 532 of 2011
Cuttack, this the **24th** day of October, 2014

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)

O.A. Nos.379/11

Chitta Ranjan Mohanty,
aged about 38 years,
S/o. Bholanath Mohanty,
At-Naladia, Po-Namouza,
Dist-Kendrapara,
At present residing at Deulasahi,
P.O-Tulasipur, City/Dist-Cuttack.

...Applicant

(Advocates: M/s- K.P. Mishra, S. Mohapatra, T.P. Tripathy, L.P. Dwivedy)

VERSUS

Union of India Represented through

1. Secretary, Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi.
2. The Director General, All India Radio,
Akashabani Bhawan, Sansad Marg, New Delhi-110001.
3. Chief Executive, Prashar Bharati,
Broadcasting Corporation of India,
Mandi House, Copernicus Marg, New Delhi-110001.
4. Station Director, All India Radio, Cuttack, Odisha.

...Respondents

(Advocate: Mr. B.K. Mohapatra)

O.A. No.532/2011

1. Nihar Ranjan Sahoo,
aged about 41 years, S/o. Niranjana Sahoo,
At-Srivihar Colony, P.O.-Tulasipur,
City/Dist-Cuttack-753008.
2. Gyana Ranjan Mohanty,
aged about 45 years, S/o. Late G.C. Mohanty,
At-Mathasahi, P.O.-Tulasipur,
City/Dist-Cuttack-753008.
3. Santa Ray,
aged about 42 years, C/o. D.N. Ray,
At-Chahata Chhak, P.O.-Bidanasi,
City/Dist-Cuttack-753008.

4. Mitali Pal,
aged about 52 years, W/o. Purna Chandra Mohapatra,
At-Bangalisahi, P.O.-Telengabazar, City/Dist-Cuttack.
5. Sukanta Kumar Rana,
aged about 52 years, S/o. Late Padmanav Rana,
At- Mathasahi, P.O.-Tulasipur, City/Dist-Cuttack-753008.
6. Sushamarani Sahoo,
aged about 38 years, W/o. Chittaranjan Sahoo,
At-Thoriasahi, P.O.-Buxibazar, City/Dist-Cuttack-753001.
7. Sucharita Mishra,
aged about 41 years, D/o. Pravat Kumar Mishra,
At-Tarachandpatna, Dal Mill Road, P.O.-Pithapur,
City/Dist-Cuttack.
8. Hitesh Kumar Mohanty,
aged about 51 years, S/o. Adwait Charan Mohanty,
At-Jhanjirimangala, P.O.-Telengabazar,
City/Dist-Cuttack.
9. Karniel Behera,
aged about 50 years, S/o. James Behera,
At-Makarbasahi, P.O.-Buxibazar, City/Dist-Cuttack.
10. Karunakar Sethy,
aged about 36 years, S/o. Mayadhar Sethy,
At-Somanathpatna, Jobra, P.O.-College Square,
City/Dist-Cuttack.
11. Banaprava Parida,
aged about 44 years, W/o. Chittaranjan Behera,
At-Tarini Book Store, P.O.-Kalyani Nagar,
City/Dist-Cuttack-753013.
12. Debidutta Mohanty,
aged about 43 years, S/o. Sashibhusan Mohanty,
At-Shivaji Nagar, P.O.-Tulasipur,
City/Dist-Cuttack-753008
13. Deepti Dash,
aged about 37 years, C/o. K.N. Dash,
At-Friends Colony, Bajrakabati Road, City/Dist-Cuttack.
14. Barsha Pattnaik,
aged about 49 years, W/o. Kamal Kumar Pattnaik,
At-Plot No.F/113, Sector-7, CDA, City/Dist-Cuttack-753014
15. Nivedita Mishra,
aged about 39 years, W/o. Tanmay Dash,
At-Tarachandpatna, Dal Mill Road, P.O.-Pithapur,
City/Dist-Cuttack.
16. Sanjay Kumar Samantaray,
aged about 39 years, S/o. Arttabandhu Sahu,
At-Hindolkothi Chhak, P.O.-Tulsaipur, City/Dist-Cuttack-753008
17. Sukanta Kumar Pradhan,
aged about 38 years, S/o. Narayan Pradhan,
At-Sankarpur Dihasahi, P.O.-Arunodaya Market,
City/Dist-Cuttack.

18. Niharbala Pattnaik,
aged about 40 years, D/o. Ranjan Kumar Behura,
At-Deulasahi, P.O.-Tulasipur,
City/Dist-Cuttack.
19. Sasmita Satpathy,
aged about 38 years, W/o. Rabindra Kumar Satpathy,
At-Dagarpada Baniasahi, P.O.-Chandinichowk,
City/Dist-Cuttack-753002.
20. Bhabagrahi Mohapatra,
aged about 52 years, S/o. Hrudananda Mohapatra,
At/P.O.-Alishabazar, City/Dist-Cuttack.
21. Prakash Chandra Deva,
aged about 40 years, S/o. Late Sarada Chandra Dave,
At-Mathasahi, Station Bazar, P.O.-College Square,
City/Dist-Cuttack-753003
22. Padmabati Dwaibedi,
aged about 40 years, D/o. Sachidananda Dwibedi,
At-Alamchandbazar, P.O.-Nimchouri,
City/Dist-Cuttack-753002.
23. Samir Mishra,
aged about 38 years, S/o. Late Damodar Mishra,
At-Plot No.2294/2497, Gandarpur Nuasahi, P.O.-College Square,
City/Dist-Cuttack-753003.
24. Saudamini Pradhan,
aged about 38 years, W/o. Sudhiranjan Mohanty,
At-Chahata Nagar, P.O.-Bidanasi, City/Dist-Cuttack.
25. Subash Chandra Nayak,
aged about 36 years, S/o. Late Muralidhar Nayak,
At-Sanksrit School, Town Hal Road, City/Dist-Cuttack.
26. Sasmita Mohapatra,
aged about 42 years, W/o.P. Tripathy,
At-Satabdi Vihar, P.O.-Abhinab Bidanasi,
City/Dist-Cuttack-753008.
27. Sibu Parida,
aged about 31 years, S/o. G.C. Parida,
At-Pithapur Dal Mill Road, P.O.-Pithapur,
City/Dist-Cuttack.
28. Monalisha Mishra,
aged about 36 years, W/o. Satyaranjan Das,
At-Gayatri Vihar, P.O.-Chandi Chhak, City/Dist-Cuttack.
29. Bijayalaxmi Patri,
aged about 31 years, C/o. Sarat Kumar Behera,
At-Near Mastharam Matha, Manasinghpatna, P.O.-Tulsipur,
City/Dist-Cuttack-753008.
30. Om Prakash Behera,
aged about 31 years, S/o.K.C. Behera,
At-Alishabazar (Educated Lane), P.O.-Chandinichowk,
City/Dist-Cuttack.
31. Swagatika Swain,
aged about 38 years, W/o.S.S. Swain,
At-Jagannath Sahi, P.O.-Chandinichowk, City/Dist-Cuttack.

32. Kalika Sahoo,
aged about 38 years, D/o.R.K. Sahoo,
At-Tulasipur Christian Sahi, P.O.-Tulasipur, City/Dist-Cuttack.
33. Chinmay Kumar Behera,
aged about 34 years, S/o.D.S. Behera,
At-Ranihar Telisahi, P.O.-College Square, City/Dist-Cuttack.
34. Gyana Ranjan Samantaray,
aged about 31 years, S/o.B. Samantaray,
At-Rajabagicha, P.O.-Tala Telengabazar, City/Dist-Cuttack.
35. Sonali Dey,
aged about 28 years, D/o.T. Dey.
At-Canal Road, Jobra, P.O.-College Square, City/Dist-Cuttack.
36. Sanjukta Das,
aged about 36 years, D/o Late G. Das,
At-Tinikonja Bagicha, P.O.-Buxi Bazar,
City/Dist-Cuttack.
37. Suranjan Lenka,
aged about 40 years, S/o.K.C. Lenka,
At-Tinighariam, P.O.-Nuabazar,
City/Dist-Cuttack.
38. Bibhutibhusan Mishra,
aged about 36 years, S/o.Late B.N. Mishra,
At-Deer Park, Biju Pattnaik Chhak, P.O.-Tulasipur,
City/Dist-Cuttack.
39. Sujata Pattnaik,
aged about 39 years, W/o.S.M. Pattnaik,
At-Nuapada, P.O.-Nuabazar,
City/Dist-Cuttack.
40. Lopamudra Jena,
aged about 30 years, D/o.J. Jena,
At-Khan Nagar, Goudasahi, P.O.-Arunodaya Market,
City/Dist-Cuttack-753012.

...Applicant

(Advocates: M/s- K.P. Mishra, S. Mohapatra, T.P. Tripathy, L.P. Dwivedy)

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Union of India Represented through

1. Secretary, Ministry of Information and Broadcasting,
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Mandi House, Copernicus Marg,
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4. Station Director,
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...Respondents

(Advocate: Mr. B.K. Mohapatra)

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O.A. Nos. 379 & 532 of 2011
C.R. Mohanty & N.R. Sahoo -Vrs- UOI

ORDER

R.C. MISRA, MEMBER (A)

The facts as well as questions of law being similar in both these O.As., both are disposed of by this common order.

O.A. Nos. 379/11

The applicant in O.A. No. 379 of 2011 has been empanelled as Announcer/compere on casual basis under the administrative control of Station Director, All India Radio, Cuttack. He has approached the Tribunal with a prayer that respondents may be directed to regularize his services against the available vacancies. A prayer has also been made to quash order dated 22.07.2011 at Annexure-A/20, and order at Annexure-A/19. However, I find that Annexure-A/19 is a letter dated 09.06.2011 addressed to one Giraja Shankar Samal (who is not the applicant of the case) regarding microphone voice test for assignees. The Annexure at A/20 is a letter dated 31.03.2011 addressed to all AIR Stations by the office of Director General, AIR. In the face of such factual errors, the prayer for quashing of these annexures is misplaced. Therefore, the prayer that would be considered herein is regarding regularization of services.

2. The facts involved in this O.A. briefly stated are that the applicant having come out successful in the audition test was included in the panel for trial broadcast by the All India Radio, Cuttack. In this regard, I find a letter dated 29.09.1999 addressed to applicant from Asst. Station Director in which it was intimated that he has been found suitable for casual compere of Oriya Talk/General programmes on contractual assignment basis, as and when required. It was further intimated that by this offer the applicant will have no right to claim any regular appointment in future in any AIR Station. Thus, the applicant has been performing

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assignments from time to time. I find a certificate at Annexure-A/2 issued purportedly by the Asst. Station Director mentioning that the applicant has been performing as a casual compere since 1999 and casual announcer since 2003 on assignment basis in AIR, Cuttack. The applicant, along with other similarly placed persons made a representation to Director General, All India Radio (Respondent No.2) on 23.05.2008 praying for regularization of their services. The Director General, All India Radio on 06.08.2008 directed all Station Directors of All India Radio to furnish information regarding casual employees including announcers and comperes for consideration regarding the feasibility of their regularization. In response to such instruction, vide letter dated 17.02.2009, the Station Director, All India Radio, Cuttack sent the names and particulars of the casual employees. In the meantime, the respondent No.3 invited applications on 05.02.2010 for contractual engagement of announcers/comperes, and in fact engaged retired officials as casual announcers while 72 casual announcers/comperes were already available to perform this job. The applicant along with others had approached the Tribunal in O.A. No.144 of 2010 claiming regularization. Against the order of rejection of interim prayer of the applicant, a Writ Petition W.P. (C) No.14173 of 2013 was filed in the Hon'ble High Court of Orissa. The orders of the Hon'ble High Court dated 07.03.2011 (Annexure-A/11) reveal that a direction was given that casual engagements should be made among the empanelled retired employees, and empanelled casual employees on 50:50 basis. This Tribunal disposed of O.A. No.144 of 2010 with the following orders:-

"In the aforesaid premises, we hold that after the decision on the pending SLP, the respondents shall examine the cases of each of the applications in the light

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of the said decision on the prayer for regularization of the applicants.”

3. Civil Appeal No.863 of 2006 was disposed of by the Hon’ble Apex Court on 09.03.20011. The following orders of the Hon’ble Apex Court are to be carefully noted:-

“ It was specifically contended by the appellants that the respondents were engaged on assignment basis to work only for six days in a month, that is, for 72 days in a year. It was the further contention of the appellants that they were not engaged against any particular vacancy and therefore they were not appointed as regular announcers. It is under these circumstances, the appellants contended that the respondents were not entitled to regularization on whatsoever basis. The Tribunal miserably failed to advert to these crucial aspects of the matter. There is no finding as such accorded by the Tribunal either accepting or rejecting the said contention. This issue, in our considered opinion, decides the fate of this lis.

The High Court merely confirmed the directions issued by the Tribunal and there is no finding as such recorded even by the High Court on the crucial aspect of the matter.

For the aforesaid reasons, the impugned judgments of the Tribunal as well as of the High Court are set aside. These appeals are allowed. The O.A. filed by the respondents shall stand ^{restored} ~~resorted~~ to its file for the hearing on merits with the further direction that the Tribunal may have to consider the question referred to hereinabove and record a finding thereon. We have not expressed any opinion, whatsoever on the merits”

4. The applicant of the O.A. further alleges that when sufficient work is not available for the existing panel, fresh casual comperes/announcers are being taken by the respondent No.4, and in the result, the existing panel is deprived of required hours of work. In a previous O.A. No.346/11 filed by applicant, and others the Tribunal directed that applicants will file representations to the respondent Department who will dispose of them by a speaking order. Even though applicants filed such representation in stipulated time, the respondents ignoring the order of

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the Tribunal, carried on further tests for empanelment of presenters of radio programmes. A special recruitment drive for SC/ST candidates has also been taken up, bypassing the claim of applicants some of whom belong to similar category.

5. The applicant pleads his case for regularization on the ground that he has been working for more than 10 years on casual basis, and he was recruited through a selection process, and he is not an irregular recruitee, and therefore is entitled to regularization.

6. The respondents in O.A. No.379 of 2011 have opposed the claim for regularization on the following grounds. First of all, the Hon'ble Apex Court has set aside the Judgments of the Tribunal and Hon'ble High Court in their order dated 09.03.2011, and remitted the matter for fresh adjudication. Secondly, empanelment as Casual Announcer/Compere does not confer any right on the person for regularization. Regular recruitment is to be done as per open advertisement in accordance with the regular recruitment rules. Thirdly, the applicant was never appointed as an announcer. 'Appointment' is a misnomer in this context. He has only been empanelled to present programmes purely on assignment basis as per the requirement of the Station from time to time. Fourthly, the applicant has no legal right to claim that he has to be booked for more than 6 days in a month and 72 days in a year. This will be decided as per actual need. Fifthly, the respondent-Department is not contemplating to frame any scheme for regularization of casual assignees like the applicant. Lastly, the respondents have placed before the Tribunal argument that the work assigned to applicant and similarly placed persons has nothing to do with the vacancy

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O.A. Nos.379 & 532 of 2011
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position of sanctioned posts. The work is assigned as per requirement, and payment of fees is made as per the latest fees structure. Therefore, the prayer of the applicant for regularization against a sanctioned post is devoid of merit.

O.A. No.532/2011

There are 40 applicants involved in this Original Application. These applicants are casual announcers/comperes under the Station Director, All India Radio, Cuttack, and in their relief sought they have prayed for quashment of the order dated 22.07.2011 passed by respondent No.2, and sought a direction to be issued to the respondents for preparation of a scheme under which the services of present applicants should be regularized. Their further prayer is that no further casual employees may be added to the panel until the regularization of services of the applicants is made.

2. The facts with regard to this O.A. are similar to facts as adumbrated in O.A. No.379/11, and therefore need not be recorded again, so that repetition is avoided. It is however, required to make a mention that the applicants have specifically prayed for quashing of the order dated 22.07.2011 passed by respondent No.2 placed at Annexure-A/22 of this O.A. This order is by way of implementation of order dated 26.05.2011 of this Tribunal in O.A. No.346/2011 filed by Chitta Ranjan Mohanty and others. As mentioned in the impugned order, the representations of the applicants were examined as per the directions of this Tribunal. The



Respondents have rejected the representations on the following specific grounds:-

“(a) The Hon’ble Supreme Court in C.A. No.863/2006, has set aside the orders of the Tribunal, Patna Bench, and Hon’ble Patna High Court, and remanded the matter to Patna Bench for fresh adjudication on merit.

(b) The empanelment of casual announcers/comperes is not through a regular process of recruitment.

(c) The process of recruitment of regular announcers is separate.

(d) Casual announcers/comperes are empanelled as talents to showcase their voice quality and presentation. It is not mandatory to give them assignment every month.

(e) The applicants have therefore, no legitimate legal claim to be regularized in the Department.”

3. The counter affidavit filed by the respondents and other pleadings are substantially the same as those in O.A. No.379/11 and therefore, it would not be required to repeat the same all over again.

Discussion

4. Having heard the learned counsels for both sides in both these O.As, I have also perused the records. The Addl. Central Govt. Standing Counsel on behalf of the respondents has raised an issue of jurisdiction, contending that the applicants before the Tribunal are not holders of civil posts under the ^{Union} of India, and therefore, their claim can not be adjudicated by the Tribunal. However, the issue of maintainability has been set at rest by the Hon’ble High Court of Odisha in W.P. (C) No.14340 of 2014 in ^{their} ~~this~~ order dated 02.09.2014 in which they have decided that service disputes involving casual employees and daily wagers of Government Departments fall under the jurisdiction of the Tribunal.

[Signature]

5. The question for determination in both these O.As is whether the applicants are entitled to be regularized under the respondent Department, on the strength of their being empanelled as casual announcer/compere and performing their job for a number of years. In this regard, we have to first see their source of recruitment. In spite of the argument of the learned counsel for applicant that the empanelment was based upon some tests, it is not convincing to prove that same method as for regular employment was followed in case of the applicants. It is quite clear that applicants were not empanelled as per any selection processes in conformity with the constitutional scheme of public employment. They were assigned duties as per the requirement of the respondent – Department. Their doing this work for a number of years does not confer upon them any right to be regularly absorbed.

6. The learned counsel for applicant has cited the decision of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Umadevi (2006 SCC Vol.4 P1), mentioning that in that case, the Hon'ble Apex Court held that "the Union of India, the State Governments and their instrumentalities should take steps to regularise as 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 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."

7. However, in the present case, applicants are not irregularly appointed to sanctioned posts. In fact, they are not 'appointees' at all to any

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post. They are only empanelled to perform certain jobs as per the requirement of respondent Department. Therefore, the citation as given by the applicants' counsel does not govern the cases of present applicants. In fact, the ratio of the Judgment of the Constitution Bench of the Hon'ble Apex Court in the Umadevi case does not favour the claim of the applicants at all. The Hon'ble Apex Court has clearly laid down as follows:-

“ It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of Constitution of India should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional Scheme.”

8. The Hon'ble Apex Court in the same judgment further observed that **“the invocation of the doctrine of legitimate expectation can not enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment.”**

9. The learned counsel for the applicant has further contended in her written notes of argument that the Judgment delivered on 7th September, 2010 of the Hon'ble High Court of Delhi has referred to a scheme of regularization of the Ministry of Information & Broadcasting (at para 8 of the judgment) which would be applicable to present applicants. On perusal I find that the judgment of Delhi High Court pertains to an entirely different subject matter. Para 8 rereferred to the claim of employees who were working as casual employees under the Ministry of Information &

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Broadcasting for regularization, when Prasar Bharati (The Broadcasting Corporation of India) was constituted on 15.09.1997. At para 15 of the judgment, the Hon'ble High Court of Delhi ordered that of the casual employees working under the Central Governemnt, and confirmed against regular posts under Prasar Bharati, ^{there} ~~these~~ can not be two groups, one group which was confirmed under the Central Government and another which was confirmed under Prasar Bharati. It is apparent that the Hon'ble High Court was dealing with a very different nature of service dispute. This ratio does not apply to the present applicants who are only empanelled as casual announcers/comperes under the administrative control of Station Director, All India Radio, Cuttack.

10. In the result, therefore it has clearly emerged that the applicants in both the O.As have failed to produce any credible evidence to establish that they are entitled to regularization in the respondent-Department. The judgment of the Hon'ble Apex Court in the Umadevi case also lays down that Tribunal can not pass such a direction to the respondents to confer upon the applicants regularized status. Having considered the matter from all angles, I therefore arrive at the conclusion that the applicants have not succeeded in convincing the Tribunal about their alleged right to be regularized against any vacant sanctioned posts under the respondent Department.

11. The O.As are therefore dismissed as devoid of merit. There shall be no order as to costs.


(R.C. MISRA)
MEMBER(A)