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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 420 of 2009
Cuttack, this the 10th day of May, 2010

Madhusudan Khatua Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.420 of 2009
Cuttack, this the 10th day of May, 2010

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

.....
Madhusudan Khatua, aged about 42 years, son of Mahuli Bhutia, At-Nimidiha, Po-Badalo, Dist. Dhenkanal.

.....Applicant

By legal practitioner: M/s.Sanjib Mohanty, S.K.Bhera, B.Ganthia,Counsel.

-Versus-

1. Director, Telecom, Bhart Sanchar Nigam Limited, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110 001.
2. The Chief General Manager, Orissa Telecom, Circle, BSNL, Bhubaneswar.
3. The Telecom District General Manager, BSNL, At/Po/Ps-Dhenkanal, Dist. Dhenkanal.
4. S.D.O, Telecom, Dhenkanal, At/Po/Dist. Dhenkanal.
5. Bana Bihari Hota, aged about 40 years, son of Sankarsan Hota, Joranda Telephone Exchange, Dhenkanal.
6. Bhagirathi Rout, aged about 42 years, Son of Dhusasan Rout, At/Po-Banasingh, At-Banasingh Exchange.
(Respondent Nos.6 to 8 are working under Telecom Direct General Manager, BSNL, Dhenkanal (Respondent No.4).

.....Respondents

By legal practitioner: M/s.P.R.Barik & P.Choudhury, Counsel

ORDER

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

The prayer of the applicant in this Original Application filed under section 19 of the A.T. Act, 1985 is to set aside the order under Annexure-21 dated 06.03.2008 and to direct to the Respondents to reinstate the applicant in the post of casual Mazdoor from the date similarly placed employees were reinstated as per Annexure-20 with all consequential service and financial benefits retrospectively within a stipulated period to be fixed by this Tribunal. Respondents 1 to 4 have filed their counter objecting to the stand of the Applicant made in this Original Application to which the applicant has also filed rejoinder. But no separate counter has been filed by Respondents 5 & 6 despite notice having been served on them from this Tribunal. Heard Learned Counsel for both sides and perused the materials placed on record.

2. It is the contention of the Learned Counsel for the Applicant that through due process of selection, 31 persons including applicant were selected to work as Casual Mazdoor

under the Respondents vide Annexure-2. Thereafter, all of them joined their duties and in support of the engagement of the applicant as Casual Mazdoor he placed on record the mazdoor card issued to him at Annexure-3. In the year 1985 all of them were retrenched due to non-availability of work. Thereafter, in the year 1996 10(ten) candidates out of 31 retrenched candidates were reinstated vide Annexure-5. In the year 1999 a decision was taken by the Respondents to regularize the services of 18 retrenched candidates. Thereafter other candidates out of retrenched list were reinstated in service. Thereafter, 7 (seven) candidates including applicant ought to have been regularized as per Annexure-7 but for the reason of not sending the names of the seven candidates including applicant by the TDM Dhenkanal, they were left out from regularization. As per the order under Annexure-9 a Committee was set up to scrutinize the cases of retrenched/left out casual mazdoors for regularization. Although the case of applicant and six others were referred for favourable consideration to the Corporate Office at New Delhi, the Corporate Office, New Delhi, without due application of mind vide letter under Annexure-10 rejected the claim of the applicant on the ground that the applicant and six others are not left out retrenched casual mazdoors. Though applicant's engagement was through regular process of selection and he was a retrenched candidate, the Divisional Engineer, GMTD, Dhenkanal, in suppression of material fact, in letter under Annexure-12 informed the AGM, Bhubaneswar that the applicant and six others have not been engaged in the year 2003. The GMTD, Dhenkanal sent name of five freshers instead of the name of Applicant for regularization and in fact they were regularized in place of applicant. Applicant and other six retrenched candidates by submitting representation sought removal of injustice caused to them and since the Respondents did not take any action on the said representation, they approached this Tribunal in OA No. 894 of 2004. This Tribunal disposed of the matter on 23.10.2004 by directing the Respondents to ~~give~~ look into the grievance of applicant. But the Respondents rejected the claim of the applicant on the ground that the applicant had not worked 24 days in a calendar year during the period of engagement as casual mazdoor. Thereafter, the applicant approached the Hon'ble High Court of Orissa in

WP (C) No. 9776 of 2005. The Hon'ble High Court of Orissa disposed of the matter on 19.9.2005 giving liberty to the applicant to approach the Director Telecom, BSNL. It has been contended that in compliance of the order of the Hon'ble High Court, applicant was given engagement but despite the fact of regularization of fresh faces, the grievance of the applicant was illegally rejected and communicated to him under Annexure-21. Accordingly, Learned Counsel appearing for the Applicant sincerely requested for grant of the relief claimed in this OA.

3. Per contra, relying on the averments made in the counter, Learned Counsel appearing for the Respondents has contended that the applicant had worked as a casual mazdoor under the sub divisional officer (Telegraphs), Dhenkanal only for a period of 51 days in the year 1984 and was retrenched on 14.5.1985 due to non-availability of work as engagement of casual labourers for a specific construction work and after completion of the work casual mazdoors engaged were retrenched. After disposal of the WP (C) No. 9796 of 2005, once again the applicant approached the Hon'ble High Court of Orissa in WP (C) No. 12856 of 2007 seeking direction for reinstatement as casual mazdoor which was subsequently withdrawn by him. It is completely a myth that the services of casual mazdoors rendering less number of days of work were subsequently regularized. As per the policy decision of the Department retrenched casual mazdoors who had completed 240 days of work prior to their retrenchment have only been regularized. As the applicant had only put in 51 days as against 240 days of work As a retrenched employee, the name of the applicant referred in the internal communication made between one office to other but that does not mean that a vested right has accrued in the applicant to be regularized. Accordingly, learned counsel for the Respondents has prayed for dismissal of this OA.

4. It is seen that the factual aspects of this case have been clearly stated in the order under Annexure-A/21 passed by the Respondents pursuant to the order of the Hon'ble High Court of Orissa, Cuttack. It is not forthcoming from any of the orders filed with this OA and rejoinder that any person having worked less number of ~~works~~ ^{days} has in fact been

reengaged/regularized. It needs no emphasis that onus lies on the applicant to prove that he had worked more number of days than the persons regularized. But he has miserably failed to substantiate any such claim fact by filing relevant materials. Thus, I am not convinced that there has been any miscarriage of justice in the decision making process of regularization. Notwithstanding the above, the Respondents shall do well to re-examine the grievance of the Applicant in open mind by way of a detailed scrutiny and in case it is found that anybody having less number of days has actually been regularized, then the Respondents should consider the case of the applicant for his reengagement as casual mazooras with such terms and conditions as was made at the time of his initial engagement.

5. In the result, with the aforesaid observations and directions this OA stands disposed of. No costs.


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