

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.803 of 2012
Cuttack, this the 12th day of September, 2014

T. Mohapatra Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.803 of 2012
Cuttack, this the 12th day of September, 2014

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

Sri Trinath Mohapatra,
aged about 36 years,
S/o. Madhab Mohapatra,
Resident of Village-Barahala,
PO-Palasahi, PS-Balipatna,
Dist-Khurda,
At present working as
Driver-cum-Mechanic,
Casual in the Office of
the Superintending Archaeologist,
Bhubaneswar Circle, Bhubaneswar,
Dist-Khurda.

..... ...Applicant

(Advocates: M/s- R.K. Das, K. Gaya, A. Rout)

VERSUS
Union of India Represented through

1. Secretary,
Ministry of Culture,
Government of India,
C. Wing, Sastri Bhaban,
New Delhi-11001.
2. Director General,
Archeological Survey of India,
Janpath,
New Delhi-110011.
3. Superintending Archeological,
A.S.I., Bhubaneswar Circle,
Tosali apartment,
Satya Nagar, Bhubaneswar,
Dist-Khurda-751007.

.....Respondents

(Advocate: Mr. D.K. Behera)



ORDER

R.C.MISRA, MEMBER(A):

Applicant, presently working as Driver-cum-Mechanic (Casual) in the office of the Superintending Archeologist, Bhubaneswar has moved this Original Application before the Tribunal seeking the following relief:

- "a) Let the order dtd. 27.07.2012 passed by the respondent No.3 be quashed.
- b) Let the Respondents be directed to regularize the service of the applicant in regular establishment in the post of Driver-cum-Mechanic for ends of justice."

2. The facts in brief are that earlier the applicant had approached this Tribunal in O.A. No. 280/2012, which was disposed of vide order dated 11.04.2012 with direction to Respondents to consider and dispose of the representation of the applicant and pass a speaking order thereon. In the above background, the Respondents having considered the representation rejected the same as per Annexure-1 dated 27.07.2012, which is impugned herein.

3. It is the case of the applicant that he was engaged as Casual Driver cum Mechanic under the Respondents vide Office Order dated 14.08.2002 being sponsored through the Employment Exchange. While working as such he was awarded the 1/30th of the minimum pay of Group D employees with Dearness Allowance for work of 8 hours a day since 20.07.2005. Thereafter, applicant received PB I of Group-C i.e. Rs. 5200 with GP Rs. 1800/- per month as wages on pro rata basis w.e.f. 1.09.2011. The applicant has



claimed that he having working for 12 years as Driver on casual basis uninterrupted his services should be regularized as such. It is also the case of the applicant that the Department of Personnel and Training has introduced a Scheme called Multi Tasking Staff including the post of Driver, therefore, according to the applicant, he having been engaged as Driver his services could be regularized to the post of Driver which is a Group-C post.

4. The Respondents in their counter have stated that the appointment of the applicant is purely casual in nature and there is no sanctioned post of Driver cum Mechanic under the establishment of Respondents. Therefore, regularization of the applicant against the post of Driver is not permissible. It is the case of the Respondents that there is no proposal in the Respondents department to absorb the candidates ~~those~~ who have already rendered 10 years of service against particular vacancies. With these submissions the Respondents have stated that the O.A. being devoid of merit is liable to be dismissed.

5. Applicant has filed rejoinder to the counter more or less reiterating the same facts.

6. I have heard the Ld. Counsel for both the sides and perused the materials placed on record. I have also taken note of the written note of submission filed by the Ld. Counsel for the parties.

7. Having heard the learned counsels for both sides perused the records. To recapitulate the essential facts of the case, the applicant vide an order dated 14.08.2002 was called by Archeological Survey of India,



Bhubaneswar Circle to appear in an interview on 26.08.2002 to be considered for the post of casual driver. His name was apparently sponsored through the Employment Exchange. He filed his joining report on 02.09.2002 before the Superintending Archeologist. He worked purely on a casual basis and was subsequently granted 1/30th of the minimum pay of Group 'D' employee. As per the recommendation of the 6th Pay Commission, the Group 'D' has been upgraded to Group 'C' post, and with effect from 1st September, 2011 the applicant was eligible for PB-1 of Group-C, i.e., Rs.5200/- with grade pay of Rs.1800/- per month as wages. The applicant earlier approached the Tribunal in O.A. No.280/2012 with prayer that his services may be absorbed in the regular establishment of ASI. The Tribunal directed respondents to dispose of the pending representation of the applicant. Accordingly, respondents disposed of the representation and rejected prayer of the applicant. Respondents took two grounds for their decision. First, the applicant's appointment was purely casual in nature. Secondly, there is no sanctioned post of driver in the ASI against which applicant could be considered for absorption.

8. The main argument of the Ld. Counsel for the applicant is that applicant has served the organization continuously for past twelve years, and he is now receiving salary of a Group 'C' employee. His services can be absorbed against any MTS POST IN Group 'C' also. The applicant's Counsel has cited the judgment of the Hon'ble Odisha High Court in OJC No.6336 of 1999 (2007 (ii) OLR-533); the case of Smt. Meera Piri Vrs. State of Odisha, the relevant portion of which is quoted below:-



“State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed person or the employees, as the case may be. Since the State is a model employer it is for this reason equal pay must be given for equal work which is indeed one of the directive principles of State policy of the Constitution. The person should not be kept in temporary or ad-hoc status for long time. Where a temporary or ad-hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularization....”

9. Based upon the principle laid down by the Hon'ble High Court, it is quite evident in the present case that Respondent organization has utilized the services of the applicant for 12 years, and therefore a *prima facie* ground is created that there is need and warrant for a regular post. The other argument of the applicant's counsel is that before taking the applicant as a casual driver, the ~~the~~ employment exchange was requested to sponsor his name. Because of the twin arguments that his name was sponsored by the Employment Exchange, and as casual driver his services were utilized for twelve years, the applicant has laid his claim for absorption against a permanent post.

10. However, the respondent's counsel has pleaded that there is no sanctioned post against which the applicant could be regularized. So, the issue before the Tribunal is whether a direction can be issued to respondents to regularize the applicant in view of his long years of casual service, in the face of the contention of the respondents that there is no sanctioned post against which such regularization could be considered. The response to this question would be that the Tribunal can not issue direction for creation of a post. There is no doubt that applicant has been serving as a casual driver

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since 2002. But that does not create a vested right in his favour for regularization, especially when there is no sanctioned post for the purpose.

He was sponsored through Employment Exchange for the post of casual driver. But he has not gone through a normal recruitment process for a selection against a regular post of Driver. He has now received salary payable to a Group 'C' post, but that is also no argument for regularization. It is relevant in this regard to quote from the landmark judgment of the Constitution Bench of the Hon'ble Apex Court in the case of Secretary State of Karnataka and Ors. Vrs. Umadevi and Others decided on 10.04.2006 reported in AIR 2006 Supreme Court 1806.

"The concept of "equal pay for equal work is different from the concept of conferring permanency on those who have been appointed on ad-hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for application of that principle. But the acceptance of that principle cannot lead to a position where the Court could direct that appointments made without following the due procedure established by law, be deemed permanent, or issued directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity."

11. The Hon'ble Apex Court in the above quoted case has gone on to observe that the fact that concerned person has been working for a considerable lengths of time on casual basis can not be a basis for regularization. The person who accepts engagement either temporary or casual employment is aware of the nature of his employment and has accepted the same with his eyes wide open. Even though he is not in a

bargaining position vis a vis the employer, on that ground only, it would not be appropriate to jettison the constitutional scheme for appointment.

12. When we apply the ratio of the judgment of the Constitution Bench of the Hon'ble Apex Court, it is quite clear that the applicant has not been able to establish his case for regularization. In consideration of the facts and circumstances of the case, I come to the conclusion that the case is devoid of merit and is accordingly dismissed. No costs.



(R.C.Misra)
Member (Admn.)

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