

50/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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MP 186/98 under ~~para 1 & 2~~ 8/10/19/96
O.A/T.A No. 49

MP 185/97 under ~~para 1 & 2~~ 8/10/14/7/97
R.A/C.P No.

MP 182/98 under para 1 dismissed 5/10/01
E.P/M.A No.

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SECTION OFFICER (Judl.)

Balita
24/11/08

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN. NO.
TRANSFER APPLN. NO.
CONTEMPT APPLN. NO.
REVIEW APPLN. NO.
MISC. PETN. NO.

49 OF 1995

OF 1995

OF 1995 (IN OA NO.

OF 1995 (IN OA NO.)

OF 1995 (IN OA NO.)

..... Jagat ... APPLICANT(S)

-vs-

..... K. O. J. D. M. RESPONDENT(S)

FOR THE APPLICANT(S)

...MR. J. L. Sarkar
MR. M. Chanda
MR.
MR.

FOR THE RESPONDENTS

...MR. S. Ali, Esq.

OFFICE NOTE

DATE

ORDER

25.3.96

This application is in
form and within date.
C. F. of Rs. 50/-
deposited vide
TRIB CD No. 337003
Dated 13.3.96

Mr M. Chanda learned counsel for
the applicant moves this application

Issue notice on the respondent
to show cause as to why this applica-
tion should not be admitted and the
reliefs sought should not be allowed.
None for the respondents. Six weeks
time for show cause.

List on 27.5.1996 for disposal
of show cause and consideration of
admission.

The interim relief as prayed in
this application cannot be allowed
as it will amount to allowing the
application. However, pending dispo-
sal of the show cause the responder
are at liberty to consider the
appointment of the applicant against
the post of Watchmen in the Canteen
Stores Department, Misamari if and
when selection is held for appoint-
ment to that post basing on his
merit as well as the law and rules
relating to the discharged casual
employees. Steps within two days.

Copy of the order be furnished
to the counsel of the parties.

30.5.96

Notice duly
served on 3/4.

For

DR 2/1
Member

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

ORIGINAL APPLN.NO.
TRANSFER APPLN.NO.
CONT EMPT APPLN.NO.
REVIEW APPLN. NO.
MISC. PETN. NO.

49 OF 1996

OF 1995

OF 1995 (IN OA NO.)

OF 1995 (IN OA NO.)

OF 1995 (IN OA NO.)

..... APPLICANT(S)

-VS-

..... RESPONDENT(S)

FOR THE APPLICANT(S)

...MR.

...MR.

...MR.

...MR.

FOR THE RESPONDENTS

...MR.

OFFICE NOTE

DATE

ORDER

Defects removed

27.5.96

None is present for the applicant
Mr S.Ali, learned Sr.C.G.S.C for the
respondents.

List on 17.6.96 for show cause and
consideration of admission.

6
Member

Requisites are yet
to be received.

order to be sent
2 parties issued
-no. 670-71 d. 25.3.96

PG

17-6-96

has been

No show cause submitted. None is
present. Adjourned to 18-7-96 for show
cause and consideration of admission.

6
Member

Requisites are issued
on 2.4.96 & (shown)
no. 730-33 d. 8.4.96

1m

18-7-96

Learned counsel Mr.J.L.Sarkar for
the applicant. Show cause has not been
submitted. Application is admitted.

Issue notice on the respondents by
registered post. Written statement within
6 weeks. List on 29-8-96.

Interim order dated 25-3-96 will be
continued pending disposal of this applica-
tion.

6
Member

Service Reports are
still not ready on
Report no. 1, 3 & 4.
Show cause issued
been submitted.

22.7.96

17/7 Copy of order add.
18.7.96 issued to the
concerned parties on

(3)

O.A. 49/96

22x2.

29.8.96 Mr M.Chanda for the applicant.

Mr S.Ali, Sr.C.G.S.C for the respondents.

Written statement has not been submitted.

List for written statement and further orders on 25.9.96.

6
Member

pg

25.9.96

Mr M.Chanda for the applicant.

Written statement has not been submitted.

List for written statement and further orders on 13.11.96.

6
Member

pg

pr
25/9

13.11.96

None present. Written statement has not been submitted.

List for written statement and further orders on 6.12.96.

6
Member

pg

pr
19/11

1) Notice duly served

on R.No - 1, 324.

6.12.96

Mr. S.Ali, Sr. C.G.S.C. for the

respondents seeks time to file written statement.

List for written statement and further orders on 1.1.1997.

6
Member

O.A.49/96

27-1-97

1) Notice duly served
on Respondent No-
1, 3, & 4.

w/ statement has not
been submitted.

1-1-97 Learned counsel Mr.J.L.Sarkar for
the applicant. Mr.S.Ali, Sr.C.G.S.C.
for the respondents seeks time for
written statement.

List for written statement and
further order on 28-1-97.

Member

lm
m
1/1

28.1.97 Mr. J.L.Sarkar, learned counsel for the
applicant is present.

Learned Sr. C.G.S.C. Mr. S.Ali for the
respondents prays for further 3 weeks time for
filing written statement and he submits that the
written statement has already been prepared and
it is only to be signed. Several adjournment
has been given. We are not inclined to give any
further adjournement. For the ends of justice a
a last chance one week time is granted.

List for further order on 4.2.1997.

3.2.97

W/S filed by the
R. no. 1, 2, 3 & 4.

trd

4.2.97

Member

Vice-Chairman

Mr J.L. Sarkar, learned counsel for
the applicant and Mr S. Ali, learned Sr. C.G.S.C.,
are present.

Let this case be listed for hearing
on 2.4.97. The applicant may file rejoinder within
2 weeks.

Member

Vice-Chairman

Notice duly served
on resp. dts no. 1, 3 & 4.

W/S filed by the
R. no. 1, 2, 3 & 4.

nk m
6/2

(5)

31.3.97

Let the case be listed on 13.5.1997 for hearing.

Member

Vice-Chairman

1) w/s. hs b/w b/w
2) hearing in hs not
b/w b/w

trd

km
19/4

13.5.97

Mr. S. Ali, learned Sr. C.G.S.C., is present. List the case on 20.5.97 for orders.

Member

Vice-Chairman

memo of appearance
not yet filed.

km
2/6

nkm

km
19/5

19.6.97

29.7.97

Two weeks time as prayed for by S. Ali, learned Sr. C.G.S.C. is granted for filing written statement against the amendment. Prayer allowed.

List on 13.8.97 for written statement and further orders.

Member

Vice-Chairman

16.7.97
no. 135/97
An MP is disposed of on
19.7.97 with a direction on pg
to file a consolidated
application in this OA.
Hence placed on orders. ab
km

13.8.97

The learned counsel for the parties submit that the case is ready for hearing. List it for hearing on 24.11.97.

nkm

Vice-Chairman

17
w/s. hs b/w b/w
28-7-97
In terms of order
dated 14-7-97 passed in
no. 135/97. Consolidated

(6)

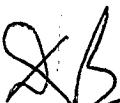
O.A. 49/96

S. Ali vs. H.W.
L.Nos 1-4. At
ge No 24-30.

24.11.97

On the prayer of the counsel
for the parties list for hearing
on 2.2.98.

6
Member


Vice-Chairman

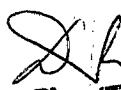
pg

25/11

2-2-98

Case is otherwise ready for
hearing. List for hearing on 25.3.98.

6
Member


Vice-Chairman

lm

1/2

25.3.98

The case is otherwise ready for
hearing. List it for hearing on 29.6.98.

6
Member


Vice-Chairman

nkm

26/3

29.6.98 Adjournd to 10.8.98
by m.

10.8.98

On the prayer made on behalf of
Mr S. Ali, learned Sr. C.G.S.C., this
case is adjourned till 24.8.98.

6
Member


Vice-Chairman

nkm

12/8

24.8.98

There is no representation on beha
of the applicant. Mr S. Ali, learned Sr.
C.G.S.C is present for the respondents.

OA 49/96

X

| Notes of the Registry | Date | Order of the Tribunal |
|---|---------------------------|--|
| <p>21/10/98 Copies of the Judgement have been sent to the D/see. for issuing the same to the parties through Regd. with A/P. 4th Issued under S. No. 3026 to 3024 Dd. 22/10/98 H.P.</p> | 15.9.98 trd 21/9/98 | <p>Judgement delivered in the open court, kept in separate sheets. The application is disposed of in the manner indicated in the order. No order as to costs.</p> <p>Member</p> <p> Vice-Chairman</p> |

| Notes of the Registry | Date | Order of the Tribunal |
|-----------------------|------|-----------------------|
| | | |

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A.NO. 49 of 1996

15-9-1998.
DATE OF DECISION.....

Sri Jagat Das,

(PETITIONER(S))

Mr.J.L.Sarkar, Mr.M.Chanda

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

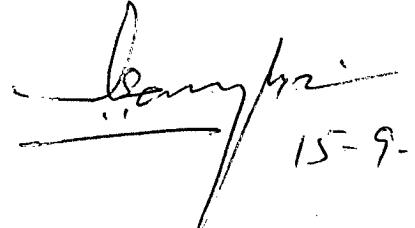
Mr.S.Ali, learned Sr.C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER


15-9-9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.49/96

Date of Order: This the 15th day of September 1998.

HON'BLE MR.JUSTICE D.N.BARUAH, VICE-CHAIRMAN
HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

1. Sri Jagat Das,
Son of Late Satram Das
Village-Nabil,
P.O.Towbhanga,
District-Sonitpur. Applicant

By Advocate Mr.J.L.Sarkar, Mr.M.Chanda.

-Vs-

1. Union of India,
Through the Secretary to the Govt. of India
Ministry of Defence,
Delhi.

2. The Director General
Canteen Store Department,
Ministry of Defence,
ADELPHI, 119 Maharshi Karve Road,
Bombay-400020

3. The Regional Manager,
Canteen Store Department,
Govt. of India, Ministry of Defence
Satgaon, Narangi. Guwahati.

4. The Manager,
Canteen Store Department
Misamari Depot(Cant.)
PIN 784506. Respondents.

By Advocate Mr.S.Ali, Sr.C.G.S.C.

O R D E R.

SANGLYINE, ADMINISTRATIVE MEMBER:

This application has been submitted by the applicant seeking directions on the respondents to consider appointing him against existing vacancies of Chowkidar/ Watch-man or any other Group 'D' post lying vacant under the Canteen Stores Department, Misamari by granting age relaxation. According to the applicant being surplus casual employee he has priority over others for absorption and appointment in regular Group 'D' post under the respondent No.4, the Manager, Canteen Stores Department, Misamari Depot, (Cant). He is also entitled to the

benefits of the 1988 scheme for regularisation of casual employees.

The facts in short are :-

The applicant was a casual Mazdoor on daily rate basis in Canteen Stores Department, Missamari, from 29-10-85 to 1989. He was selected for appointment as Peon in 1986 but he was not appointed. In 1988 he was selected for appointment in Group 'D' post but again he was not appointed. In 1990 he was selected for appointment as Mali. But at that time also he was not appointed. In 1994 he was not considered for appointment as cook. The applicant submitted this O.A. on 19-3-96. During the pendency of the application the respondents made recruitment to some vacant Group 'D' posts. The interview was held on 23-9-1996.

Pursuant to the interim order dated 19-9-1996 issued by the Tribunal the applicant was allowed to participate in the interview. It is however, alleged that although he qualified in the Selection his case was not considered for appointment due to being over aged. The applicant had amended the application and submitted the amended application on 28-7-97 and copy served on the Sr.C.G.S.C. No additional written statement was submitted.

We have considered the contention of the applicant in this application. Apparently the respondents had allowed the applicant to participate in several selections as mentioned above. But for some reasons stated by them in the written statement he could not be appointed though he was successful. We however failed to understand why in 1990 he was empanelled for the post of Mali when there

is no vacancy in that post. According to the applicant in the selection of 1996 he had qualified in the interview. This is not contradicted by the respondents. He also submitted that he was not given appointment because of his being over aged. This is also not contradicted by the respondents. The applicant contended that he is not over aged if relaxation of age is granted to him in accordance with the provision as laid down by the Government of India in their policy of granting age relaxation as published in Swammy's Complete Manual of Establishment and Administration, 1994 edition, Chapter 14. pages 114-124. According to his policy it has been stated by the applicant that he is entitled to his age relaxation to the extent of his service in the Canteen Stores Department as Casual Worker in addition to three years age relaxation and over and above the relaxation of age limit in favour of the residents of the State of Assam for appointment in Public Service as provided in the Residents of Assam (Relaxation of Upper Age-Limit) Rules, 1985. After considering the contentions of the applicant we direct the respondents to reconsider the case of the applicant with reference to the interview held on 23-6-1996 by taking into consideration the provision of age relaxation as indicated above. As it has not been disputed by the respondents that the applicant had qualified in the said interview, the respondents shall make appointment of the applicant according to merit if he is within the age limit after age relaxation is granted. A final order shall be communicated to the applicant by the competent authority of the respondents with 60 days

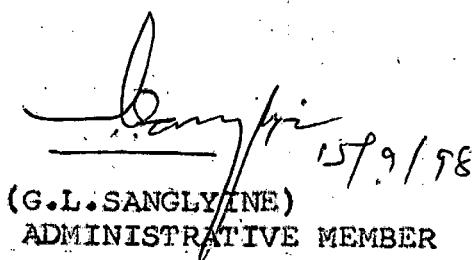
contd/-

from the date of receipt of this order.

The application is disposed of as indicated
above. No costs.



(D.N.BARUAH)
VICE-CHAIRMAN



15/9/98

(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER

LM

Consolidated petition.

15
Filed by the applicant -
Through N.D. Goswami
Advocate.

1120
18 JUN 1997

Established Bench
Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

An Application under Section 19 of the
Administrative Tribunal Act, 1985.

O. A. No. 49/96.

Sri Jagat Das.

vs.

Union of India & Ors.

I N D E X.

| Sl.No. | Annexure. | Particulars. | Page No. |
|--------|-----------|-----------------------------------|----------|
| 1. | - | Application. | 1 - 21. |
| 2. | - | Verification. | 21. |
| 3. | 1 | Certificate dt. 5.5.87. | 22. |
| 4. | 2 | Representation dated 30.11.87. | 23. |
| 5. | 3 | Notice Dt. 26.6.95. | 24 - 25. |
| 6. | 4 | Reply dt. 28.9.95. | 26. |

A copy is served
upon Mr. S. Ali
Sri. C. S. C.
Date : 28/7/97

Shri
Adv.
28/7/97

Filed by :
Neera Devi Goswami
Advocate.

Shri Jagat Das.

1. Particulars of the Applicant.

Sri Jagat Das,
Son of late Satram Das
Village - Nabil,
P.O. - Bowbhanga,
District - Sonitpur.

.....Applicant.

2. Particulars of the Respondents.

1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Defence,
New Delhi.
2. The Director General,
Canteen Store Department,
Ministry of Defence,
ADELPHI, 119 Maharsi Karve Road,
Bombay - 400 020.
3. The Regional Manager,
Canteen Store Department,
Govt. of India, Ministry of Defence,
Satgaon, Narengi,
Guwahati.
4. The Manager,
Canteen Store Department,
Misamari Depot (Cant.),
PIN 784 506.

.....Respondents.

3.....

Shri Jagat DW -

3. Particulars for which this Application is made.

This application is made for appointment/~~employment~~ absorption on regular basis against the existing vacancies of Chowkidar or any other Group D vacancies on priority basis considering his past casual service in the Canteen Store Depot.

4. Limitation.

The applicant begs to state that this application is filed within the prescribed limitation period under Section 21 of the Administrative Tribunal Act, 1985.

5. Jurisdiction.

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

6. Facts of the case.

6.1. That the applicant is a citizen of India as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant is a bona fide local unemployed youth. He read upto Class IX. The name of the applicant was sponsored by the local Employment Exchange in the year 1985 against a vacant regular post of Mazdoor in the Canteen Store Department, Misamari, Government of India, Ministry of

Defence.....

Shri Jagat-^W -

Defence, the applicant accordingly appeared before the constituted selection board for the post of Mazdoor and duly selected and accordingly he was appointed as daily ~~R~~ rated Mazdoor with effect from 29.10.85 and thereafter he continuously worked upto to 1989 without any break at the rate of Rs. 12/-, 15/-, 21/-, 31/-, and 32/- per day on 'No work No pay basis' with one or two days artificial breaks.

6.2. That the applicant served the Canteen Store Department to the best satisfaction of the authorities concerned which would be evident from the certificate dated 5.5.87 issued by the Manager, Canteen Store Department Misamari Depot. The applicant while serving as Mazdoor in the Misamari Depot, the appeared in an interview for the post of Peon in the year 1986. After the said interview a panel was prepared in the Canteen Store Department, Misamari and the name of the applicant also declared selected and shown in the approved panel for appointment to the post of Peon. But the respondents did not issue any appointment letter in respect of the applicant. The applicant being aggrieved for non-appointment to the post of Peon submitted a representation dated 30.11.87 addressed to the General Manager, Canteen Store Depot, Bombay but to no result.

A copy of

Shri Jagat DW -

A copy of the certificate dated 5.5.87 and representation dated 30.11.87 are annexed as Annexures - 1 & 2 respectively.

6.3. That your applicant also sponsored by the local Employment Exchange for interview for the post of Mazdoor/Driver/Watchman/Peon/Mali/Cleaner. The applicant appeared in the interview in terms of Call Letter dated 28.7.88 under Reference MMD/Estt/64/1463. The applicant also declared selected in the said interview and empaneled in the panel for the post of Watchman which was drawn on 22/23 November 1988 but the name of the applicant is now stated to be cancelled based on the Govt. order bearing No. OM/40014/18184/Estt(C) dated 7.5.85 which is now communicated in response to his Lawyers Notice dated 26.6.95. It is further stated in their reply dated 28.9.95 under letter under reference No. 3/PRS/A-1/1107 (Misamari)/4932. It is further however stated in the said letter dated 28.9.95 that the order dated 7.5.85 as stated above restricted the appointment of casual workers recruited after issuance of the Circular dated 7.5.85 and therefore the applicant could not be recruited although he was duly selected for the post of Watchman while was serving in the Canteen Depot.

6.4.....

Shri Jagat Day.

6.4. That your applicant sponsored by the local Employment Exchange for interview for the post of Mazdoor/Peon/Watchman/Safaiwala/Mali/Driver/Cleaner and the applicant accordingly appeared in the interview on 30.7.90 and he was declared selected and also empanelled for the Group D post which was prepared at Misamari Depot on 10.9.90. But surprisingly it is stated in the reply of Legal Notice dated 28.9.95 that he could not be appointed due to non-availability of vacancy of Mali and the validity of the panel is expired on 15.8.92. It would also be evident from the letter dated 28.9.95 that the applicant could not be appointed in the recent recruitment in the C. S. D., Missamari during May 1994 and the serial N.o.l of the local panel drawn up for recruitment for the post of cook. There also the present petitioner is being deprived from the appointment of Cook whereas the applicant is entitled to on priority basis for consideration of appointment to the post of Cook. Therefore the action of the respondents is highly arbitrary, illegal and unfair.

6.5. That the applicant being highly aggrieved for non-appointment to any Group D post submitted a Lawyer's Notice on 26.6.95 for seeking employment under the respondents on priority basis considering his past service. The applicant have stated in detail regarding his service

rendered.....

Shri Jaiyer-DAS

rendered in the Canteen Store Depot at Misamari in the Lawyer's Notice dated 26.6.95. The respondents on receipt of the Notice dated 26.6.95 replied the same vide their letter under Reference No. 3/PERS/A-1/1107 (Misamari)/4932 dated 28.9.95 by the General Manager, Canteen Store Depot, Govt. of India, Ministry of Defence, Bombay wherein it is admitted that the present applicant was initially appointed in the Misamari Depot with effect from 26.10.85 as casual worker and also stated that on number of occasions the applicant was empanelled for appointment against Group D Posts. But either due to the non-availability of post or due to expiry of validity of the panel and it is also admitted that even during the year 1988 some recruitment was made but the applicant could not be appointed. Therefore the the action of the respondent is highly illegal, Arbitrary for non-appointing the applicant to any Group D vacancy on priority basis. Be it stated that the applicant is entitled to be appointed in any Group D post considering his past service in the Canteen Store Depot.

A copy of the Lawyer's Notice dated 26.6.95 and reply dated 28.9.95 are enclosed as Annexure - 3 and 4 respectively.

6.6. That the applicant begs to state that he has come to know from a reliable source that presently six

posts

Shri Jagat Das

posts of Chowkidar/Watchman are lying vacant and the respondents are taking necessary steps to fill up the aforesaid vacancies in the Canteen Store Depot at Misamari along with some other Group D vacancies. Therefore the present applicant now approached this Hon'ble Tribunal with the instant Application for an appropriate direction to consider the case of the present applicant for his appointment on priority basis to any of the Group D post in the Canteen Store Depot, Misamari. In this connection it may be stated that it is a well settled law that the retrenched employee should be given priority in the matter of future employment which would be evident from the Judgement and Order dated 16.2.90 in O.A. No. 2306/89 (Sri Rajkamal & Ors. Vs. Union of India & Ors.) passed by the Principal Bench, New Delhi wherein it is observed in paragraph 21 of the Judgement and Order that the surplus casual workers should be absorbed on priority basis in the existing or future vacancies. The relevant portion of the Judgement & Order dated 16.2.90 reported in SJJ. 1990 (2) CAT Page 169 is quoted below :

"21. We are, therefore, of the opinion that in order to solve the problem of causal labourers engaged in the Central Government offices in a fair and just manner, the proper course for the Government would be to prepare a scheme, somewhat

like the.....

Sri Jagat D -

like the one in operation for redeployment of surplus staff, vide Department of Personnel and A.R.'s O.M. No. 3/27/65-CS-II dated 25.2.1966 and amplified vide Department of Personnel and Training's O.M. No. 1/8/81-CS-II dated 30.4.1987, and the Department of Personnel and Training's O.M. No. 1/14/88-CS-III dated 31.3.1989 and 1/18/88-C.S.III dated 1.4.1989, for all casual labourers engaged prior to 6.1988, but who had not been regularised by the authority concerned for want of regular vacancies or whose service has been dispensed with for want of regular vacancies. Since the Department of Personnel and Training is monitoring the implementation of the instructions issued vide O.M. dated 7.6.1988, the Union of India through that Department, should undertake to prepare a suitable scheme for absorbing such casual labourers in various ministries/departments and subordinate and attached offices other than the Ministry of Railways and Ministry of Communications. Their absorption should be on the basis of the total number of days worked by the persons concerned. Those who have worked for 240 days/206 days (in the case of six days/five days week respectively), in each of the two years prior to 7.6.1988 will have priority

over the.....

S/Me Jagat DMS -

over the other in regard to absorption. They would also be entitled to their absorption in the existing or future vacancies. Those who have worked for lesser periods, should also be considered for absorption, but they will be entitled to wages for the period they actually worked as casual labourers. No fresh engagement of casual labourers. No fresh engagement of casual labourers against regular vacancies shall normally be restored to before absorbing the surplus casual labourers. The fact that some of them may not have been sponsored by the Employment Exchange, should not stand in the way of their absorption. Similarly they should not be considered ineligible for absorption if at the time of their initial engagement, they were within the prescribed age limit".

The applicant also begs to refer the Judgement and Order dated 8.2.91 passed by the Principal Bench, New Delhi reported in 1991 (17) ATC Page 671. The relevant portion is quoted below :

"12. The Supreme Court has directed the Government to prepare scheme for regularising casual workers in the Railways, the posts and Telegraphs Department, the Income Tax Department, the Delhi Municipal Corporation, Nehru Yuval Kendra,

C.P.W.D.

Shri Jagat Singh -

C.P.W.D and P.W.D. Daily-wage Employees in Kamataka (vide Inder Pal Yadav Vs. Union of India relating to the Railways, Daily-Rated Casual Labour Employed under P & T. Vs. Union of India relating to P & T Department U.P. Income Tax Department Vs. Union of India Vs. P.L. Singh, Dhirendra Chamoli Vs. State of Up. relating to Nehru Yuval Kendras, Surinder Singh Vs. Engineer-in-Chief, C.P.W.D., and Dharward District P.W.D. Literate Daily Wages Employees Vs. State of Kamataka, Referring to the leading decisions on the subject, the Supreme Court made the following pertinent observations in the Kamataka case, mention above.

"We have referred to several precedents all rendered within the current decade - to emphasize upon the feature that equal pay for equal work and providing security of service by regularising casual employment within a reasonable period, have been unanimously accepted by this Court as a constitutional goal to our policy. Article 142 of the Constitution provides how the directions of this court are to be treated and we do not g think there is any need to remind the instrumentalities of the state - be it of the

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Centre or the State, or the Public Sector - that the Constitution makers wanted them to be bound by what this Court said by way of interpreting law".

13. In the light of the aforesaid legal position, the framing of a suitable scheme for regulatising the Casual Artists of Doordarshan is a Constitutional imperative and long overdue.

14. In our considered view, the respondents should frame a scheme for absorption of Casual Artists who have worked for a period of one year and more, keeping in view the following aspects.

(i) Casual Artists who have been engaged for an aggregate period of 120 days, may be treated as eligible for regularisation. The broken periods in between engagement and disengagement, are to be ignored for this purpose.

(ii) The respondents shall prepare a panel of Casual Artists who had been engaged on contract basis, depending on the length of service. The names of those who have not been regularised so far, specially from 1980 onwards, though may not be in service now, are to be included in the panel. Persons borne on the panel, are to be considered for regularisation in the available vacancies.

(iii)

Shri Jagat Das.

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(iii) For the purpose of regularisation the upper age-limit has to be relaxed to the extent of service rendered by the Casual Artists, 120 days' days' service in the aggregate shall be treated as the service rendered in one year for this purpose.

(iv) Till all the Casual Artists who have been engaged by the respondents have been regularised, the respondents may not resort to fresh recruitment of such Artists though Employment Exchange or otherwise.

(v) Till the Casual Artists are regularised the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employees in an identical post. The amount of actual payment would be restricted to the actual number of days worked during a month".

The Central Administrative Tribunal, Principal Bench, New Delhi has also expressed similar view in the case of P. Munu Swamy and Ors. Vs. Union of India & Ors. reported in ATC. (1992) Vol. 22, Page 115. The relevant portion of the Judgement and Order passed in O.A. Nos. 1154 of 1991, 1827, 1843 and 1954 of 1990 in the case of P. Munuswamy and Others Vs. U.O.I. & Ors. dated 24.12.1991 is quoted below :

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Shri Jagat Day

"iii. In the light of the above, the applications are disposed of with the following orders and directions :

(i) The respondents are directed to prepare a list of casual labourers engaged in their various offices located in Delhi and elsewhere from time to time through Employment Exchange or otherwise. Whenever they need the services of the casual labourers, they should be engaged from the said list, preference being given to those who have put in longer period of service than the others. The broken periods of service shall not be reckoned for the purpose of determining the total length of service.

(ii) We hold that the practice of disengaging casual labourers and engaging fresh recruits through Employment Exchange is not legally sustainable and disapprove the same.

(iii) The respondents shall consider regularisation of the casual labourers in Group D posts whenever vacancy arises due to retirement or otherwise. Such regularisation should be in accordance with the administrative instructions issued by the Department of Personnel

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and Training. Till they are so regularised, they should be paid wages on the scale prescribed by the Department of Personnel and Training.

(iv) The applicants shall be accommodated as casual labourers in their offices located at Delhi or elsewhere, depending on the availability of vacancies and in accordance with the aforesaid directions. Interim orders passed in these cases are hereby made absolute.

(v) There will be no order as to costs".

From the above it is quite clear that the applicant have also acquired a valuable legal right for his appointment on regular basis in any existing or future Group D post considering his length of service on casual basis under the respondents. Be it stated that presently a number of Group D posts are lying vacant in the Misamari Canteen Stores Department therefore the Hon'ble Tribunal be pleased to direct the respondents to consider the appointment of the applicant on priority basis against any existing Group D post on regular basis.

6.6(A). That your applicant begs to state that during the pendency of the Original Application, the respondents

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conducted an interview for filling up few vacant posts of Group 'D' including the posts of Chowkidars, on 23.9.96, the applicant also allowed to appear in the said interview in terms of Hon'ble Tribunal's order dated 19.9.96, passed in Misc. Petition. The applicant therefore came to know from a reliable source that although he is qualified in the selection but due to over age, his case for appointment cannot be considered. This decision of the respondents is highly arbitrary, illegal and unfair.

6.6.(B). That your applicant begs to state that the applicant is entitled to age relaxation to the extent he has served in the Canteen Store department as casual worker in addition to 3 years relaxation and over and above, the age relaxation granted in terms of Assam accord. The relevant portion of the extract of age relaxation provision laid down by the Govt. of India are quoted below from Swamy's Complete Manual on Establishment and Administration 1994 edition Chapter 14, Page 114.

"AGE RELAXATIONS FOR APPOINTMENTS.

i. Categories of persons and extent of concessions - Certain age concessions have in the past been sanctioned to few specified categories of persons for the purpose of appointment under the Government of India. These concessions are still in force until further orders. Details

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of the categories of persons and age concessions admissible to them, as given below are hereby published for general information.

| Category of person to whom Age concession is admissible. | Categories of posts to which the Age concession is admissible. | Extent of Age concessions. |
|---|---|---|
| 1 | 2 | 3 |
| (i) x x x | xx | |
| (ii) Retrenched Central Govt. Employees. | For posts filled otherwise than through UPSC. on the basis of competitive tests, i.e. filled through Employment Exchange. | Period of previous service under the Government of India plus three years. |
| | xxx | xxx |
| | xxx | xxx |
| (ix) Casual labours for absorption in regular establishment in Group 'D'. | For Group 'D' posts only. | Period spent as casual labourer, Broken period of service rendered as casual labourer may also be taken into account for the purpose of age relaxation for appointment in regular establishment, provided that one stretch of such service is for more than six months. |

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In addition to above, the applicant is also entitled to grant of temporary status in terms of 1988 Office Memorandum and also entitled to be treated as temporary Central Govt. Employees.

6.7. That this application is made bona fide and for the ends of justice.

7. Reliefs prayed for :

Under the facts and circumstances stated above the applicant prays for the following reliefs :

1. That the respondents be directed to consider the appointment against the existing post of Watchman lying vacant under the Canteen Stores Department, Misamari.
2. That the respondents also be directed to consider appointment of the applicant in any existing Group D post including the post of Mazdoor, Peon, Safaiwala, Ma Cleaner etc. on priority basis considering the past service of the applicant.
- 2A. That the respondents be directed to appoint the applicant in the existing post of Group 'D' by granting age relaxation.

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3. To pass any other order or orders as deemed fit and proper under the facts and circumstances of the case.
4. Cost of the case.

The above reliefs are prayed on the following amongst other -

- G R O U N D S -

1. For that the applicant has rendered more than 4 years of service under the respondents as casual labourer in the Misamari Canteen Store Depot.
2. For that the applicant have acquired legal rights for consideration of appointment on priority basis considering the past service of the applicant.
3. For that the applicant was empaneled by the respondents on number of occasions but denied appointment on regular basis to any Group D post.
4. For that fresh hands were recruited in supersession of the claim of the applicant for appointment on regular basis.
5. For that the applicant completed required number of working days for regular appointment on regular basis in each year in terms of Central Govt. Scheme for regular appointment of casual workers.

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6. For that the applicant fulfils all requisite qualification for appointment to the Group D Post on regular basis.
7. For that the respondents have admitted the applicant's engagement on casual basis in the Canteen Store Deptt. since 26th Oct. 1985 in their letter dated 28.9.85 (Annexure - 4).
8. For that the applicant approached the respondents through his representations, Lawyers Notice for regular appointment in any Group D post in the Canteen Store Deptt.
9. For that the applicant belongs to very poor family having no other source of alternative income for maintaining himself and his depending family members.
10. For that the applicant is entitled to grant of age relaxation as per provision laid down by the Government of India.
11. For that Selection Committee ought to have granted the age relaxation of the applicant following the provision laid down by the Government of India.

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12. For that the applicant ought to have been appointed on regular basis long back on priority basis in terms of Govt. of India's Office Memorandum dated 7.6.1988.

13. For that Group 'D' vacancies are still available in the Canteen Store Department at Misamari.

i) Interim Reliefs prayed for :

During the pendency of the case the applicant prays for the following interim relief :

i. That the respondents be directed to consider the appointment of the applicant in any existing Group D vacancy particularly to the post of Watchman.

The above reliefs are prayed on the grounds explained in paragraph 7 of this application.

9. That the applicant declares that he has not filed any other application/case in any other Court or Tribunal.

10. That the applicant declares that there is no other remedy under any rule and the Hon'ble Tribunal is the only remedy.

ii. Particulars of I.P.O.

Postal Order No. :

Date of Issue :

Issued from : G.P.O., Guwahati.

Payable at : G.P.O., Guwahati.

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S/No' Jagat DW.

12. An Index showing particulars of the enclosures is enclosed.

13. Documents.

As per Index.

VERIFICATION.

I, Sri Jagat Chandra Das, son of late Satram Das, aged about 36 years, village Nabil, P.O. - Towbhanga District - Sonitpur, Assam, applicant in this application do hereby solemnly affirm and declare that the statements made in ^{para 1/2} this application are true to my knowledge and belief and I have not suppressed any material facts.

I sign, this Verification on this the 28th day of ^{July} ~~March~~, 1996.

Shri Jagat Das.

Place : Guwahati

Signature.

Date :

Annexure - I.

Govt. of India.

CANTEEN STORES DEPARTMENT.

MISAMARI DEPOT.

Telegram : CANSIND.

MISAMARI (CANT)

Telephone : Office Mil-255.

Assam 784506.

Residential Mil - 218.

Ref.

Date : 5th May '87.

TO WHOM IT MAY CONCERN.

It is to certify that Shri Jagat Das Son of Shri Satram Das of Vill. Nobil P.O. Naharbari District Sonitpur (ASSAM) was serving this Department as Daily Rated Mazdoor w.e.f. 29 Oct. 85 to 31 Mar 87 with intermittent breaks.

I wish him success in life.

Sd/- Illegible

MANAGER.

CANTEEN STORES DEPARTMENT.

(M.L. Sarkar).

*Attached
Shri
Adh.*

Annexure -- 2.

To
The General Manager,
Canteen Stores Department,
'ADELPHI' 119 M.K. Road,
Bombay-20.

Through proper channel.

Sub: PRAYER FOR APPOINTMENT.

Sir,

I beg to state the following few lines for your kind perusal and sympathetic consideration please :

Sir, I am working in (CSD) Misamari Depot. since October '85 as a daily Rated Mazdoor. I had given an interview in this Depot for the post of Peon in the year 1986. After interview a panel was drawn in this department. My name also listed in the approval panel. However, now I am eager to move here for my service at CSD Depot BRAHMNEI-DI-BARI (Mammu) in respect of your circular No. 3/A-2/1275/9806 dt. 17 Nov. '87.

Therefore, I fervently request to your kindness to offer me one the post. I am belong to a schedule caste of Assam and son of very poor family and there was no income source except me in my family. I hope you will give a chance for the post mentioned above. For this act of kindness I shall remain ever grateful and oblige.

Thanking you in anticipation.

Yours faithfully,

(SRI JAGAT DAS)
Dated : The Misamari CSD DEPOT, MISSAMARI,
30th November '87. P.O. Misamari - 6 784506
Dist. Sonitpur (Assam).

*Allesched
Asri
J.D.W.*

Annexure - 2x 3

MANIK CHANDA, Advocate,
Gauhati High Court,
C/O. Late Rabindra Mazumdar,
Bye Lane - 7, Lachit Nagar,
Guwahati-781007.

Dated : 26.6.96.

N O T I C E.

To
The Manager,
Canteen Stores Department,
Misamari.

Under the instruction of my client Sri Jagat Das, Son of Late Satram Das of village Nabil, P.O. Towbhanga in the district of Sonitpur I do hereby give this notice to you undermentioned grounds :-

1. That my client is a citizen of India having his permanent residence at the aforesaid address. He read upto Class IX.
2. That my client's name was sponsored through the local Employment Exchange to the Canteen Stores Department, Misamari, Ministry of Defence, Govt. of India. Thereafter my client appeared before the Selection Board and was selected for a post of Mazdoor at Canteen Stores Department, Misamari Depot. My client was appointed as daily rated Mazdoor with effect from 29.10.1985 and worked upto 1989 at the rate of Rs. 12/-, 15/-, & 21/-, 31/-, and 32/-etc. per day with artificial breaks. He served to the best satisfaction of the authorities concerned vide a copy of certificate dated 5.5.87, issued by the Manager, Canteen Works Department, Misamari Depot.
3. That since 1989 my client is without job.
4. That my client filed a representation dated 30.11.87 praying to get appointment but to no result vide representation dated 30.11.87. My client has working experience in this Depot for about 4 years.

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5. That many other persons were appointed in this C. S. D., Misamari Depot on regular basis but my client is singled out. My client came to know from reliable source that very recently that office of the Administrative Commandant, Misamari has recruited some officials against regular vacancies whereas the case of my client has not been considered.

6. That my client has acquired a legal right to get regular appointment in this C. S. D., Misamari Depot as he has completed more than 240 days in this Depot as per Circular of the Central Government.

Under the facts and circumstances state above I requested you to make an arrangement to appoint my client in C. S. D., Misamari Depot as Mazdoor on regular basis otherwise my client shall institute a case in legal forum appropriate relief. Hope you will avoid bitter experience of case for most and consequence thereof.

Hope you will do needful as early as possible.

Thanking you.

Yours Sincerely,

Sd/-
Advocate,
for Client J. Das.

Copy to :

The Regional Manager, Canteen Stores Department,
Narengi, Satgaon, Govt. of India, Ministry of Defence).

(MANIK CHANDA).

Manik Chanda

Government of India,
Canteen Stores Department
Ministry of Defence.

Telegrams : CANSIND.
Telex : 112761 CASD IN.

'ADELPHI'
119 MAHARSHI KARVE ROAD,
BOMBAY-400020.

Ref. No. 3/Pers./A-1/1107 (Misamari)/4932. Date 28th Sept. '95.

Shri Manik Chanda,
Advocate,
Gauhati High Court,
Bye Lane-7,
Lachit Nagar,
Guwahati - 781007.

EMPLOYMENT TO SHRI JAGAT DAS.

Reference your Notice dated 26.6.95 for giving employment to Shri Jagat Das S/O. Late Satram Das.

2. We have examined the case of your client Shri Jagat Das, S/O. Late Satram Das of village Nabil, P.O. Towbhanga, Dist. Sonitpur.

Brief of the case is as under :-

i. Shri Jagat Das was engaged at our Misamari Depot. w.e.f. 26th Oct. '85. Though his name was empanelled in the local panel for Watchman which was drawn on 22/23 Nov. '88, his name was cancelled from the panel based on the Govt. Order bearing No. O.M. 40014/18114/Estt(C) dated 7th May, '85.

The order states that "Casual Workers recruited prior to the issue of the instructions can be considered for regular appointment of Gp. 'D' posts, even if they were recruited otherwise than through the Employment Exchange, provided they are eligible for regular appointment in all other aspects.

ii. Your client's name was empanelled for the post of Mali when the local panel for Gp. 'D' categories were drawn at Misamari Depot on 10.9.90, as his name was sponsored by Employment Exchange. Since there was no vacancy for the post of Mali at our Misamari Depot till expiry of validity period of the panel i.e. 15.8.92, we could not give appointment to your client in our Department.

iii. Regarding recent recruitment in CSD Misamari, it is stated that on 23rd May, '94, local panel for Cook was drawn by Misamari Depot and the person who has been empanelled at Srl. No.1 was given appointment to fill up the vacancy of Cook at our Misamari Depot.

3. From the above, it is seen that we have not done any injustice to your client. Therefore, you are requested to appraise the petition to your client Shri Jagat Das.

Sd/- J.N.Kar,
OIC(P),
for General Manager.

Shri Jagat Das

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

19 MAR 1996

An Application under Section 19 of the Administrative Tribunals Act, 1985.

O.A. No. 49 / 96

Sri Jagat Das

vs.

Union of India & ⁰rs.

I N D E X

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| 2 | - | Verification | 18 |
| 3 | 1 | Certificate dt. 5.5.87 | 19 |
| 4 | 2 | Representation dt. 30.11.87 | 20 |
| 5 | 3 | Notice Dt. 26.6.95 | 21-22 |
| 6 | 4 | Reply dt. 28.9.95 | 23 |
| 7. | 20/3/96 | S. R. 1 — 4. | 24 → 30 |

Filed By :

Date : 20-3-96.

M. Chakraborty
Advocate

Received 6/3/96
C. S. C. 20/3/96

Sri Jagat Das

22
Filed by the applicant
through m. chakraborty

1. Particulars of the Applicant.

Sri Jagat Das

Son of late Satram Das

Village - Nabil

P.O. Towbhanga

District- Sonitpur Applicant

2. Particulars of the Respondents.

1. Union of India

Through the Secretary to the Govt. of India,

Ministry of Defence, ~~Adelphi~~ 119 Mahatma Gandhi Road

New Delhi

2. The Director General,

Canteen Store Department,

Ministry of Defence,

ADELPHI, 119 Mahatma Karve Road,

Bombay-400 020

3. The Regional Manager,

Canteen Store Department,

Govt. of India, Ministry of Defence,

Satgaon, Narengi,

Guwahati.

4. The Manager,

Canteen Store Department,

Misamari Depot (Cant.)

PIN 784 506

..... Respondents

Sri Jagat DW

3. Particulars for which this Application is made.

This application is made for appointment/absorption on regular basis against the existing vacancies of Chowkidar or any other Group D vacancies on priority basis considering this past casual service in the Canteen Store Depot.

4. Limitation

The applicant begs to state that this application is filed within the prescribed limitation period under Section 21 of the Administrative Tribunals Act, 1985.

5. Jurisdiction

The applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

6. Facts of the case

6.1 That the applicant is a citizen of India as such he is entitled to all the rights and privileges guaranteed by the Constitution of India. The applicant is presently serving a bonafide local unemployed youth. He read upto Class IX. The name of the applicant was sponsored by the local Employment Exchange in the year 1985 against a vacant regular post of Maadoor in the Canteen Store Department, Misamari, Government of India, Ministry of Defence, the applicant accordingly appeared before the duly constituted selection board for the post

Shri Jagat Das

of Mazdoor and duly selected and accordingly he was appointed as daily rated Mazdoor with effect from 29.10.85 and thereafter he continuously worked upto to 1989 without any break at the rate of Rs. 12/-, 15/-, 21, 31/-, and 32/- per day on 'No work No pay basis' with one or two days artificial breaks.

6.2 That the applicant served the Canteen Store Department to the best satisfaction of the authorities concerned which would be evident from the certificate dated 5.5.87 issued by the Manager, Canteen Store Department Misamari Depot. The applicant while serving as Mazdoor in the Misamari Depot he appeared in an interview for the post of Peon in the year 1986. After the said interview a panel was prepared in the Canteen Store Department, Misamari and the name of the applicant also declared selected and shown in the approved panel for appointment to the post of Peon. But the respondents did not issue any appointment letter in respect of the applicant. The applicant being aggrieved for non-appointment to the post of Peon submitted a representation dated 30.11.87 addressed to the General Manager, Canteen Store Depot, Bombay but to no result.

A copy of the certificate dated 5.5.87 and representation dated 30.11.87 are Annexed as Annexure 1 & 2 respectively.

6.3 That your applicant also sponsored by the local Employment Exchange for interview for the post of Mazdoor/

Shri Jagatdas

Dirver/Watchman/Peon/Mali/Cleaner/. The applicant appeared in the interview in terms of Call Letter dated 28.7.88 under Reference MMD/Estt/64/1463. The applicant also declared selected in the said interview and empanelled in the panel for the post of Watchman which was drawn on 22/23 November 1988 but the name of the applicant is now stated to be cancelled based on the Govt. order bearing No. EM/40014/18184/Estt (C) dated 7.5.85 which is now communicated in response to his Lawyer's Notice dated 26.6.95. It is further stated in their reply dated 28.9.95 under letter under reference No. 3/PRS/A-1/1107 (Misamari)/4932. It is further however stated in the said letter dated 28.9.95 that the order dated 7.5.85 as stated above restricted the appointment of casual workers recruited after issuance of the Circular dated 7.5.85 and therefore the applicant could not be recruited although he was duly selected for the post of Watchman while he was serving in the Canteen Store Depot.

6.4 That Your applicant sponsored by the local Employment Exchange for interview for the post of Mazdoor/Peon/Watchman/Safaiwala/Mali/Driver/Cleaner and the applicant accordingly appeared in the interview on 30.7.90 and he was declared ~~was~~ selected and also empanelled for the Group D post which was prepared at Misamari Depot on 10.9.90. But surprisingly it is stated in the reply of Legal Notice dated 28.9.95 that he could not be appointed due to non-availability of vacancy of Mali and the validity of the panel is expired on 15.8.92. It would also be evident from the letter dated 28.9.95 that the

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the applicant could not be appointed in the recent recruitment in the recent recruitment in C.S.D, Misamari during May 1994 and the serial No. 1 of the local panel drawn up for recruitment for the post of Cook. There also the present petitioner is being deprived from the appointment of Cook whereas the applicant is entitled to on priority basis for consideration of appointment to the post of Cook. Therefore the action of the respondents is highly arbitrary, illegal and unfair.

6.5 That the applicant being highly aggrieved for non-appointment to any Group D post submitted a Lawyer's Notice on 26.6.95 for seeking employment under the respondents on priority basis considering his past service. The applicant have stated in detail regarding his service rendered in the Canteen Store ~~XXX~~ Department at Misamari in the Lawyer's Notice dated 26.6.95. The respondents on receipt of the Notice dated 26.6.95 replied the same vide their letter under Reference No. 3/PERS/A-1/1107 (Misamari)/ 4932 dated 28.9.95 by the General Manager, Canteen Store Depot, Govt. of India, Ministry of Defence, Bombay wherein it is admitted that the present applicant was initially appointed in the Misamari Depot with effect from 26.10.85 as casual worker and also stated that on number of occasions the applicant was empanelled for appointment against Group D Posts. But either due to the non-availability of post or due to expiry of validity of the panel and it is also admitted that even during the year 1988 some recruitment was made but the applicant could not be appointed. Therefore the

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Therefore the action of the respondent is highly illegal, Arbitrary for non-appointing the applicant to any Group D vacancy on priority basis. Be it stated that the applicant is entitled to be appointed in any Group D post considering his past service in the Canteen Store Depot.

A copy of the Lawyer's Notice dated 26.6.95 and reply dated 28.9.95 are enclosed as Annexure 3 and 4 respectively.

6.6 That the applicant begs to state that he has come to know from a reliable source that presently six posts of Chowkidar/Watchman are lying vacant and the respondents are taking necessary steps to fill up the aforesaid vacancies in the Canteen Store Depot at Misamari alongwith some other Group D vacancies. Therefore the present applicant now approached this Hon'ble Tribunal with the instant Application for an appropriate direction to consider the case of the present applicant for his appointment on priority basis to any of the Group D post in the Canteen Store Depot, Misamari. In this connection it may be stated that it is a well settled law that the retrenched employee should be given priority in the matter of future employment which would be evident from the Judgement and Order dated 16.2.90 in O.A. No. 2306/89 (Sri Rajkamal & Ors Vs. Union of India & Ors.) passed by the Principal Bench, New Delhi wherein it is observed in paragraph 21 of the Judgement and Order that the surplus casual workers should be absorbed on priority basis in the existing or future vacancies. The relevant portion of the

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Judgement & Order dated 16.2.90 reported in SLJ 1990 (2)

CAT Page 169 is quoted below :

* 21. We are, therefore, of the opinion that in order to solve the problem of casual labourers engaged in the Central Government offices in a fair and just manner, the proper course for the Government would be to prepare a scheme, somewhat like the one in operation for redeployment of surplus staff, vide Department of Personnel and A.R.'s O.M. No. 3/27/65-CS-II dated 25.2.1966 and amplified vide Department of Personnel and Training O.M. No. 1/8/81-CS-II dated 30.4.1987, and the Department of Personnel and Training's O.M. No. ~~1/14/88~~ 1/14/88-CS-III dated 31.3.1989 and 1/18/88-C.S. III dated 1.4.1989, for all casual labourers engaged prior to 7.6.1988, but who had not been regularised by the authority concerned for want of regular vacancies or whose service has been dispensed with for want of regular vacancies. Since the Department of Personnel and Training is monitoring the implementation of the instructions issued vide O.M. dated 7.6.1988, the Union of India through that Department, should undertake to prepare a suitable scheme for absorbing such casual labourers in various ministries/departments and subordinate and attached offices other than the Ministry of Railways and Ministry of Communication. Their absorption should be on the basis of the total number of days worked by the persons

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concerned. Those who have worked for 240 days
206 days (in the case of six days/five days respectively), in each of the two years prior to 7.6.1988 will have priority over the other in regard to absorption. They would also be entitled to their absorption in the existing future vacancies. Those who have worked for lesser periods, should also be considered for absorption, but they will be entitled to wage for the period they actually worked as casual labourers. No fresh engagement of casual labourers against regular vacancies shall normally be restored to before absorbing the surplus casual labourers. The fact that some of them may not been sponsored by the Employment Exchange, should not stand in the way of their absorption. Similarly they should not be considered ineligible for absorption if at the time of their initial engagement, they were within the prescribed a limit." 12

The applicant also begs to refer the Judgement and Order dated 8.2.91 passed by the Principal Bench, New Delhi reported in 1991 (17) ATC Page 671. The relevant portion is quoted below :

"12. The Supreme Court has directed the Government to prepare scheme for regularising casual workers in the Railways, the posts and Telegraphs Department, the Income Tax Department, the Delhi Municipal Corporation, Nehru Yuva

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Kendras, C.P.W.D. and P.W.D. Daily-wage Employees in Karnataka (vide Inder Pal Yadav Vs. Union of India relating to the Railways, Daily-Rated Casual Labour Employed under P & T Vs. Union of India relating to P & T Department; U.P. Income Tax Department Vs. Union of India Vs. P.L. Singh, Dhirendra Chamoli Vs. State of Up. relating to Nehru Yuvek Kendras, Surinder Singh Vs. Engineer-in-Chief, C.P.W.D., and Dharward District P.W.D. Literate Daily Wage Employees Vs. State of Karnataka. Referring to the leading decisions on the subject, the Supreme Court made the following pertinent observations in the Karnataka case. mention above.

"We have referred to several precedents all rendered within the current decade - to emphasize upon the feature that equal pay for equal work and providing security of service by regularising casual employment within a reasonable period, have been unanimously accepted by this Court as a constitutional goal to our policy. Article 142 of the Constitution provides how the directions of this court are to be treated and we do not think there is any need to remind the instrumentalities of the State - be it of the Centre or the State, or the Public Sector - that the Constitution makers wanted them to be bound by what this Court said by way of interpreting law."

Contd... P/11

Sri Jagannath

13. In the light of the aforesaid legal position the framing of a suitable scheme for regularisation of the Casual Artists of Doordarshan is a Constitutional imperative and long overdue.

14. In our considered view, the respondents should frame a scheme for absorption of Casual Artists who have worked for a period of one year and more, keeping in view the following aspects.

(i) Casual Artists who have been engaged for an aggregate period of 120 days, may be treated as eligible for regularisation. The broken periods in between engagement and disengagement, are to be ignored for this purpose.

(ii) The respondents shall prepare a panel of Casual Artists who had been engaged on contract basis, depending on the length of service. The names of those who have not been regularised so far, specially from 1980 onwards, though may not be in service now, are to be included in the panel. Persons borne on the panel, are to be considered for regularisation in the available vacancies.

(iii) For the purpose of regularisation the upper age-limit has to be relaxed to the extent of service rendered by the Casual Artists, 120 days' service in the aggregate shall be treated as the service rendered in one year for this purpose.

Smti JAGAT DW

(iv) Till all the Casual Artists who have been engaged by the respondents have been regularised, the respondents may not resort to fresh recruitment of such Artists though Employment Exchange or otherwise.

(v) Till the Casual Artists are regularised the wages to be paid to them should be in accordance with the scale of pay of the post held by a regular employees in an identical post. The amount of actual payment would be restricted to the actual number of days worked during a month."

The Central Administrative Tribunal, Principal Bench, New Delhi has also expressed similar view in the case of P.Munu Swamy and Ors. Vs. Union of India & Ors. reported in ATC(1992) ~~22~~ Vol. 22, Page 115. The relevant portion of the Judgement and Order passed in O.A. Nos. 1154 of 1991, 1827,1843 and 1954 of 1990 in the case of P.Munuswamy and Others Vs. U.O.I. & Ors dated 24.12.1991 is quoted below :

"11. In the light of the above, the applications are disposed of with the following orders and directions :

(i) The respondents are directed to prepare a list of casual labourers engaged in their various offices located in Delhi and elsewhere from time to time through Employment Exchange or otherwise. Whenever they need

the services of the casual labourers, they should be engaged from the said list, preference being given to thos who have put in longer period of service than the others. The broken periods of service shall not be reckoned for the purpose of determining the total length of service.

- (ii) We hold that the practice of disengaging casual labourers and engaging fresh recruits ~~through~~ through Employment Exchange is not legally sustainable and disapprove the same.
- (iii) The respondents shall consider regularisation of the casual labourers in Group D posts whenever vacancy arises due to retirement or otherwise. Such regularisation should be in accordance with the administrative instructions issued by the Department of Personnel and Training. Till they are so regularised, they should be paid wages on the scale prescribed by the Department of Personnel and Training.
- (iv) The applicants shall be accommodated as casual labourers in their offices located at Delhi or elsewhere, depending on the availability of vacancies and in accordance with the aforesaid directions. Interim orders passed in these cases are hereby made absolute.
- (v) There will be no order as to costs."

Shri Jagat Singh

From the above it is quite clear that the applicant have also acquired a valuable legal right for his appointment on regular basis in any existing or future Group D post considering ~~the~~ his length of service ~~xxxxxx~~ on casual basis under the respondents. Be it stated that presently a number of Group D posts are lying vacant in the Misamari Canteen Stores Department therefore the Hon'ble Tribunal be pleased to direct the respondents to consider the appointment of the applicant on priority basis against any existing Group D post on regular basis.

6.7 That this application is made bonafide and for the ends of justice.

7. Reliefs prayed for :

Under the facts and circumstances stated above the applicant prays for the following reliefs :

1. That the respondents be directed to consider the appointment against the existing post of Watchman lying vacant under the Canteen Stores Department, Misamari.
2. That the respondents also be directed to consider appointment of the applicant in any ~~xxxx~~ existing Group D post including the post of Mazdoor, Peon, Safaiwala, Mali, Cleaner etc. on priority basis considering the past service of the applicant.

3. To pass any other order or orders as deemed fit and proper under the facts and circumstances of the case.
4. Cost of the case.

The above reliefs are prayed on the following amongst-

other-

-G R O U N D S-

1. For that the applicant have rendered more than 4 years of service under the respondents as casual labourer in the Misamari Canteen Store Depot.
2. For that the applicant have acquired legal rights for consideration of appointment on priority basis ~~considering~~ considering the past service of the applicant.
3. For that the applicant was empaneled by the respondents on number of occasions but denied appointment on regular basis to any Group D post.
4. For that fresh hands were recruited in supersession of the claim of the applicant for appointment on regular basis.
5. For that the applicant completed required number of working days for regular appoint-

Shri Jagat Singh

~~Bank~~

ment on regular basis in each year in terms of Central Govt. Scheme for regular appointment of casual workers.

6. For that the applicant fulfils all requisit qualification for appointment to the Group D Post on regular basis.
7. For that the respondents have admitted the applicant's engagement on casual basis in Deptt. the Canteen Store ~~Depar~~ since 26th Oct, 1985 in their letter dated 28.9.85 (Annexure-4).
8. For that the applicant approached the respondents through his representations, Lawyers Notice for regular appointment in any Group D post in the Canteen Store ~~Dept~~.
9. For that the applicant belongs to very poor family having no other source of alternative income for maintaining himself and his depending family members.

9. Interim Reliefs prayed for :

During the pendency of the case the applicant prays for the following interim relief :

1. That the respondents be directed to consider the appointment of the applicant in any existing Group D vacancy particularly to the post of Watchman.

The above reliefs are prayed on the grounds explained in paragraph 7 of this application.

9. That the applicant declares that he has not filed any other application/case in any other Court or Tribunal.

10. That the applicant declares that there is no other remedy under any rule and the Hon'ble Tribunal is the only remedy.

11. Particulars of I.P.O.

| | | |
|------------------|---|------------------|
| Postal Order No. | : | 337003 |
| Date of Issue | : | 13.3.96 |
| Issued from | : | G.P.O., Guwahati |
| Payable at | : | G.P.O., Guwahati |

12. An Index showing particulars of the enclosures is enclosed.

13. Documents

As per Index.

VERIFICATION

I, Sri Jagat Chandra Das, son of late Satram Das, aged about 25 years, village Nabil, P.O. Towbhanga District-Sonitpur, Assam applicant in this application do hereby solemnly affirm and declare that the statements made in this application are true to my knowledge and belief and I have not suppressed any material fact.

I sign, this verification on this the 19th day of March, 1996.

Place : Gauhati

Date : 19-3-96.

Sri Jagat Das
Signature

XXX

ANNEXURE-1

Govt. of India
 CANTEEN STORES DEPARTMENT
 MISAMARI DEPOT

Telegram : CANSIND
 Telephone : Office Mil-255
 Residential Mil-218

MISAMARI (CANT)
 Assam 784506

Ref.

Date : 5th May '87

TO WHOM IT MAY CONCERN

It is to certify that Shri Jagat Das Son of
 Shri Satram Das of Vill Nobil P.O. Naharbari District
 Sonitpur (ASSAM) was serving this Department as Daily
 Rated Mazdoor w.e.f. 29 Oct 85 to 31 Mar 87 with
 intermittent breaks.

I wish him success in life.

Sd/- Illegible
 MANAGER
 CANTEEN STORES DEPARTMENT
 (M.L.Sarkar)

*Authored
 Chander
 ADV*

To

The General Manager,
Canteen Stores Department,
'ADELPHI' 119 M.K.Road,
Bombay-20

Through proper channel

Sub : PRAYER FOR APPOINTMENT

Sir,

I beg to state the following few lines for your kind perusal and sympathetic consideration please :

Sir, I am working in (CSD) Misamari Depot. since October '85 as a daily Rated Mazdoor. I had given an interview in this Depot for the post of Peon in the year 1986. After interview a panel was drawn in this department. My name also listed in the approval panel. However, now I am eager to move here for my service at CSD Depot BRAHMNEI-DI-BARI (Jammu) in respect of your circular No. 3/A-2/1275/9806 dt. 17 Nov. '87

Therefore, I fervently request to your kindness to offer me one the post. I am belong to a schedule caste of Assam and son of very poor family and there was no income source except me in my family. I hope you will give a chance for the post mentioned above. For this act of kindness I shall remain ever grateful and oblige.

Thanking you in anticipation.

Yours faithfully,

Dated : The Missamari
30th November '87

(SRI JAGAT DAS)
CSD DEPOT, MISSAMARI
P.O. Missamari-784506
Dist. Sonitpur (Assam)

Attent
Wd
Adv

ANNEXURE-3

MANIK CHANDA, Advocate
 Gauhati High Court
 C/o Late Rabindra Mazumdar
 Bye Lane-7, Lachit Nagar
 Guwahati-781007

Dated : 26.6.96

N O T I C E

To

The Manager
 Canteen Stores Department
 Misamari

Under the instruction of my client Sri Jagat Das, Son of Lat Satram Das of village Nabil, P.O. Towbhanga in the district of Sonitpur I do hereby give this notice to you undermentioned grounds :-

1. That my client is a citizen of India having his permanent residence at the aforesaid address. He read upto Class IX.
2. That my client's name was sponsored through the local Employment Exchange to the Canteen Stores Department, Misamari, Ministry of Defence, Govt. of India. Thereafter my client appeared before the Selection Board and was selected for a post of Mazdoor at Canteen Stores Department, Misamari Depot. My client was appointed as daily rated Mazdoor with effect from 29.10.1985 and worked upto 1989 at the rate of Rs. 12/-, 15/-, 21/-, 31/-, and 32/- etc. per day with artificial breaks. He served to the best satisfaction of the authorities concerned vide a copy of certificate dated 5.5.87 issued by the Manager, Canteen Works Department, Misamari Depot.
3. That since 1989 my client is without job.
4. That my client filed a representation dated 30.11.87 praying to get appointment but to no result vide representation dated 30.11.87. My client has working experience in this Depot for about 4 years.

Attest
 (Signature)
 Adv.

Annexure-3

63

5. That many other persons were appointed in this C.S.D., Misamari Depot on regular basis but my client is singled out. My client came to know from reliable source that very recently that office of the Administrative Commandant, Misamari has recruited some officials against regular vacancies whereas the case of my client has not been considered.
6. That my client has acquired a legal right to get regular appointment in this C.S.D., Misamari Depot as he has completed more than 240 days in this Depot as per Circular of the Central Government.

Under the facts and circumstances state above I request you to make an arrangement to appoint my client in C.S.D., Misamari Depot as Mazdoor on regular basis otherwise my client shall institute a case in legal forum appropriate relief. Hope you will avoid bitter experience of case for cost and consequence thereof.

Hope you will do needful as early as possible.

Thanking you,

Yours Sincerely,

Sd/-

Advocate
for Client J.Das

Copy to :

The Regional Manager, Canteen Stores Department,
Narengi, Satgaon, Govt. of India, Ministry of Defence.

(MANIK CHANDA)

*Attentively
J.Das
pdv*

Annexure-4

Government of India
 Canteen Stores Department
 Ministry of Defence

Telegrams : CANSIND
 Telex : 112761 CASD IN

'ADELPHI'
 119 MAHAARSHI KARVE ROAD
 BOMBAY 400020

Ref No. 3/Pers/A-1/1107 (Misamari)/4932 Date 28th Sept. '95

Shri Manik Chanda,
 Advocate,
 Gauhati High Court,
 Bye Lane-7
 Lachit Nagar,
 Guwahati-781007

EMPLOYMENT TO SHRI JAGAT DAS.

Reference your Notice dated 26.6.95 for giving employment to Shri. Jagat Das S/O Late Satram Das.

2. We have examined the case of your client Shri. Jagat Das, S/O Late Satram Das of village Nabil, P.O. Towbhanga, Dist. Sonitpur.

Brief of the case is as under :-

i. Shri. Jagat Das was engaged at our Misamari Depot. w.e.f. 26th Oct. '85. Though his name was empanelled in the local panel for Watchman which was drawn on 22/23 Nov '88, his name was cancelled from the panel based on the Govt. Order bearing No. O.M. 40014/18114/Estd (C) dated 7th May '85.

The order states that "Casual Workers recruited prior to the issue of the instructions can be considered for regular appointment of Gp. 'D' posts, even if they were recruited otherwise than through the Employment Exchange, provided they are eligible for regular appointment in all other aspects.

ii. Your client's name was empanelled for the post of Mali when the local panel for Gp. 'D' categories were drawn at Misamari Depot on 10.9.90 as his name was sponsored by Employment Exchange. Since there was no vacancy for the post of Mali at our Misamari Depot till expiry of validity period of the panel i.e. 15.8.92, we could not give appointment to your client in our Department.

iii. Regarding recent recruitment in CSD Misamari, it is stated that on 23rd May '94, local panel for Cook was drawn by Misamari Depot and the person who has been empanelled at Srl. No. 1 was given appointment fill up the vacancy of Cook at our Misamari Depot.

3. From the above, it is seen that we have not done any injustice to your client. Therefore, you are requested to appraise the position to your client Shri. Jagat Das.

Sd/- J.N.Kar
 OIC (P)
 for General Manager

Attn: Fed
 Adm
 Adv

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BRANCH:GUWAHATI.

D.A. NO. 49 OF 1996.

Sri Jagat Das,

-Versus-

The Union of India & Others.

Central Govt. ~~Establishments~~ Central Administrative Tribunal
8/2697

*Filed by
C. Thakurata &
3/2697*

- AND -

IN THE MATTER OF:

Written Statements submitted by the
Respondents No. 1, 2, 3 & 4.

(WRITTEN STATEMENTS)

The humble Respondents beg to
State /submit their Written
Statements as follows:-

- 1) That with regard to the statements made in paragraphs 1, 2, 3, 4, & 5 of the application the Respondents have no comments.
- 2) That with regard to the statements made in paragraph 6.1 of the application the Respondents beg to state that, the applicant who has served in one of the establishments of the respondent, viz Misamari Depot, as casual labour was employed on casual basis. It is to intimate this Hon'ble

*Parimand
Wd
H.V.
3-2-97*

(Contd.)

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Tribunal that this organisation is responsible for procurement of Canteen Stores and liquor for onward supply to the Armed forces personnel located in every nook and corner of the country. Due to movement of the troops, sometimes dependency of one depot increases to the extent that the depot cannot cope up with the work with the existing manpower. In such circumstances the Depot management was empowered to engage casual workers on daily rated basis from the panel drawn from the names duly sponsored by the local Employment exchange. Daily wages of such casual workers were fixed by local Army Station Headquarters.

It is to submit that at the time of engaging the applicant as daily rated casual worker, he was never given the assurance that his services would continue for long and he was made to understand that as soon as work availability for him would be over his services would terminate. It is also to submit that as per the procedure in accordance to the U.M. NU. G.I.M.H.A. OM No. 71/49-DGS dated 11-12-1949 read with G.I., M.H.A. OM No. 14/11/64-Estt(D) dated 21-3-64 (copy enclosed), recruitments which are not undertaken by UPSC or SSC has to be informed to the Employment Exchange and from the list of names of sponsored candidates local panel has to be prepared on merit basis. It is also stated in the above circular that no vacancy can be fulfilled until and unless employment exchange

did not issue No-Availability Certificate.

3) That with regard to the statements made in paragraph 6.2 of the application the Respondents beg to state that, as per the procedure of rules and regulations, panel for the post has to be around double or triple the number of candidates in comparison to the available vacancies and within the validity period, empanelled candidates will be given an offer of appointment as soon as vacancy arises. Regarding the contention of the applicant that he has been selected for the post of peon in 1986 as he was empanelled at Sr.No. of the panel, is not at all correct. It is to submit that the validity period of the panel was upto 9-7-88 and in the absence of clear vacancy during the above period the applicant could not be given appointment of a peon in the Department.

4) That with regard to the statements made in 6.3 of the application the Respondents beg to state that the Office of the respondent has requested the local employment exchange to sponsor the candidates for the post of Group D in 1988 and the applicant was one of the sponsored candidates. It is also to submit that the applicant was empanelled for the post of watchman at Sr.No. 3. However, on receipt of the Government of India circular No. OM/40014/18184 /Estt (C) dated 7-5-85 in which it was clarified that the casual workers recruited before the issue of this

(Contd.)

- 4 -

instruction may be considered for regular appointment in Group D even if they were not recruited through employment exchange. It is to submit to this Hon'ble Tribunal that Sh. Jagat Das was engaged as casual daily rated worker w.e.f. 26-10-85 while the date of issue of above Government order was 7th May 1985. As such the panel consisting the name of the applicant was cancelled which is absolutely in accordance with the rules and regulations and no violation has taken place at any point of time.

5) That with regard to the statements made in paragraph 6.4 of the application the Respondents beg to state that, on the basis of expected vacancies for the various cadres local panels were also drawn. Accordingly the panel for the post of Mali was drawn and the applicant was ~~empowered~~ empanelled for the post of Mali on 10-9-90. It is to submit that intimate the Hon'ble Court that the panel for the post of Mali was valid upto 15-8-92 and within this period due to non availability of clear vacancy, the applicant could not be accommodated. Further it is to bring to the notice of this Court that the contention of the applicant that he has been selected for the post of Cook is absolutely baseless, hence is denied. In fact the name of the applicant has not at all appeared in the panel and hence not considered for this post. As such all the actions initiated by the respondent were in accordance with the existing rules and the contention of the applicant that it is

(Contd.)

illegal and unfair is baseless, misconceived, hence denied.

6) That with regard to the statements made in paragraphs 6.5 of the application the Respondent beg to state that the recruitment to the office of respondent is being undertaken in accordance with the existing rules and as such, in the absence of a clear vacancy the applicant was not offered an offer of appointment, and this action is not at all illegal as stated by the applicant in this paragraph. The respondents have correctly replied to the notice of the Lawyer, issued to them on behalf of the applicants.

7) That with regard to the statements made in paragraph 6.6 of the application the Respondents beg to state that, even when vacancies are available with Respondents, the recruitment can be made only after observing the laid down procedure. The applicant has all rights to appear in the interview if he has been called for after due scrutiny of his application. It is to confirm to this Hon'ble Tribunal that whatsoever vacancies will be filled by the way of recruitment will be absolutely after observing the norms and if applicant falls within that his candidature will be considered for the posts. Resps are matters of record.

8) That with regard to the statements made in paragraph 7 of the application regarding the reliefs sought for the Respondents beg to state that ,they have to consider the candidature of the applicant in the light of existing rules and this Hon'ble court should / not pass any order in this matter .

9) That with regard to the statements made in paragraphs the grounds of the application the Respondents beg to state that :

i) To close up with the increased workload, the respondents have engaged the services of the applicant and not at any/ point of time he has been assured for continuous employment as such the contention of the applicant that he has got the legal right for his consideration for appointment is absolutely baseless, misconcieved, hence denied.

ii) It is true that applicant has been empanelled at various occasions for various posts but within the validity period due to non-availability of vacancies he has not been given an offer of appointment. It is to submit that untill and unless clear vacancies are not available , appointment to any of the empanelled candidates cannot be given because in the Government organisation staff strength is recommended by SIU and sanctioned by president of India. It is to state

It is also to state that respondents have no authority to either increase or decrease the authorised staff strength.

iii) It is to submit that the fulfillment of requisite qualifications of the applicant can be seen by the duly constituted Board at the time of interview but at this point we have nothing to offer in this matter.

iv) It is true that applicant has served the respondent as casual worker for some period but it does not offer a claim for a permanent employment on this ground. As already elaborated in the foregoing paragraphs, that the scope of up with the increased work-loads, local management has the authority to engage casual workers for completion of the job.

10) That with regard to the statements made in paragraphs 8 to 13 of the application the Respondents have no comments.

VERIFICATION

I, Sri N. K. Vaid, Regional Manager (East)
Canteen Stores Department, C.S.D. Depot Complex, Satgaon
Guwahati, do hereby solemnly affirm and declare that the statements made in the above Written Statements are true to my knowledge, belief & information.

And I sign this verification today on 30th day of January, 1997 at Guwahati.

N.K. Vaid
N.K. Vaid
Regional Manager (E)
CSD Depot (Guwahati)