

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 819 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member**

Sanatan Nayak, aged about 48 years, S/o Late Dukha Naik,
At/PO-Murarifa, PO – Padmapur, PS- Jagatpur, Dist.- Cuttack.

.....Applicant.

VERSUS

1. Union of India represented by the Secretary, Ministry of Textile, Office of the Textile Commissioner, Post Bag No. 11500, Mumbai, Pin – 400020.
2. Director, (ADMN), Office of the Textile Commissioner, PBN-11500, Mumbai, Pin – 400020.
3. Officer-in-Charge, Power Loom Service Centre, ITT Building, At-Gandhichhak, Choudwar, Dist-Cuttack, Pin – 754025.
4. The Officer-in-Charge, Regional Office of the Textile Commissioner, 1 Council House Street, Kolkata – 700064.

.....Respondents.

For the applicant : Mr.S.Mohanty, counsel

For the respondents: Mr.P.K.Mohanty, counsel

Heard & reserved on : 11.12.2018

Order on : 2.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

“Under such circumstances it is humbly prayed that this Hon'ble Court may kindly be pleased to admit this original application and issue notice to the respondents to file their show cause as to why the case of the applicant shall not be allowed and after hearing the parties, the order passed vide Annexure A/9 dtd. 27.2.2014 be set aside and direction be given to the respondents to regularize the services of the applicant in the post of Chowkidar in P.S.C., Cuttack within a stipulated period and the applicant be given all other financial and consequential benefit.”

2. The applicant claims that he was appointed as a part time sweeper in the power loom service centre (in short PSC), Cuttack from 20.04.1982 and continued as such till 3.07.1989, when his service was terminated. He filed the OA No. 441/1989 which was disposed of on 1.04.1991 quashing the order of termination. On 17.06.1991, the applicant was appointed as casual sweeper at PSC on daily wage basis on 1/30th of minimum basic monthly pay and DA for

Group D employee. On 1.08.1994, the applicant was transferred and posted in Regional Office, Noida as a sweeper. Since there was personal difficulty of the applicant, he submitted a representation to the respondents. The applicant was directed to join at PSC, Cuttack on 16/17.11.2000. It is stated in the OA that he was given the work of Chowkidar in addition to his work as sweeper.

3. As a post of Chowkidar was vacant, the applicant submitted a representation on 10.02.2009 for the said post. Vide order dated 05/06.11.2009 (Annexure A/7), his request for appointment to the post of Chowkidar was not considered since he was appointed as Casual Sweeper (Full Time) on humanitarian ground. The applicant filed OA No. 70/2010 for regularization of his service as Chowkidar at PSC, Cuttack and vide order dated 3.01.2014 (Annexure A/8), the respondents were directed to consider the case of the applicant. The respondents rejected the claim of the applicant after contempt petition was filed by the applicant. This OA is directed against the impugned order dated 27.02.2014 (Annexure A/9), by which, the case of the applicant for regularization was rejected by the respondents.

4. The respondents have filed Counter opposing the claims made on the OA, while not disputing the basic facts as stated in the OA. The applicant was appointed as a regular sweeper in the Regional office, Noida w.e.f. 1.8.1994. But due to his absence, his services were terminated vide order dated 10.1.1995. The applicant continued to appeal before authorities for reinstatement at PSC, Cuttack. He furnished an undertaking on 6.4.1999 on legal bond paper stating that he was willing to work as a casual sweeper at Cuttack where he agree to attend to the duties of sweeper as well as of the Group D employee. Keeping in view his request and order dated 1.04.1991, he was appointed by the respondents on daily wage 1/30th wage basis on 17.11.2000. It is stated in the counter that the Tribunal vide order dated 3.01.2014 passed in OA No. 70/2010 had directed the respondents to consider the case of the applicant keeping in view the judgment in Umadevi case. The case was examined and it was found that the applicant is not entitled for regularization.

5. The applicant filed Rejoinder, mainly reiterating the averments made in the OA, stating that the order of the Tribunal has directed to consider his case in the light of para 53 of the judgment in Uma Devi case.

6. We heard learned counsels for the parties and also considered the materials available on record and the pleadings of both the parties. The applicant's counsel brought to our notice the Annexure A/11 and A/13 and stated that the applicant was allowed for wages as per the revised pay after

sixth central pay commission report. He also reiterated the grounds mentioned in the pleadings. Written argument was also filed by the applicant's counsel earlier, mainly reiterating the stand taken in the pleadings. It stated that the respondents are legally obliged to consider regularization of the applicant as per the order of the Tribunal. Learned counsel has also cited the judgment of Hon'ble Supreme Court in the case of Amarkant Rai vs. State of Bihar and Ors. 2015(3) SCALE 505 and the judgment dated 15.05.2015 of Hon'ble Orissa High Court in the case State of Odisha through Secretary to Government, P.R. Department, Odisha and another vs. Manoj Kumar Parida & another 2015 (Supp.-II) OLR-198 in support of the applicant's case.

7. Learned counsel for the respondents, in his submissions reiterated the averments made in the counter. He had also submitted a note of argument earlier, which is on record.

8. The OA No. 70/2010 filed by the applicant in second round of litigation, the Tribunal vide order dated 3.01.2014 has held as under:-

"5. On perusal of the impugned order it is seen that the case of the applicant has not been considered in its proper perspective. The applicant's right to be considered against a post cannot be taken away by mere executive action. In this connection, it would be profitable to quote hereunder the relevant portion of the decision rendered by the Hon'ble Apex Court in the case of Secy., State of Karnataka -vs- Uma Devi (3) [(2006) 4 SCC 1] which runs thus :

'53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. (Emphasis supplied)'

6. In view of the above settled position of Law the impugned order under Annexure A/8 dated 6.11.2009 is quashed and accordingly, Respondents are directed to consider the case of the applicant for the post of Chowkidar at PSC Cuttack keeping in mind the above observation and pass an appropriate order within a period of three months from the date of receipt of this order. In the result this OA is allowed to the extent indicated above. No costs."

9. In compliance to above order of the Tribunal, the impugned order dated 27.02.2014 (Annexure A/9) passed by the respondents, has mentioned the following grounds for rejecting the case of the applicant:-

"6. The Textile Commissioner has sympathetically and carefully examined the above case of Shri Sanatan Naik and taking into account the family background, length of service as part time Sweeper as well as full time Sweeper at PSC, Cuttack, spirit of CAT, Cuttack Bench judgment dated 1.4.1991 and the status of his employment in this organization etc. considered to appoint Shri Sanatan Naik on humanitarian grounds as casual Sweeper at PSC, Cuttack on full time work basis, at the daily wage rate of 1/30th of the minimum basic monthly pay and dearness allowance prescribed for the Group D employee with the condition that he should attend other duties/work of Group D staff in addition to the duties of Sweeper as full time daily wager in the PSC, Cuttack, Accordingly, Shri Sanatan Naik was appointed as 'Casual Sweeper' on full time work basis in PSC, Cuttack w.e.f. 17.11.2000.

7. In the year 2004, the Office of the Textile Commissioner, Mumbai vide its Notification No.6(2)/04/Estt-II/343 dated 17.6.2004 invited applications from the eligible candidates for recruitment to the various posts including to the post of Chowkidar (2 UR & 1 OBC, preferable for Ex-servicemen). In response to the above notification, Shri Sanatan Naik (belongs to SC category) had also submitted his candidature for the post of Chowkidar dated 6.7.2004. However, Shri Naik, was not eligible in terms of age, as he was over aged i.e. 38 years as on last date of application dated 16.7.2004, as per notification dated 17.6.2004. hence, his candidature could not be considered at the scrutiny stage itself.

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10. I have gone through the relevant portion of the decision of the Apex Court in the above case of State of Karnataka -vs- Uma Devi cited by the Hon'ble CAT at para-5 in its order dated 3.1.2014 wherein it is inter alia mentioned that the State Govts & their instrumentalities should take steps to regularize as a one time measure the services of such irregularly appointed, who are duly qualified persons in terms of the statutory recruitment rules for the post and who have worked for ten years or more in dully sanctioned posts but not under cover of orders of court or tribunals. The Apex Court has clarified that if such appointment itself is in violation of the provisions of the constitution, illegally cannot be regularized.

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13. Based on the position mentioned above, it is noted that –

Shri Sanatan naik was not meeting the eligibility criteria as per the Recruitment Rules and as per the Notification dated 17.6.2004 for the post of 'Chowkidar' and hence he was disqualified at the tie of scrutiny stage of the application. Since Shri Sanatan Naik was not meeting the statutory Recruitment Rules for the post of Chowkidar, the said Supreme Court ruling is not applicable in this case.

Secondly, the Supreme Court ruling as stated above is regarding regularization of irregularly appointed cases. The said Supreme Court ruling again is not applicable in this case because Shri

Sanatan Naik was never appointed as 'Chowkidar' and hence question of regularization of irregular appointment is not involved.

The present service of Shri Sanatan Naik as 'Casual Sweeper' is due to the intervention of the Hon'ble Cat, Cuttack in OA No. 441/89 filed by the applicant in the year 1989. Hence, the said Supreme Court ruling again is not applicable in this case as appointment as 'Casual Sweeper' was due to the orders of the Hon'ble Tribunal.

14. I find that Shri Sanatan Naik i.e. the applicant was not meeting the eligibility criteria as per the statutory recruitment rules for the post of Chowkidar and hence he was disqualified for the post of 'Chowkidar'. Secondly, he was appointed as Casual Sweeper (full time) not against sanctioned post of 'Sweeper' at PSC Cuttack. Further Shri Sanatan Naik was appointed as Casual Sweeper on the order of Hon'ble Tribunal, Cuttack Bench, Cuttack on 1.4.1991.

15. In view of the aforementioned facts, I do not find any merit in the representation of Shri Sanatan Naik, dated 10.2.2009 for consideration of his appointment to the post of Chowkidar in the Office of the Textile Commissioner, Mumbai."

10. From above, it is clear that while considering the applicant's case for regularization against the post of Chowkidar at PSC, Cuttack, the respondents have relied on the undertaking furnished by the applicant for his transfer from Noida to Cuttack. As stated in the impugned order dated 27.02.2014, the applicant was admittedly regularized as a Sweeper w.e.f. 1.08.1994 and posted at Noida, where he had joined in the post. Due to his absence, his services were terminated vide order dated 10.01.1995. Thereafter, on his representation and furnishing an undertaking that he will continue to work as a daily wage worker and will not demand regularization. He also agreed to attend to the duty of Group D post including duty of Sweeper, he was re-engaged as a casual sweeper (full time) at PSC, Cuttack on above terms w.e.f. 17.11.2000. Then in 2004, an advertisement was published for a post of Chowkidar, for which the applicant had applied, but his application was rejected as he was found to be overage.

11. In the impugned order dated 27.02.2014, following reasons have been furnished in para 13 of the said order for rejecting the applicant's representation:-

(i) Applicant did not qualify for the post of Chowkidar and he does not meet the eligibility criteria as per the statutory requirement for the post of Chowkidar and for that reason, his application for the said post was earlier rejected. Hence, his case cannot be considered for regularization for the post of Chowkidar.

(ii) The judgment of Hon'ble Supreme Court is applicable for regularization of irregular appointees. This judgment is inapplicable to the his case since the applicant was never appointed as Chowkidar.

(iii) Present service of the applicant is due to the order of the Tribunal in OA No. 441/89 filed by the applicant. Hence, the judgment of Hon'ble Supreme Court is not applicable to the case of the applicant.

12. Regarding the ground No. (i) of para 11, no statutory rule applicable for the post of Chowkidar (which has been referred to in the order dated 27.02.2014) has been placed by the respondents in their pleadings on record. At para 7 of the impugned order dated 27.2.2014, it is mentioned that the applicant had applied as per the notification in 2004 inviting application for the post of Chowkidar, but he could not fulfil the age criterion, as he was overaged as per the notification inviting the applications. The same reason has been reiterated in the counter filed by the respondents (vide para 9). No other reason like non-qualification of the criteria as per the statutory rule has been mentioned in the impugned order or in the counter for rejecting the case of the applicant. Hence, while rejecting the applicant's case for consideration for the post of Chowkidar for not fulfilling the age criteria as notified in the notification inviting application for the said post cannot be faulted, but it will not imply that the applicant does not fulfil the criteria for the post of Chowkidar in PSC, Cuttack as specified in statutory rules, since no such rules have been placed before the Tribunal. Hence, in absence of the Recruitment Rules, non-fulfilment of the age criteria which was specified by the authorities in the advertisement for the post, cannot be considered to be non-fulfilment of the statutory requirement on the part of the applicant.

13. The ground No. (ii) of para 11 is that since the applicant was not appointed as Chowkidar, his claim for regularization against the post cannot be considered. It is noted that vide para 4.6 of the OA, the applicant claims that after retirement of the regular Chowkidar in PSC, Cuttack during 2004, he is discharging the duty in the post of Chowkidar and casual sweeper (full time). This contention of the applicant has not been specifically contradicted in the counter filed by the respondents. Vide order dated 19.1.2001 (Annexure 2 to the OA), the applicant was to work as Chowkidar on weekly off days of the Chowkidar in addition to his duty. Vide para 8 of the counter, it is an admitted fact that the applicant is discharging the duty of Group D employee in addition to the duty of casual sweeper. Also, there is nothing on record which is adverse regarding performance of the applicant. Hence, the contention that the appointment of the applicant was not as a Chowkidar is not acceptable.

14. Regarding the ground No.(iii) of para 11, that the present service of the applicant was given due to the order of this Tribunal in OA No. 441/1989, we are not able to accept this contention of the respondents in view of the fact that the applicant after termination of his service on 10.1.1995, was appointed vide order dated 15.11.2000 (Annexure 1 to the OA) and for such re-appointment there was no direction of this Tribunal.

15. Learned counsel for the applicant in his written synopsis has cited the following 2 judgments:-

- (i) Amarkant Rai -vs- State of Bihar & Ors. [2015 (3) SCALE 505]
- (ii) State of Odisha -vs- Manoj Kumar Parida & Anr. [2015 (Supp.-II) OLR – 198]

In the case of Amarkant Rai (supra), Hon'ble Supreme Court applied the ratio of the judgment in the case of Secretary, State of Karnataka and Ors. vs. Umadevi and Ors. [(2006) 4 SCC 1] and held as under:-

"11. As noticed earlier, the case of the appellant was referred to Three Members Committee and Three Members Committee rejected the claim of the appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in Umadevi's case (supra). In Umadevi's case, even though this Court has held that the appointments made against temporary or ad-hoc are not to be regularized, in para 53 of the judgment, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken one time measure to regularize them. In para 53, the Court observed as under:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

The objective behind the exception carved out in this case was prohibiting regularization of such appointments, appointed persons whose appointments is irregular but not illegal, ensure security of employment of those persons who

served the State Government and their instrumentalities for more than ten years.

12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in [State of Karnataka & Ors. v. M.L. Kesari & Ors.](#), (2010) 9 SCC 247, this Court held as under:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3) , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

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14. In our view, the exception carved out in para 53 of Umadevi is applicable to the facts of the present case. There is no material placed on record by the respondents that the appellant has been lacking any qualification or bear any blemish record during his employment for over two decades. It is pertinent to note that services of similarly situated persons on daily wages for regularization viz. one Yatindra Kumar Mishra who was appointed on daily wages on the post of Clerk was regularized w.e.f. 1987. The appellant although initially working against unsanctioned post, the appellant was working continuously since 03.1.2002 against sanctioned post. Since there is no material placed on record regarding the details whether any other night guard was appointed against the sanctioned post, in the facts and circumstances of the case, we are inclined to award monetary benefits be paid from 01.01.2010.

15. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of Night Guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the appellant retrospectively w.e.f. 03.01.2002 (the date on which he rejoined the post as per direction of Registrar)."

16. Learned Counsel for the applicant has also cited the case of Manoj Kr. Parida & Anr. (supra). In that case the petitioner was appointed as Junior Stenographer after being selected in pursuance to an advertisement. He joined on 3.6.1994 and his service was terminated on 18.7.1994. He was again re-engaged as a Junior Clerk on 20.7.1994 on ad hoc basis for 44 days. Subsequently from 1.11.1994 he was engaged as a Junior Stenographer on contractual basis on a consolidated pay till 3.6.1996 against a sanctioned post. His representation for regularization was rejected. The first writ against the rejection of the representation of the petitioner was considered by the Hon'ble

Single Judge and it was allowed. Against this decision, the respondents filed the Writ Appeal before Hon'ble High Court, which was dismissed with the following observations :

"9. In the case at hand, it is not disputed that respondent no.1 having possessed the prescribed qualification for being appointed as a Junior Stenographer under DRDA, Kendrapada, was appointed and allowed to continue against a sanctioned post of Junior Stenographer, but the fact remains that he was recruited without following the procedure laid down in Regulations 1989. In such view of the matter, the appointment of respondent no.1 to the post of Junior Stenographer can by no stretch of imagination be said to be illegal and the same can only be said to be irregular as held in the decision in the case of M.L. Kesari (supra). Moreover, appellant no.1 while rejecting the representation of respondent No.1 for regularization of his service observed "irregularly recruited employees cannot claim the right of regularization without passing through regular recruitment procedure". Hence, the first contention of the appellants that since respondent no.1 was appointed de hors the Recruitment Rules and G.O. No. 11269 dated 7.12.1989, the same is illegal, cannot sustain.

Secondly, the appellants further submitted that the respondent No.1 has not completed ten years of continuous service and he was allowed to continue with intermittent breaks/interruption. It was strenuously urged that respondent No.1 was initially appointed on 3.6.1994 as a Junior Stenographer and his services was terminated on 18.7.1994. Subsequently, he was re-engaged on 24.7.1994 as a Junior Clerk and continued as such til 5.9.1994 on ad hoc basis for forty-four days with one day break in between. Thereafter, the respondent no.1 was engaged as a Junior Clerk-cum-Typist on 06.09.1994 and continued as such till 01.11.1994 on contractual basis as a contractual employee on consolidated pay. On 01.11.1994, he was engaged as a Junior Stenographer on contractual basis with consolidated pay and continued as such till 06.03.1996. Again he was engaged on 07.03.1996 and is continuing as such till date.

Taking into consideration the submission of the appellants, it can safely be said that the respondent no.1 is continuing as a Junior Stenographer from 07.03.1996 till date continuously and without protection from any court or tribunal. Thus, the case of respondent No.1 is squarely covered under the observation made in Paragraph-7 (II) of the case of M.L. Keshari (supra).

Thirdly, the appellants raised an issue that the DRDA, Kendrapada is a Society registered under the Societies Registration Act. Thus, the writ petition under Article 226 of the Constitution of India is not maintainable against a Society. Needless to mention here that the State Government in Panchayati Raj Department has deep and pervasive control over the DRDA. The DRDA implements the projects and schemes of both Central and State Government for the rural development in Odisha. It is an agency which functions on the financial aid of the State Government. The Chairperson of Zilla Parishad of the District is the Ex-officio Chairperson of the DRDA and the Collector of the District is the Chief Executive Officer of the concerned DRDA.

10 Therefore, there is no iota of doubt that the DRDA, Kendrapada is an instrumentality of the State and thus, the writ petition is maintainable. 10. Besides that one Smt. Suniti Mohapatra, who was appointed and continued as a Junior Clerk in the DRDA, Khurda in the similar manner as that of the respondent no.1, had moved this Court in W.P.(C) No. 14929 of 2009. Pursuant to the directions made by this Court in the said writ petition, the Government in Panchayati Raj Department had regularized her services as a Junior Clerk in the DRDA, Khurda vide letter dated 18.07.2011 (Annexure-11). The appellants neither in the writ petition nor in the writ appeal dispute this factual position. In such view of the matter, the respondent No.1 cannot be treated unequally refusing regularization of his services."

17. As discussed earlier, the applicant in this OA was appointed and then regularised in 1994 against a post, but since he remained absent after sometime, his services were terminated in 1995 and he was subsequently

appointed as a full time casual Sweeper from 17.11.2000 at PSC, Cuttack. The applicant has claimed that there is a post of regular Sweeper available which has been contradicted by the respondents. But the claim of the applicant in para 4.6 of the OA that he is also working as a Chowkidar after retirement of the regular Chowkidar in the year 2004 has not been specifically contradicted by the respondents in their counter. Hence, it is clear that the applicant is discharging duty against the post of Chowkidar, which is vacant after retirement of the regular Chowkidar in the year 2004. As discussed earlier there is nothing on record to show that he does not fulfil the qualifications prescribed for the said post.

18. We take note of the fact that while appointing the applicant at PSC, Cuttack as per the order dated 15.11.2000 (Annexure A/1), it was stated as under:-

"The competent authority has approved the appointment of Shri Sanatan Naik, on humanitarian grounds, as Casual Sweeper at PSC Cuttack as full time work basis at the daily wages rate of 1/30th of the minimum basic monthly pay and dearness allowance prescribed for the Gr. 'D' employee with the condition that he should attend other duties/work of Gr.'D' staff in addition to the duties of Sweeper as full time daily wages in the PSC Cuttack.

In view of above the File No.2(21)/94/EST.II/P/RON Noting Sheets from 1/N to 14/N and Sr. No. 1-P-1/C to Sr. No. 30-P/74/C in original in respect of Shri Sanatan Naik is returned herewith for onward transmission to PSC Cuttack."

From above, it is not mentioned whether the appointment of the applicant as above is a fresh appointment or not. In para 8 of the counter it is averred that the competent authority decided to pass this order to appoint him at Cuttack after taking into consideration the spirit of the order dated 1.04.1991 of the Tribunal and length of his earlier service.

19. Further, it is noted that the circular of the Department of Personnel and Training, Government of India, dated 16.10.2014n on regularization of casual labourer (<https://doptcirculares.nic.in/Default.aspx?URL=8JKH6D3jPQMH%20>) states as under:-

"F.No.49014/3/2014- Estt(C)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated 16th October, 2014

OFFICE MEMORANDUM
Subject: Regularization of Casual Labour with Temporary Status(CL-TS)-
Proposals from
Ministries/Departments on -regarding.

The undersigned is directed to say that Casual Labourers (Grant of Temporary Status & Regularisation). Scheme of Government of India, 1993, circulated vide DOPT OM No. 51016/2/90 Estt(C) dated 10.09.1993, stipulated conditions for grant of temporary status and regularization of services to the persons recruited on daily wage basis in the Central Government Offices as on 10.09.1993. It was held in the Mohan Pal Case SLP (Civil) No. 2224/2000 that the Scheme of 1-9-93 is not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme only if they were in employment on the date of the commencement of the scheme and they should have rendered continuous service of at least one year i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). The Scheme inter-alia provided for regularization of CL-TS against Group 'D' posts.

2. Following the acceptance of the recommendation of the 6 th CPC, all Group D posts have *been* upgraded to Group C posts. Recruitment to erstwhile Group 'D' posts placed in Group 'C', PB-1, Grade Pay '1800/- (non technical as MT Staff) is now made only through Staff Selection Commission and minimum educational qualification for appointment is Matriculation or ITI pass. Regularisation of CL-TS therefore cannot be done by the Ministries/ Departments on their own and requires relaxation of para-8 of the Appendix to the O.M. dated 10.09.1993.

3. - This Department vide O.M No. 49011/31/2008-Estt(C) dated 17th February, 2009 had requested all Ministries/ Department to provide information relating to CL-TS on their rolls. Information relating to 231 CL-TS was received from 29 Ministries/Departments which were processed. Since then this Department has been receiving proposals piece-meal from different Departments.

4. Department of Expenditure have now advised this Department that in order to avoid piecemeal examination of such proposals, a consolidated proposal for regularization of all such remaining CL TS who were on the rolls of the Ministries/Departments on 10.09.1993 and yet could not be regularized may be forwarded to them for further consideration/examination. Therefore, all Ministries/Departments are requested to review the position at their establishments and send a consolidated proposals for regularization of services of such remaining CL-TS on their rolls (including attached/subordinate and autonomous bodies), if any, latest by 30.11.2014 to this Department in the enclosed format. It may be ensured that complete information in respect of the Ministry/Department and its Attached/Subordinate Offices is sent. The information may also be sent by e-mail (in MS Word) at dse@nic.in."

It is clear that as per these guidelines of DOPT, regularization of the service of the casual labourers can be considered only if they are in service as on 10.09.1993. As stated in para 8 of the counter, the applicant was appointed as a casual sweeper on full time basis for discharging duty of a part time sweeper and also of a Group D employee w.e.f. 17.06.1991 at PSC, Cuttack. His services were regularized as a Sweeper w.e.f. 1.08.1994 in Regional Office, Noida, but due to his absence, his services were terminated vide order dated 10.1.1995. Then he was re-appointed vide order dated 15.11.2000 as a full time casual sweeper at PSC, Cuttack with his undertaking. Hence, the applicant was working as a full time casual employee as on 10.9.1993 and appointed again w.e.f. 17.11.2000 after his regularization in 1994 and termination in 1995.

20. In view of above discussions, we are of the view that taking into account the factual circumstances of the case, the applicant's case deserves to be re-

considered, particularly since the respondents have not treated the applicant's appointment at PSC, Cuttack w.e.f. 17.11.2000 as a fresh appointment as per the order dated 15.11.2000 (Annexure A/1 to the OA) and his service was regularized w.e.f. 10.08.1994 against a post of Sweeper in Regional Office, Noida. Further, since the applicant was working on full time basis as on 10.09.1993, his case for regularization under the guidelines of the DOPT also deserves consideration as per the instructions of DOPT and the reasons mentioned in the order dated 27.02.2014 are not tenable. Hence, the impugned order dated 27.02.2014 (Annexure A/9) is set aside and quashed and the matter is remitted to the Respondent no. 2 for re-consideration of the case of the applicant for regularization of his service against the post of Chowkidar or any other vacant post Group D or Sweeper in accordance with the provisions of law. After such re-consideration, the respondent no. 2 shall pass a reasoned and speaking order, copy of which shall be communicated to the applicant within three months from the date of receipt of a certified copy of this order. If the applicant applies for any post of Group 'D'/Sweeper/Chowkidar to be advertised by the respondents in future, then the applicant will be entitled for being considered for age relaxation, if admissible under the rules.

21. The OA is allowed in terms of the directions in the paragraph 20 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath