
(2008) 09 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 421 of 2000

Sri. Siba Sankar Patra

APPELLANT

Vs

The Central Administrative Tribunal, Cuttack Bench, Cuttack
and Others

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) CLT 484 Supp

Hon'ble Judges : L. Mohapatra, J;Indrajit Mahanty, J

Bench : Division Bench

Advocate : S.K. Pattanaik and U.C. Mohanty, for the Appellant;

Final Decision : Allowed

Judgement

Indrajit Mahanty, J.—The Petitioner Sri. Sib Sarikar Patra who was engaged as a Driver as daily wage basis by the Executive Engineer (E), Telcom, Electrical Division, Bhubaneswar (O.P. No. 6) had filed O.A. No. 204 of 1994 before the Central Administrative Tribunal, Cuttack Bench, Cuttack praying for regularization of his service w.e.f. 27.4.1991, i.e. the date on which the Petitioner had been selected for appointment to the said post and also prayed for release of his salary as per the scale applicable to the post. The said application came to be rejected by the Tribunal on a finding that the Petitioner was not a casual worker but had been engaged on daily wage basis as and when necessity arose and he was also ineligible to appear in the recruitment for the post of driver in terms of the Recruitments Rules, 1993 since the Petitioner had not been engaged prior to 1.4.1985.

2. Learned Counsel for the Petitioner submitted that the opposite party No. 6, namely, the Executive Engineer, Telecom, Electrical Division, Bhubaneswar vide letter dated 26.2.1991 had sent a requisition to the Employment Exchange, Bhubaneswar to sponsor the names of eligible Motor Drivers in possession of a valid driving licence for light and heavy motor vehicle having four years of driving

experience. The Employment Exchange forwarded the names of 20 candidates including the name of the Petitioner under cover of its letter dated 14.3.1991. Accordingly, the Petitioner was called to face the interview on 27.4.1991 for selection to the post of Jeep Driver and on being found suitable, he was ultimately, selected in the said test and since then the Petitioner has been driving the vehicle bearing No. OSF 1278 continuously without any break, but being paid on daily wage basis.

3. It is submitted by the learned Counsel for the Petitioner that since no sanction order for the post had been received, in spite of the fact that the vehicle in question (Jeep) had been allotted in the year 1991, the Petitioner has been continuing to discharge his duties as a driver in that post on a daily wage basis. He further submitted that the sanction for the post of driver was intimated in letter dated 13.6.1991 and since the Petitioner had been selected in a regular interview after being sponsored through the Employment Exchange, he has been repeatedly representing that he may be absorbed in that sanctioned post w.e.f. 13.6.1991. He also submitted that the Recruitment Rules framed under Article 309 of the Constitution of India in the P & T Department, for appointment of Motor, Jeep, Lorry and Staff Car Driver, stipulates that an applicant for appointment should be in possession of a valid driving licence for light and heavy motor vehicles. At least four years of driving experience of light motor vehicles and one year of experience of heavy vehicles. Apart from the aforesaid requirement of the rules it is also required for the applicant to have ability to read and write local language and to make simple arithmetical calculation. Learned Counsel for the Petitioner submitted that the Petitioner possessed all the necessary qualification as stipulated in the rules and after his name was sponsored by the Employment Exchange, he was called for the interview by the selection committee and having been found to be duly suitable, was declared as such and since 27.4.1991, and since then he has been continuously driving the vehicle of the Telecommunication Department without being appointed against the sanctioned post and being paid on daily wage basis. It appears that on 10.9.1991, a circular was issued by the Govt. of India in which it was stipulated that recruitment to the post of Driver can be made only from amongst those drivers, already appointed in the Dept. on casual basis before 1.4.1985. This circular dated 10.9.1991 was also sought to be challenged by the Petitioner before the Tribunal.

4. Learned Counsel for the Petitioner submitted that no sooner the post of Driver was sanctioned on 13.6.1991, opposite party No. 6 duly recommended the case of the Petitioner to the Superintending Engineer (Civil) Telecom Civil Circle, Bhubaneswar seeking regular absorption of the Petitioner since he was the only duly selected candidate as per the selection held on 27.4.1991 and consideration of that recommendation is still pending.

5. Mr. L. Jena, learned Counsel appearing for the Central Govt. submitted that since the Petitioner did not qualify for consideration for regularization in terms of

the Circular dated 10.9.1991, the Tribunal is justified in rejecting the application of the Petitioner.

6. Without entering into the unnecessary details, it is clear that opposite party No. 6 had sent a requisition to the Employment Exchange, Bhubaneswar to sponsor the names of eligible candidates having four years driving experience under cover of the letter dated 26.2.1991. Pursuant thereto, the Employment Exchange forwarded the names of 20 candidates (including the Petitioner) under cover of the letter dated 14.3.1991. It is further a fact that the applicant attended the interview held on 27.4.1991 and the Petitioner having been found suitable, was duly selected for the said post and from the said date, i.e. 27.4.1991, he has been continuing to drive the departments' vehicle but is being paid on daily wage basis. It is also a fact that the sanction for the post of driver was duly intimated in letter dated 13.6.1991 vide Annexure-4 to the writ application.

7. After sanction of the post, there was no legal impediment for not regularizing the appointment of the Petitioner in the post, but in the meantime, a further circular came to be issued by the Department of Telecommunication dated 1st 0.9.1991 on the subject of recruitment to the post of driver for which, the opposite parties took a decision that against the 5th 0% quota of vacancies meant for outsiders, recruitment of drivers may be made only from amongst those drivers, already appointed in the Department on casual basis before 1.4.1985, failing which recruitment may be made from amongst the casual labourers of temporary status doing the job of drivers. It is also pertinent to mention here that various authorities from time to time have repeatedly recommended the case of the Petitioner for his regularization, such as, letter dated 5.1.2007 by opposite party No. 6 under Annexure-22; letter dated 24.3.2007 by opposite party No. 3 under Annexure-23 and letter dated 10.9.2007 by opposite party No. 6 once again recommending to the opposite party No. 3 for regularization of the Petitioner under Annexure-24.

8. In view of the facts as noted hereinabove, we find that the Circular dated 10.9. 1991 relied upon by the opposite parties as well as the Tribunal to deny the Petitioner his claim, would have no applicability to the present case since, the Petitioner had been engaged pursuant to the regular selection process and in consonance with the Recruitment Rules of the Department prior to the issue of the said circular. It is also clear from the records that the Petitioner upon his selection as Driver, has been working continuously in the said post since 27.4.1991 and had Annexure-4 dated 13.6.1991 been implemented within a reasonable time, the subsequent Circular dated 10.9.1991 under Annexure-6 would have had no impact or consequence on the Petitioner's regularization.

9. Without entering into the Issue as to whether Annexure-6 applies to the Petitioner, or as to whether the Petitioner satisfies the requirements for being termed as the "casual labourer" as stipulated under Annexure-6, we are of the view that the Petitioner was a "regular candidate" duly sponsored by the

Employment Exchange and was duly selected by the competent Selection Committee. In other words, the Petitioner was a regular appointee to the post of Driver and although on the date of his appointment i.e. 27.4.1991, the post to which appointment was made, had not been formally sanctioned, the said sanction having been ultimately accorded on 13.6.1991 under Annexure-4, there was no legal impediment for regularization of the Petitioner against the post of Driver at the relevant point of time.

10. In view of the above, the judgment dated 14.12.1999 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 204 of 1994 is quashed and the writ application is allowed with a direction to the opposite parties to regularize the appointment of the Petitioner in the post of Driver in the office of the Executive Engineer, Electrical, Telecom, Electrical Division, Bhubaneswar w.e.f. 27.4.1991, i.e. the date when he was selected for the post and consequently release the financial benefits applicable to the said post to the Petitioner since the date of his engagement i.e. 27.4.1991. This direction be complied within three months from the date of communication of this judgment.

11. Writ application is allowed in terms of the directions contained hereinabove.

L. Mohapatra, J.

12. I agree.