

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/891/2016

Date of Reserve: 22.01.2020
Date of Order: 13.03.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Ram Chandra Moharana, aged about 53 years, S/o.Raghunath Moharana – at present working as Carpenter in the Office of Garrison Engineer, Chilika, PO-N.T.C.-Chilika, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.B.B.Patnaik
S.K.Routray

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, At-South Block, New Delhi-110 001.
2. The Engineer-in-Chief's Branch Ministry of Defence (Army), IHQ, Kashmir House, New Delhi-110 001.
3. The Chief Engineer Headquarters, Southern Command, Pune-411 001, Engg.Branch Army Head H.Q. Kirkee, Maharashtra.
4. The Chief Engineer (Navy), Military Engineer Services, Railway Station Road, Visakhapatnam-530 004 (AP).
5. Deputy Director (Pers.) Office of the Chief Engineer Southern Command, Pune-411 001.
6. The Garrison Engineer, INS Chilika, PO-NTC Chilika, Dist-Khurda.
7. Commander Works Engineer (P), Station Road, Vishakhapatnam-AP)

...Respondents

By the Advocate(s)-Mr.L.Jena
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Carpenter under the Respondent

No.6. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs;:

- i) To issue notice to the Respondents.
- ii) To pass an order directing the Respondents to regularize the 995 days casual service of the applicant in pursuance to the Policy decision of the Government of India under Annexure-2,3 & 4 and direction of this Hon'ble Tribunal passed in O.A.No.160/06 under Annexure-5 with effect from the date of the employees of other units at Delhi, Bombay

etc. have been regularized within stipulated time as this Hon'ble Tribunal may deem fit and proper.

iii) And/or pass any other order(s) & direction(s) as this Hon'ble Tribunal may deem fit and proper.

2. Facts of the matter brief are that the applicant was initially appointed as Mazdoor in the year 1980 on casual basis and continued to work from 21.4.1980 to 25.1.1983 under the administrative control of Respondent No.6, whereafter, he was promoted as Carpenter. Grievance of the applicant is that a similarly situated person had approached this Tribunal in O.A.No.160/2006 and in compliance with the direction made therein, the respondents regularized the service of the applicant in the said O.A. Since applicant's service for the period in question was not regularized, he along with others had approached this Tribunal in O.A.No.495/2006, which this Tribunal disposed of on 09.06.2006 with a direction to respondents for consideration of the case of the applicants. Thereafter, the Respondent No.4 vide order dated 02.07.2007 (A/6) rejected the claim of the applicant along with others. Thereafter, the applicant submitted a representation 16.07.2013, which the respondent authorities did not consider on the pretext that the applicant is going to retire soon. While the matter stood as such, MES Workers Union, Chilika made a representation on 28.1.2014 (A/10) to the Director General (Pers.), E/C., New Delhi requesting to implement the order passed by this Tribunal in O.A.No.495/2006 thus referring the order dated 7.11.2008 that had been passed by the respondents in compliance of the orders of this Tribunal dated 22.02.2006 in O.A.No.160/2006 filed by Shri Raghunath Sahoo, but to no effect. Therefore, alleging inaction as well as the discriminatory treatment, the applicant has approached this Tribunal praying for the reliefs as mentioned above.

3. Resisting the claim of the applicant, respondents have filed a detailed counter. According to respondents, there is no documentary evidence in support of the service of the applicant from 21.04.1980 to 25.01.1983 and the Annexure-1 which has been published on 31.05.1999, i.e., after a lapse of 19 years based on which the applicants claims to have been engaged as Mazdoor from 21.04.1980 to 25.01.1983 is not an authentic one. In view of this, Para-2 of the said order dated 31.05.1999 has been cancelled by G.E. Chilika vide another Part-2 order 32/2009 dated 10.08.2009. Though efforts were made to obtain the pay bills and service records pertaining to the casual service of the period in question from H.Q., Eastern Naval Command, the latter expressed its inability furnish the required records as it was more than 29 years old. Therefore, it has been submitted that regularization of casual service has not been taken place due to non-submission of the proof of applicant's continuous service. Respondents have pointed out that the applicant is not fulfilling the criteria of regularization of casual service rendered by him as the period of intervening technical break between the date of appointment and date of regularisation of service is exceeding 10 days in a single spell, i.e., 19 July, 1980 to 16 September, 1980, 19 December, 1981 to 05 June, 1982, 05 Apr. 1982 to 02. May, 1982 and 08 Nov. 1982 to 24. Nov. 1982) as per HQ Eastern Naval Command letter dated 31.05. 1996/10 June, 1996 (Annexure-R/2). In Paragraphs-8, 9 & 10 of the counter-reply, the Respondents have submitted as follows:

"8. That in reply to the averments made in Para-4C and 4D of the OA, it is humbly submitted that the specific policy letters dated 26 Jul 1996, 31 May 1996 and 10 Jun 1996 quoted by the applicant in the OA pertain to regularization of casual services of the employees of Eastern Naval Command. The said Govt. Orders are not applicable to the casual employees who were not regularised subsequently against Govt. Billets of the

Dept/office where they rendered their casual services as evident from HQ Eastern Naval Command letter No.CE/9303/170/N1/NP dated 04 Apr 2007. (Annexure-R/3). Therefore as stated by the applicant in OA, the applicant is not a similarly situated employee. Moreover it is brought out that the policy decision vide HQ Eastern Naval Command letter No.CE/9303/170/NB dated 31 May 1996/10 Jun 1996 (Annexure-R/4) is for regularisation of service of "Non Industrial/Non Petitioner". In the instant case the applicant is an industrial employee and the decision cannot be applied to him.

9. That in reply to the averments made in para 4E of the OA, it is humbly submitted that the applicant is not an applicant in OA No.160/2006 and the order of the said OA is meant for regularisation of casual service of employee of HQ Eastern Naval Command. The applicant is not a similarly situated employee and hence the said order is not applicable to him.
10. That in reply to the averments made in para 4F of the OA, it is humbly submitted that the averment made by the applicant is far from truth. The Hon'ble CAT Cuttack Bench has directed the applicants in OA No.495/2006 to place their grievance individually before their authorities within a period of 15 days and on receipt of such grievance, the respondents/concerned authorities were directed to consider their grievances and pass appropriate orders. Accordingly, the applicant and others were issued with speaking order on 02 Jul 2007 by CWW Visakhapatnam after considering their grievances in compliance with the Hon'ble CAT Cuttack order. The applicant has not raised any objection on the said speaking order thereafter".

4. Applicant has filed a rejoinder to the counter in which it has been pointed out that the Respondent-Department is an non-industrial establishment and therefore, Annexure-R/2 is fully applicable to him. It has been submitted that if at all the respondents cancelled Part-II order under A/1 vide order dated 10.08.2009, the same has never been communicated to the applicant. It has been stated that the applicant belongs to HQ Eastern Naval Command and therefore, even if he was not an applicant in O.A.No.160/2006,

he should have been meted out a similar treatment being similarly situated person.

5. We have heard the learned counsels for both the sides and perused the records.

6. Indisputably, the period of casual service rendered by the applicant which is sought to be regularized pertains to non-industrial service. In this regard, a policy decision was taken by the respondents vide A/1 dated 10.06.1996, whereby instructions were issued in compliance of the orders passed by CAT, New Bombay Bench in O.A.Nos.306/88, 516/88 & 732/88, for regularization of the services of non-industrial/non-petitioners from the date of initial appointments. According to respondents, there being no documentary evidence in support of service of the applicant from 21.4.1980 to 25.1.1983, Paragraph-2 of the list published in the year 1999 was cancelled vide order dated 31.01.1999 (R/1), wherein the name of the applicant was found place at SI.No.48. Secondly, the applicant did not challenge the legality of order dated 2.7.2007 (A/6) passed by the Respondents in pursuance of the direction of this Tribunal in O.A.No.495/2006. Therefore, a question crops up for consideration as to whether in the absence of both the orders dated 31.01.1999 (R/1) and the order dated 2.7.2007 being under challenge, can this Tribunal grant relief sought for by the applicant herein. The answer to this is in the negative. We note that the applicant has stated that cancellation order dated 31.01.1999 (R/1) was not communicated to him at any point of time. But the fact remains that the applicant was promoted to Carpenter in the year 1983 while working as Mazdoor. Besides the above, he also slept over the matter to challenge the order dated 2.7.2007 passed by the respondents in pursuance to O.A.No.495/2006. Therefore, at this belated stage, it would not

be proper for this Tribunal to unsettle the position that has been settled by the respondents way back in the year 1999, by virtue of which they cancelled the Paragraph-2 of Annexure-A/1 showing the applicant to have worked as Mazdoor.

7. For the reasons aforesaid, the O.A. is held to be without any merit and accordingly, the same is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(A)

(GOKUL CHANDRA PATI)
MEMBER(J)

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