

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 510 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

1. Madan Majhi, aged about 66 years, S/o Late Keshab Majhi, At.Baunasaki, PO-Sabira, PS-Soro, Dist.- Balasore.
2. Raghunath Sethi, aged about 51 years, S/o Subal Sethi, At-Jagannath patna, PO-Ganguti, PS/Dist.-Balasore.
3. Bishnu Mohan pal, aged about 64 years, S/o Ram Pal, At-Bastrideipur, PO-Sarasinkh, PS-Soro, Dist.-Balasore.
4. Purna Chandra Mahana, aged about 60 years, S/o Chinta Mahana, At/PO-Barsankh, PS-Soro, Dist.-Balasore.
5. Nanda Nayak, aged about 60 years, S/o Damodar Nayak, At-Nuagaon, PO-Mulisingh, PS-Soro, Dist.-Balasore.
6. Bhagirathi Jena, aged about 61 years, S/o Shyam Jena, At-Nuagaon, PO-Mulisingh, PS-Soro, Dist.-Balasore.
7. Sabitri Dei @ Kanda, aged about 60 years, W/o Late maheswar Khand, At-Nuagaon, PO-Mulisingh, PS-Soro, Dist.-Balasore.
8. Ananta Dhinda, aged about 57 years, S/o Sambhu Dhinda, At-Madhusudanpur, PO-Banabishnupur, PS-Soro, Dist.-Balasore.
9. Gajendra Jena, aged about 49 years, S/o Dama Jena, At-Nuagaon, PO-Mulisingh, PS-Soro, Dist.-Balasore.
10. Jatindra Majhi, aged about 67 years, S/o Late Kangalo Majhi, AT/PO-Sabira, PS-Soro, Dist.-Balasore.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. The Divisional Railway Manager, South Eastern Railway, Kharagpur Railway Division, At/Po-Kharagpur, Dist.-Midnapur, West Bengal.
3. The Divisional Personnel Officer, Office of the Divisional Railway Manager, South Eastern Railway, Kharagpur Railway Division, At/po-Kharagpur, Dist.-Midnapur, West Bengal.
4. Permanent Way Inspector (PWI), Soro Railway Station, South Eastern Railway, At/PO-Soro, Dist.-Balasore.

.....Respondents

For the applicant : Mr.B.S.Tripathy, counsel

For the respondents: Mr.B.B.Patnaik, counsel

Heard & reserved on : 22.11.2019 Order on : 18.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this OA the applicants have prayed for the following reliefs :

“(a) To pass appropriate orders quashing the orders vide letter dtd. 19.4.17 under Annexure A/7 series;

- (b) To pass appropriate orders directing the Respondents-Railways to consider the case of the applicants in pursuance of the order passed by the Hon'ble Supreme Court of India and to extend all the service and consequential benefits w.e.f. 8.7.02 as per the direction of this Hon'ble Tribunal in OA No. 381/93 under Annexure-A/2; and
- (c) To pass such further order/orders as may be deemed just and proper in the facts and circumstances of the case and allow this OA with cost."

2. The applicants including the late husband of the applicant No. 7 claim to be working as casual labourers under the respondent No. 4 during the period prior to 1985 and from 1985 to 1989. There were 52 such casual labourers working under the respondent No.4. They were retrenched prior to 1985. They were allowed to be engaged in 1985 on the basis of their retrenchment certificates. Then based on the opinion of the finger print expert, the applicants were disengaged, while allowing engagement to 28 persons as Gangman, for which, they moved the Tribunal by filing the OA No. 381/1993 claiming service benefits from the date when 28 persons were taken as Gangman. The OA was dismissed by the Tribunal vide order dated 20.5.1997. That order was challenged by the applicants before Hon'ble High Court and the said petition was allowed by quashing the order dated 20.5.1997 and remitting the matter back to Tribunal. Vide order dated 20.6.2002 (Annexure-A/2), the OA was allowed by the Tribunal directing the respondents to engage the applicants as Monsoon Patrol casual labourers with immediate effect.

3. The order dated 20.6.2002 (Annexure-A/2) of the Tribunal was challenged by the respondents by filing a writ petition [WP(C) No. 405/2002] before Hon'ble High Court and the said writ petition was dismissed vide order dated 9.4.2010 (Annexure-A/3). The respondents challenged the order date dated 9.4.2010 by filing the SLP before Hon'ble Apex Court. The said SLP was disposed of with direction to the respondents to implement the order of the Tribunal dated 20.6.2002 (A/2) within four weeks vide order dated 19.2.2016 (Annexure-A/4). The respondents rejected the case of the applicants vide order dated 4.5.2016 (Annexure-A/5 series) after hearing the applicants. The applicants filed the OA No. 917/2016, which was disposed of vide order dated 17.2.2017 (Annexure-A/6) directing the applicants to submit their reply with documents before the respondent No.3, who was directed to dispose of the matter within four weeks from the date of receipt of reply of the applicants. But the respondent No. 3 has rejected the case of the applicants again vide order dated 19.4.2017 (Annexure-A/7 series), which has been challenged in this OA.

4. The respondents filed Counter without disputing the facts and stating therein as under:-

“7. That in reply to the averments made in Para 4.9, it is denied and disputed save and except what are matter of Records. It is further stated that the order of the Hon’ble HC/CTC dtd. 9.4.2010 was challenged before the Hon’ble Apex Court [SLP(C) No. 15806/11 finally numbered as Civil Appeal No. 1550/2016]. The Hon’ble Apex Court directed to implement the order of the Tribunal within four weeks by its order dtd. 19.2.2016 duly holding that the direction issued in para 10 & 11 of the writ petition cannot be sustained. Moreover, it is submitted that the Applicants not being project casual labourers in accordance with Indra Pal Yadav’s case of the Hon’ble Apex Court the scheme in question not being in force and lost his entity since 2006, so in view of this there cannot be extended any benefit as prayed for in violation of the order of the Apex Court.

8. That in reply to the averments made in Para 4.10 & 4.11, it is humbly submitted that the averments are denied and disputed save and except what are matter of Records. In order to implement the order of the Apex Court, the applicants were called for personal hearing along with the Civil documents in support of their identity on 6.4.2016. The Applicant and the legal heirs in place of those dead applicants attended this office on 6.4.2016 and submitted documents available to them. After verification of documents letters dtd. 6.5.2016 were issued to the respective applicants (Annexure A/5).

9. That in reply to the averments made in Para 4.12 is denied and disputed save and except what are matters of Records. Since the Applicants could not be satisfied for their employment they have filed the present case. But the respondents have every right to check and verify the documents filed by the applicants.”

5. Learned counsel for the applicants was heard. He stated that the respondents did not implement the order of the Tribunal dated 20.6.2002 after it was upheld by Hon’ble High Court and challenged the same before Hon’ble Apex Court in a SLP in which the Tribunal’s order was confirmed. Now the respondents cannot reject the case of the applicants on the ground that they have crossed the age of superannuation.

6. Learned counsel for the respondents was heard. He submitted that as per the rules, no person can be engaged as a casual worker as per the order dated 20.6.2002 (A/2) of the Tribunal after he has crossed the age of superannuation. It was also submitted that in the case of the applicant no. 7, she approached the respondents as legal heir of her late husband in whose favour, the Tribunal’s order was applicable as he had expired during pendency of the litigation.

7. The pleadings as well as the submissions of both the parties have been duly considered by me. The Tribunal in the order dated 20.6.2002 (A/2) had directed as under:-

“This matter having come on demand, a fresh hearing was given to the Advocate for the Applicant and Mr.B.Pal, learned Senior Advocate for the Railways. On giving a fresh consideration/fresh look to the matter with reference to the materials placed on record, it is, as discussed above, held now of that the Applicants faced gross discrimination in the matter of getting re-engagement, if not anything more, as Monsoon patrol Casual Labourers and, therefore, keeping the observations recorded in the departmental meeting dated 31st August, 1989 (as quoted above), the Respondents are hereby directed to give engagements to the applicants as Monsoon Patrol Casual Labourers with immediate effect. The Applicants should report to the Permanent Way Inspector of South Eastern Railway (stationed at Soro) with a copy of this order, by 25th of

June, 2002 and, thereafter, steps shall be taken to give them actual re-engagements by 8th of July, 2002, for which the Respondents 2 and 3 should take prompt steps. In the result, this Original Application is allowed. No costs."

8. Instead of complying the order, the Respondents challenged it before Hon'ble High Court without any success. The order dated 9.4.2010 (Annexure-A/3) of Hon'ble High Court, dismissing the writ petition filed by the respondents, was challenged before Hon'ble Apex Court. By the order dated 19.2.2016 (Annexure-A/4), Hon'ble Apex Court disposed of the SLP filed by the respondents directing to implement the order of the Tribunal within four weeks. Then the respondents initiated the process of implementing the Tribunal's order dated 20.6.2002 (A/2) as per the order dated 19.2.2016 of Hon'ble Apex Court and allowed the applicants a personal hearing on 6.4.2016 in which certain discrepancies were noticed, for which, the applicants were asked to furnish documentary evidence in support of their age and identity vide letter dated 4.5.2016 (Annexure-A/5 series). In all cases, it was mentioned that the applicant may be overage for engagement.

9. The applicants moved the Tribunal in OA No. 917/2016, challenging the letter dated 4.5.2016 and the said OA was disposed of vide order dated 17.2.2017 (Annexure-A/6) with following directions:-

"6.For effective adjudication of this matter in the Tribunal it is required that the applicants should submit the reply to the letter dated 4.5.2016 issued by the Respondents Department by submitting the required documents which should be considered by the authorities for implementation of the orders of the Hon'ble Apex Court. In view of the discussions the applicants are directed to submit their reply along with necessary documents to Respondent No.3 within a period of two weeks from today and if such replies are filed the Respondent No.3 is directed to dispose of the matter within a period of four weeks from the date of filing of such replies."

10. Thereafter, the documents were furnished by the applicants and the respondents passed the impugned orders dated 19.4.207 (Annexure-A/7 series), rejecting the case of the applicants for engagement as casual labourers since they were more than 60 years of age. In case of the applicant no. 7, the case was rejected as his age would have been more than 60 years, had he survived. As a result of these impugned orders, the respondents have converted the reliefs granted to the applicants by the Tribunal in order dated 20.6.2002, which was upheld by Hon'ble Apex Court, into a nullity. The Tribunal while passing the order dated 20.6.2002, had noted that the applicants had faced "gross discrimination in the matter of getting re-engagement" and for that reason, the relief was allowed by the Tribunal, which was finally upheld by Hon'ble Apex Court. In this case, the applicants were not responsible for delay in implementation of the Tribunal's order.

11. From the circumstances of the case as discussed above and taking into consideration the fact that the applicants have been discriminated by the

respondents earlier as observed by the Tribunal in order dated 20.6.2002, I am of the considered opinion that the action of the respondents to reject the case of the applicants on the ground of age or delay has defeated the spirit of the order dated 20.12.2002 (A/2) of the Tribunal, which has been upheld by Hon'ble Apex Court. It is not the case of the respondents that they could not have implemented the order of the Tribunal as the same was stayed by Hon'ble High Court or Hon'ble Apex Court. If the applicants had crossed the age of superannuation by the time the Tribunal's order was upheld by Hon'ble Apex Court on 19.2.2016, nothing prevented the respondents from considering financial benefits to the applicants in lieu of the service benefit as allowed by the Tribunal.

12. In the circumstances, the orders dated 19.4.2017 (Annexure-A/7 series) are legally not sustainable as these are not in accordance with spirit of the order of the Tribunal dated 20.6.2002 (A/2). Accordingly, the aforesaid impugned orders dated 19.4.2017 are set aside and quashed and the respondents are directed to grant the financial benefits that would have accrued to the applicants had they been engaged as casual labourers with effect from 8.7.2002 till the age of superannuation as applicable for a casual labourer, within three months from the date of receipt of a copy of this order.

13. The OA is allowed as above. In the circumstances, each of the applicants will be entitled to a cost of Rs. 3000/- each.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath