

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No.375 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Muralidhar Khuntia, aged about 51 years, S/o Dhaneswar Khuntia, At/PO-Saruali, PS-Telkoi, Dist.-Keonjhar-758084.

.....Applicant

VERSUS

1. Union of India represented through its Secretary to government of India, Ministry of Water Resoruces Shramashakti Bhawan, Rafi Marg, New Delhi-110001.
2. The Central Water Commission represented through its Chairman, CWC, Sewa Bhawan, R.K.Puram, New Delhi – 110066.
3. The Chief Engineer, Governm,ent of India, Central Water Commission Mahanadi and Eastern Rivers Organization, Plot No.A-13/14, Mohanadi Bhawan, Bhoinagar, Bhubaneswar-751022.
4. The Superintending Engineer, Government of India, Central Water Commission, Office of the Chief Engineer, Mahanadi and Eastern Rivers Organisation, Mahanadi Bhawan, Plot No.A 13 and 14, Bhoi Nagar, Bhubaneswar-751022.
5. The Executive Engineer, Central Water Commission, Office of the Brahmani Subarnarekha Division, Plot No. A 13 and 14, Bhoi Nagar, Bhubaneswar-751022.

.....Respondents

For the applicant : Mr. D.K.Mohanty, counsel

For the respondents: Mr. S.Behera, counsel

Heard & reserved on : 4.3.2020

Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following relief :

- “(i) To quash the order dated 28.01.2015 under Annexure A/6 and order dt. 29.03.2016 under Annexure A/9.
- (ii) To direct the Respondents to consider his case as has been considered similarly placed persons after discontinuance of 8 to 16 years of service and also vacancies for man power when the applicant made representation still exists, so he may kindly be extend to work of seasonal Khalasi taking into consideration of his past experience and extend the similar benefit thereafter;
- (iii) To pass any other order(s) as deemed fit and proper.”

2. The applicant's case is that he was appointed as a seasonal Khalasi under the respondents in the year 1985 in work charged establishment and

continued till 1993 as per the certificate at Annexure-A/1 series. He has averred in para 4.6 of the OA some persons like him have been engaged as Khalasi after their discontinuation for about 8 to 14 years as at serial nos. 217, 227, 235, 236, 247 and 249 of the seniority list as on 15.6.2002 at Annexure-A/3 and they have been regularized even though they were discontinued from engagement like the applicant. But the case of the applicant has not been considered, which according to him, is violation of the Article 14 and 16 of the Constitution of India. He made a representation dated 19.12.2014 (Annexure-A/5) to the respondent no. 1, but it was rejected by the respondent no. 4 vide order dated 28.1.2015 (Annexure-A/6) which is stated to have been issued in a casual manner on the basis of extraneous considerations. Then he filed another representation to respondent no. 2 for consideration of his case.

3. The applicant filed OA No. 1002/2015 which was disposed of vide order dated 19.1.2016 (Annexure-A/8). Respondent no. 2 rejected his representation vide order dated 29.3.2016 (Annexure-A/9). It is stated by him that due to his father's illness, he could not agitate his grievances earlier. It is also stated in the OA that some other similarly placed persons had filed OA No. 359/89 for regularization which was allowed. Similarly in OA No. 27/1991, Tribunal directed the respondents that those who had put in 5 years of service will continue in service and shall be regularized as and when regular vacancies are available. The action of the respondents is arbitrary. The judgment in the case of Kasturi Lal Lakshmi Reddy vs. The State of Jammu and Kashmir and another, AIR 1980 SC 1992 was referred to in the OA.

4. Counter has been filed by the respondents stating that though the applicant was being engaged as a Seasonal Khalasi during monsoons from 1985 till 1993, but since 1994 he had not turned up. It is also averred that he did not offer his willingness to be engaged as seasonal khalasi during last 20 years and did not give any ground for not turning up. The appointment of seasonal khalasi was for four months in a year and it was not continuous engagement. It is further averred that as per the Scheme for Grant of Temporary Status & Regularization, 1997 there was complete ban on engagement of seasonal khalasi. Regarding regularization of some other seasonal khalasi, it is stated in para 4 of the Counter as under:-

“4. That the contention of the applicant that after being discontinued for 8 to 16 years some persons have been given Seasonal appointment and were regularized thereafter, may be a fact but the circumstances leading to their continuation as Seasonal Khalasi and subsequent regularization are not available. There are instances, when some persons who were working as Seasonal Khalasis and discontinued for some years due to some of their genuine problems were taken back duly considering the genuineness of the grounds by deferring their seniority for the discontinued period. But till that

time the Seniority list of Seasonal Khalasis was open and not exhausted. This process was closed in the year 2014, when no Seasonal Khalasi was left in the roll of concerned circle for their regularization.”

6. Rejoinder filed by the applicant states that in para 4 of the Counter, the respondents have admitted that persons have been engaged even after discontinuation of service for about 8 to 16 years, but no reason for such action was disclosed. It is averred that the process of regularization was closed in 2014 and the applicant had approached the authorities in 2014 to be engaged as seasonal khalasi.

7. We heard learned counsel for the applicant who reiterated the stand of the applicant in the OA and also submitted that similarly situated persons like the applicant have been allowed to be engaged and regularized by the respondents. Learned counsel for the respondents was also heard. He referred to the speaking order dated 29.3.2016 (A/9) to state that the seasonal khalasi engaged during monsoon in previous year have to give their willingness so as to consider their re-engagement as seasonal khalasi. It was submitted that from 1994 till 2014, the applicant did not give his willingness to be engaged as seasonal khalasi and approached the respondents for the first time in 2014 by submitting a representation.

8. With due regard to the submissions by learned counsels for both the parties, it is noticed that the respondent no. 2 has stated the following in the impugned order dated 29.3.2016 (Annexure-A/9) :-

1. “Although you were working as Seasonal Khalasi during the monsoon from 1985 to 1993 (as stated by you in your representation), you had not turned up for service in subsequent monsoon since 1994. No such reason/ground for failing to serve in subsequent years (about 20 years) had ever been submitted by you during these years.
2. Further, on the implementation of Scheme of Temporary Status, there complete ban on fresh recruitment of Seasonal Khalasi, which is being adhered to by this department.
3. During the last 20 years, you had neither given your willingness for engagement as Seasonal Khalasi, nor put forth before the authority any sustainable ground for not turning up for Seasonal service in any subsequent years in this department. As such it is not possible to accede to your request on the ground of any precedence.
4. The action of the department is therefore not found discriminatory in your case.”

9. It is also stated in para 9 of the Counter that there was a complete ban on fresh recruitment of Seasonal Khalasi, although no circular to that effect has been furnished by the respondents.

10. The applicant has urged the ground that some other similarly placed persons were re-engaged as seasonal khalasi even after 8 to 16 years of discontinuation in service as seen from the serial nos. 217, 227, 235, 236, 247

and 249 of the seniority list as on 15.6.2002 at Annexure-A/3. On perusal of the list at Annexure-A/3 reveals that all these cases referred in the OA had been allowed to rejoin prior to 2006. The applicant did not approach the authorities prior to 2006. If he would have approached the authorities and his case was not considered, then the charge of discrimination vis-a-vis these persons would have been valid. The contention of the respondents that he did not approach the authorities for engagement from 1994 till 2014 has not been contradicted by the applicant. If he had some family problems like illness of his father as stated in the OA, nothing prevented the applicant to inform the respondents about the same and requested for engagement at the earliest time possible.

11. In view of the above, the prayer to quash the impugned orders cannot be accepted. However, taking into consideration the fact that the applicant was undisputedly working as a seasonal khalasi from 1985 to 1993, this OA is disposed of with direction to the respondents to consider the case of the applicant on priority before considering any outsider, in case there is requirement for engaging any seasonal or temporary/casual khalasi for the organization depending on the work load, taking into account his working experience with the organization. The OA is disposed of accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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