

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.309/2015

CORAM:

HON'BLE MR. PRADEEP KUMAR, MEMBER(A)
HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)

1. Jayadev Swain, aged about 49 years, S/o- Lochan Swain, At/P.O.- Asarala, Dist.-Khurda.
2. Baladev Prasad Mohanty, aged about 50 years, S/o-Nilamani Mohanty, At-Dakabanglow Road, P.O.-Jatani, Dist.-Khurda.
3. BamanCharanParida, aged about 45 years, S/o-Prafulla Ch. Parida, At/P.O.-Saranga, Dist.-Puri.
4. Kailash Chandra Behera, aged about 46 years, S/o-Manguli Behera, At-Bambarada, P.O.-Sarithania, Dist.-Puri.
5. Benudhar Behera, aged about 46 years, S/o-Bhagaban Behera, At/PO-Bitipur, Jorakani, Via-Delang, Dist.-Puri.
6. Kamadev Behera, aged about 46 years, S/o-Guru Charan Behera, At/PO-Bitipur, Jorakani, Via-Delang, Dist.-Puri.
7. Dhuliram Jena, aged about 46 years, S/o-Late Chakradhar Jena, At-Madhupur, PO-Brajamohanpur, Dist-Khurda.
8. Pabitra Mohan Bhuyan, aged about 46 years, S/o-BanchhanidhiBhuyan, At-Patabenana, P.O.-Sarangadharpur, Dist.-Nayagarh.

.....Applicants

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
2. Divisional Railway Manager(P), East Coast Railway, Khurda Road, P.O.-Jatani, Dist.-Khurda.

.....Respondents.

For the applicant : Mr. P.K. Behera

For the respondents: Mr. M.K. Das

Heard & reserved on : 12.01.2021

Order on :16.03.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This O.A. has been filed by the applicant before this Tribunal seeking the following relief(s):-

“(a) Quash the impugned rejection order dated 6/6/2-13 at Annexure-A/11 and direct the Respondents to grant temporary status to the

applicants from the date they have completed 120 days of service as casual labourer in a calendar year i.e., in the year 1986.

(b) Direct the Respondents to count the services of the applicant after grant of temporary status i.e., in the year 1986 till regularisation, as continuous service for the purpose of pension and other pensionary benefits.

(c) To pass any other order or direction which would afford complete relief to the applicants in the facts and circumstances of the case.”

It is humbly prayed that the Hon’ble Tribunal may be graciously pleased to quash Annexure-A/1, A/3 & A/5 direct the respondents to give all consequential benefits.

And any other order(s) as the Hon’ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain ever pray.”

2. The factual matrix of the present O.A. are that the applicants were disengaged after working as Casual Labourers for a considerable time where as the juniors and fresher’s to the applicants were taken as regular Class-IV ‘Group-D’ employees ignoring the cases of the applicants, although, they were entitled to preference under the rules as per Board’s letter No.E(NG) 11/98/CL/32, dated 09.10.1998 which is statutory. Thereafter, the applicants filed O.A. No.155/1995 for their appointment as Class-IV posts on regular basis. This Tribunal disposed of the OA vide order dated 20.07.1998 (Annexure-A/1) held that the applicants have the right for consideration and preference for engagement as casual labourers over persons freshly taken from open market and directed the Respondents (G.M., DRM(P) and Chairman, Railway Recruitment Board) to include the names of the applicants in the live casual Register and offer engagements as and when available. The Respondents/Railways filed OJC No.16887/1998 challenging the said judgment. By order dated 11.09.2000, the Hon’ble High Court upheld the judgment but confined the direction in para-7 of O.A. Thereafter, the Respondents partly implemented the judgment and names of the applicants were included in the Live Casual Labourer Register dated 30.11.2000/21.12.2000 (Annexure-A/2).

3. It is submitted that due to non-compliance of the judgment of this Tribunal dated 20.07.1998 passed in O.A. No.155/1995, the applicants filed C.P. No.37/2002. This Tribunal, while disposing the said C.P. vide order dated 11.02.2003(Annexure-A/3), directed that, the applicants shall get temporary status and other consequential benefits, as due and admissible under the standing instruction of the Railways, if it is found that they have completed 120 days of casual engagement in any calendar year. Thereafter, applicant Nos.1, 2 5 & 7 were re-engaged as Substitute in Gr. 'D' Category vide letter dated 14.12.2005 (Annexure-A/4) and thereafter applicant No.7 who was posted as Khalasi w.e.f. 30.12.2005 was granted temporary status on completion of 120 days working w.e.f, 29.04.2006 (Annexure-A/5).

4. It is further submitted that one Udaya Kumar who was initially engaged as Substitute B. Peon on 29.07.2003 was given temporary status on 16.11.2003 vide order dated 25.10.2005 (Annexure-A/6). It is submitted that the applicants are entitled to get temporary status before their disengagement from service i.e. in the year 1986 as they had completed more than 120 days as casual labourer in a calendar year. Instead of granting temporary status in the year 1986, the Railways extended the temporary status w.e.f. 29.04.2006 which is wrong. Thereafter, the applicants submitted representations dated 12.05.2008 (Annexure-A/8) and dated 02.06.2012 (Annexure-A/9) before respondent Nos.1 & 2 respectively for grant of temporary status from 1986 instead of 2006 in terms of order dated 11.02.2003 passed in C.P. No.37/2002. Due to the inaction on the part of the respondents, the applicants filed O.A. No.1063/2012 before this Tribunal. Vide order dated 12.03.2013 (Annexure-A/10) passed in O.A. No.1063/2012, this Tribunal directed to consider and dispose of Annexure-A/9 representation keeping in mind the order passed in C.P. No.37/2002. By

order dated 06.06.2013 (Annexure-A/11) respondent No.2 rejected the representation of the applicants. Vide letter dated 02.04.1986 (Annexure-A/12 of RRB, Bhubaneswar containing the names of the applicants and mentioning that they had completed more than 120 days in a calendar year was disputed and in Para-5 of the Judgment, this Tribunal has held genuine. Therefore, applicants are entitled to temporary status from 02.04.1986. Hence the Railway Board circular is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Hence the present O.A. has been filed with the above prayer as mentioned.

5. The respondents, in their counter denied the selection/appointment of these applicants as Casual Labourers in Railway Recruitment Board, Bhubaneswar. It is further submitted that at no point of time, the applicants have objected about their temporary status at the time of incorporation of names in the Leave Casual Labour Register as per this Tribunal's order, engagement as substitute, grant of temporary status in substitute after completion of 120 days, regularization in Group-D post and on the date of promotion. After enjoying all the benefits, now the applicants are claiming that they have got temporary status in RRB, Bhubaneswar, which is not true.

6. It is pertinent to mention here that in similar case, one Paramananda Sahoo and Others had filed O.A. No.92/2001 before this Tribunal which was dismissed on 21.02.2001 (Annexure-R/2). Against the said order of the Tribunal, some of the applicants filed W.P.(C) No.5476 of 2007 before Hon'ble High Court of Orissa, which was disposed of vide order dated 15.02.2011 (Annexure-R/3) with direction that the petitioners except petitioner No.5 & 7 are entitled to get the same benefits as have been granted to the similarly

circumstanced persons in O.A. No.365 & 366 of 1987 and O.A. No.155 of 1995(filed by the present applicants). Thereafter, the respondents filed RVWPT No.215 of 2011 and Misc. Case No.185 of 2011 before Hon'ble High Court to review the order passed in W.P.(C) No.5476 of 2007 which is presently subjudice. The petitioners of W.P.(C) No.5476 of 2007 also filed Contc. No.1820 of 2011 (A/o W.P.(C) No.5476 of 2007) before Hon'ble High Court, alleging non-implementation of order dated 15.02.2011 (Annexure-R/2) for final adjudication. It is submitted that without awaiting the final decision, the applicants hurriedly preferred this O.A. for the reasons best known to them.

7. It is further submitted that the claim of applicants pertains to 1986 and after more than a decade they have approached before the Tribunal which attracts law of limitation and the O.A. is also barred by limitation. In this connection it is apt to mention here that *in the case of Chennai Metropolitan Water Supply and Sewerage Board and others Vrs. T.T. Murali Babu*, reported in AIR 2014 SC 1141 the Hon'ble Apex Court have heavily come down on the Courts/Tribunal for entertaining matters without considering the statutory provision of filing application belatedly.

8. It is submitted that the Annexure-A/12 series dated 02.04.1986 and dated 04.02.1986 of the instant OA are fake and fabricated which is evident from the aforesaid two registers. The Railway administration specifically denied to issue such type of documents to the applicants and specifically taken the stand that the same are fake and forged one. No such letters has ever been issued by the RRB/BBS office to the applicants. The order of the Tribunal passed in O.A. No.155 of 1995 and the order of Hon'ble High Court passed in OJC No.16887 of 1998 was implemented since, the Chairman, Railway Recruitment Board

Bhubaneswar was not able to produce any Attendance Register as a token of their engagement at the material point of time. Hence, to avoid legal complication, the Railway Administration found no alternative but to include their names in the Live Casual Labour Register and after engagement of the applicants as substitute and after completion of 120 days, the applicants have been given temporary status with all benefits followed by regularization as could be evident from the aforesaid paras. In this connection it is submitted that *in the case of State of Manipur Vrs. Token Sing reported in 2007 (2) SCC (L&S) Page-107* the Hon'ble Apex Court held that when the appointments were not in existence and were not issued by the competent authority but obtained by fraudulent means, no need to follow principle of natural justice and no need to issue notice before termination and further in the case of *India Vrs. Bhaskaran, AIR 1996 SC 686, the Hon'ble Apex Court* held that fraudulently obtained appointments could be legitimately treated as violative at the option of the employer. That further *in the case of Kendriya Vidyalaya Sangathan Vrs. Ram Ratan Yadav, 2003 SCC (L&S) 306*, the Hon'ble Apex Court held that a candidate having suppressed material information and/or giving false information cannot claim right to continue in service. Further in the case of *Sanjeev Kumar Agrawal Vrs. Union of India & others reported in 1993 (25) ATC-234* the Hon'ble Court held that illegal appointments do not have any rights and as such termination valid.

9. It is further submitted that as per Para-185.7 of Railway Recruitment Board's manual no powers are vested with Railway Recruitment Board to engage any Casual Labour or Substitutes. Further, as per Para-2001 (a) of Indian Railway Establishment Manual, Volume-1, casual labourers are primarily engaged to supplement the regular Staff in work of seasonal or sporadic nature

which arises in the day-to-day working of Railway system. This includes labour required for loading & un-loading of materials, special repairs and maintenance of tracks and other structures, supplying drinking water to passengers during summer months, patrolling of tracks etc. Further, it is submitted that the contention made in the OA is to gain undue sympathy from the Court, since there is no rule in vogue in Railways for their engagement as casual labour in Railway Recruitment Board, Bhubaneswar without prior approval of Railway Board so far as RRBs are concerned.

10. It is submitted that the applicants have approached the Court after 19 to 26 years. For all these years from 1986 to till filing of O.A. No.155/95 till filing of O.A. No.1063 of 2012 for granting temporary status retrospectively, they neither approached the respondents for their engagement/temporary status under the Railways which is going to show that they were not in need of Railway service. Hence, the instant OA is hopelessly barred by limitation, devoid of merit as per Hon'ble Apex Court's pronouncements and liable to be dismissed prima-facie. Therefore, instead of granting temporary status taking into consideration of the alleged engagement in RRB/BBS in the year 1986, they are liable to be removed from service, since taking the plea of non-availability of documents for verifying the genuineness of the alleged engagement in RRB/BBS in the year 1986 the applicants have got engagement.

In view of the aforesaid disclosure, the instant OA deserves no merit, barred by limitation and based on forged documents and liable to be dismissed with heavy cost.

11. The applicants have filed their written notes of submission by reiterating the points raised in the rejoinder and submit that that as per Railway Board

Circular No.E(NG)11/98/CL/32 dtd. 09.10.1998 which is statutory, the applicants were entitled to preference over persons freshly taken from the open market. The applicants have filed the present O.A. challenging the order dated 06.06.2013 (Annexure-A/11) on the ground that Annexure-A/12 dated 02.04.1986 and 04.02.1986 to this OA filed by the applicant has held to be genuine and the Railway-Respondents having been accepted the said findings and partly implemented the judgment and is estoppels in saying that the said documents at Annexure-A/12 series are not genuine and the applicants will not get benefits from the said Annexure-A/12 series. The Respondents who filed the counter should be facing contempt proceeding for deliberately misleading and denying the benefits arising out of the said documents i.e., temporary status on completion of 120 days and thereafter till regularisation treating the period of service as continuous for the purpose of pension and pensionary benefits. It reveals from the Annexure-A/12 series that Sashi Bhusan Nanda at Sl. No.19, ParamanandaSahu at Sl. No.2, Md. Mustaq at Sl. No.11, Samir Biswal at Sl. No.9 and Purna Chandra Sahoo at Sl. No.10 relying the very Annexure-A/12 series has filed O.A. No.92/2001 claiming similar benefits as has been extended to the present applicants. The Tribunal rejected the said petition on the ground of delay as per order dtd. 31.02.2003. The applicants in the said case filed W.P.(C) No.5476/2007 challenging the order dated 31.02.2003 of this Tribunal passed in O.A. No.92/2001. The Hon'ble High Court vide order dated 15.02.2011 held that the applicants in the said case are entitled to get the benefits as has been granted to the present applicants in OA. No.155/1995 and further held in paragraph-6 that the Chairman, Railway Recruitment Board has filed an affidavit before the Tribunal admitting his signature in Annexure-A/1 & A/2 (presently Annexure-A/12 series in this O.A)

as genuine. Therefore, the question raised by the respondents that such documents are not genuine, is not correct. The counsel for the applicants at the time of hearing through V.C. placed the said judgment dated 15.02.2011 passed in W.P.(C) No.5476/2007 & 5477/2007.

12. It is further submitted that the respondents in their counter have stated that the Review bearing RVWPET No.215/2011 against the said judgment dated 15.02.2011 was pending before the Hon'ble High Court. The Railway-Respondents deliberately filed false statement because the said Review was dismissed on 18.01.2017 and the said dismissal was made much prior to the filing of counter by the respondents. The respondents are aware about the said facts and suppress the same to mislead this Tribunal.

13. It is submitted that the respondents thereafter went before the Hon'ble Supreme Court challenging the order dated 15.02.2011 passed in W.P.(C) No.5476/2007 & 5477/2007 and also RVWPET No.215/2011. The Hon'ble Supreme Court dismissed the said SLP, where after the applicant filed Contempt Petition bearing CONTC No. 1820/2011 before the Hon'ble High Court and the Respondents/Railways filed compliance affidavit dated 28.03.2019 before the Hon'ble High Court wherein the respondents treated the said casual labourer whose name included in Annexure-A/12 series as regular staff from the date of judgment of the Hon'ble High Court and even through, they have not worked, they have huge lakhs of arrear salary from 15.0.2.2011 to 26.03.2019 as revealed in para-8 of the compliance affidavit.

14. It is further stated on behalf of the applicant that in view of the facts and law mentioned above, the rejection order as well as counter runs contrary to the record and judgment and findings of this Tribunal, Hon'ble High Court as well

as the Hon'ble Supreme Court. In view of the said findings any stand that the said documents that the Annexure-A/12 series are not genuine is contemptuous and not permissible under law. In the circumstances, the applicants are entitled to relief claimed in the O.A. with continuance of service by counting the past service from 1986, the date on which they have completed 120 days service till regularization as per Railway Board Circular No.E(NG)11/98/CL/32 dtd. 09.10.1998 which is statutory as continuous for the purpose of pension and pension and pensionary benefits.

15. The respondents have filed their written note of submission by reiterating the points raised in the counter and submits that Annexure-A/12 series to the instant OA is not the engagement order and it has also never been issued by the Railway Recruitment Board, Bhubaneswar and no records available with the Chairman, Railway Recruitment Board, Bhubaneswar in support of the applicants' engagement on daily rate basis as Casual Labour. It is further submitted that at the relevant point of time when other similar matters are pending, the Chairman, Railway Recruitment Board, Bhubaneswar not able to produce any attendance register as a token of their engagement. Therefore, in obedience to Hon'ble Court's orders, their names were incorporated in the Live Casual Labour Register vide office order No.P/Rect./RRB/BBS/OANO.155 of 95/OJC No.16887 of 98 dated 21.12.2000. It is further submitted that at no point of time, the applicants have objected/pointed-out about their temporary status at the time of incorporation of names in the Live Casual Labour Register as per Tribunal's order, engagement as substitute after completion of 120 days, regularization in Group-D post and on the date of promotion. After enjoying all the benefits, now the applicants are claiming that they have got temporary status in RRB, Bhubaneswar, which is not true.

16. It is submitted that the applicants' joint representation dated 02.06.2012 (Annexure-A/9 to OA) was disposed of by Respondent No.2 (Divisional Railway Manager(P), E.Co. Rly, Khurda Road vide reasoned order dated 06.06.2013 (Annexure-A/11 to the O.A.) stating therein that the applicants' case deserves no consideration for grant of temporary status taking into consideration of the alleged engagement in RRB, BBS in the year 1986. Hence, the representation is not having any merit consideration and hereby rejected. It is submitted that the respondents have filed Review Petition before the Hon'ble High Court, which is subjudice.

17. It is further submitted that against the order of this Tribunal dated 31.02.2003 passed in O.A. No.92/2001 some of the applicants filed WP(C) No.5476 of 2007 before Hon'ble High Court which was disposed of on 15.02.2011 (Annexure-R/2) with direction that petitioners in WP(C) No.5476 of 2007 except petitioner No.5 & 7 are entitled to get the same benefits as have been granted to the similarly circumstanced persons in O.A. No.365 & 366 of 1987 and O.A. No.155 of 1995 (filed by the present applicants). Thereafter the said order of the Hon'ble High Court was processed for taking administrative decision & 02 records were available in Railway Recruitment Board, Bhubaneswar's office pertaining to the relevant period and it is found that none of the names including the present applicants of O.A. No.309/2015 were found. Thereafter, the respondents filed review petition before Hon'ble High Court to review the order dated 15.02.2011 (Annexure-R/2) which is subjudice. Without awaiting the final decision, the applicants hurriedly preferred the OA for the reasons best known to them. It is further submitted that the applicants have approached the Tribunal after 19 to 26 years. In view of the above, the instant

O.A. is devoid of merit, based upon forged documents and grossly barred by limitation and liable to be dismissed in line with heavy cost.

18. Applicant's counsel relied on few citations including the following:-

- (1) Railway Board Circular No.E(NG)11/98/CL/32 dtd. 09.10.1998.
- (2) order dated 15.02.2011 passed in W.P.(C) No.5476/2007 & 5477/2007.
- (3) Order dated 18.01.2017 passed in RVWPT No.215/2011.
- (4) Order dated 24.07.2017 passed by Hon'ble Supreme Court in Diary No.(s).16916/2017.

19. Respondents' counsel relied on few citations including the following:-

- (1) in the case of Chennai Metropolitan Water Supply and Sewerage Board and others Vrs. T.T. Murali Babu, reported in AIR 2014 SC 1141.
- (2) in the case of State of Manipur Vrs. Token Sing reported in 2007 (2) SCC (L&S) Page-107
- (3) in the case of India Vrs. Bhaskaran, AIR 1996 SC 686, the Hon'ble Apex Court
- (4) in the case of Kendriya Vidyalaya Sangathan Vrs. Ram Ratan Yadav, 2003 SCC (L&S) 306,
- (5) in the case of Sanjeev Kumar Agrawal Vrs. Union of India & others reported in 1993 (25) ATC-234

20. We have heard learned counsels for both sides, gone through the pleadings and citations relied upon by them. Although in the counter which was filed in the month of September 2017, it has been mentioned that the Review Application bearing RVWPT No. 215/2011 is pending before Hon'ble High court and the said aspect was reiterated but during the course of argument learned counsel for the applicant had submitted that the said Review Application bearing no. RVWPT No. 215/2011 has been dismissed by Hon'ble High Court on 18.01.2017. Learned counsel for the applicant had also submitted that Hon'ble Supreme Court has also dismissed the application of the respondents department on 24.07.2017 at the stage of admission although the respondents had filed application before Hon'ble Supreme Court against the order dated 18.01.2017 passed by Hon'ble High Court of Orissa in RVWPT No. 215/2011.

The copy of the said order dated 24.07.2017 passed by Hon'ble Supreme Court has also been filed by learned counsel for the applicant along with written submissions.

21. In the above circumstances it is surprising that the respondent department did not prefer to apprise this Tribunal regarding the disposal of the above review application by Hon'ble High Court and dismissal of the case by Hon'ble Supreme Court. That apart, it was specifically pleaded in counter affidavit by the respondents that Review Application is still pending. Such a stand taken by the respondents is nothing but an attempt to mislead this Tribunal and it is not expected from responsible officer from the side of respondents department to make such an inaccurate factual aspect in the counter affidavit.

22. In view of the above factual aspect, this Tribunal does not give any importance to the stand taken by respondent department and submission of learned counsel for the respondents that the applicant has hurriedly approached this Tribunal by filing of OA without waiting for disposal of review application by Hon'ble High Court. In the above circumstances it is necessary that respondent/competent authority should be directed to again consider the case of the applicant for conferring of temporary status with effect from the year 1986 and for their regularization for the purpose of pension and other pensionary benefits. For the said purpose, copy of the OA be sent at the cost of the applicant to Respondent No. 2 so that the said authority shall consider the OA as fresh representation and pass reasoned and speaking order, in accordance with law, to be communicated to the applicant within a period of three months from the date of receipt of copy of this order. While doing so the respondents shall take into consideration that similarly placed persons have been also given the benefit by respondent department. The point of delay should not be taken as

ground for rejection of application of the applicant, since the background and circumstances reveal that the applicants have been knocking the door of this Tribunal and other forums for getting relief and redressal of their grievance.

23. The OA is accordingly disposed of with above observation but in the circumstances without any order to cost.

(SWARUPKUMARMISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

K.B.