

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 965 of 2015

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

Sri Ganeswar Jethi, aged about 50 years, S/o Krushna Chandra Jethi, At- Mundapatna, P.o: Majhiara, PS: Balipatna, Dist: Khurda

.....Applicant

VERSUS

1. Union of India, represented through its Secretary to the Government of India, Ministry of Water Resources, Shramashakti Bhawan, Rafi Marg, New Delhi –110 001.
2. The Central Water Commission represented through its Chairman, CWC, Sewa Bhawan, R.K. Puram, New Delhi- 110066.
3. The Chief Engineer, Government of India, Central Water Commission, Mahanadi and Eastern Rivers Organization, Plot No.A-13/14, Mohanadi Bhawan, Bhoi Nagar, Bhubaneswar-751022.
4. The Superintending Engineer, Government of India, Central Water Commission, Mahanadi and Eastern Rivers Organization, Plot No. A 13 and 14, Bhoi Nagar, Bhubaneswar-751022.
5. The Executive Engineer, Government of India, Central Water Commission, Office of Brahmanai Subarnareka 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: 08.10.2020 Order on: 5.11.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA under the section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the orders dated 23.01.2015 (Annexure-A/5 of OA) and 27.08.2015 (Annexure-A/8 of OA) passed by the respondent-authorities rejecting the applicant's request to be

engaged as seasonal Khalasi under the respondents and has prayed for the following reliefs:-

- “i) To quash the order dated 23.01.2015 under Annexure-A/5 and order dated 27.08.2015 under Annexure-A/8.*
- ii) To direct the Respondents to consider his case as has been considered similarly benefit after discontinuance of 8 to 14 years of service and also vacancies for man power still exists so he may kindly be extend to work of Khalasi taking into consideration of his past experience.*
- iii) To pass any other order(s) as deemed fit and proper.”*

2. The applicant was appointed as a Khalasi on 1.6.1985 and worked as such without any interruption till 11.8.1992 as per the service certificates at Annexure-A/1 series of OA. Similarly placed persons had filed two OAs seeking regularization of their services. The aforesaid OAs were disposed of vide order dated 3.5.1990 and 21.1.1993 (Annexure-A/2 series) with a direction to the respondents to engage them on work charge basis and regularize them according to seniority list as and when vacancies arise. The applicant is aggrieved since though he was placed under similar position as others who had filed the OAs, but similar benefits were not extended to him. It is averred in the OA that many seasonal Khalsis like him were engaged after 8 to 14 years of discontinuation of service and are continuing in regular establishment. These persons are at lower position compared to the applicant in the seniority list (Annexure-A/3 of OA). It is averred by applicant due to his illness till 2012, he could not agitate his grievance before the authorities regarding his claim for similar treatment given to other seasonal Khalasis junior to him and submitted a representation dated 19.12.2014 (Annexure-A/50 addressed to the respondent no.4. The said representation was rejected by the respondent no.4 in a casual manner vide order dated 23.1.2015 (Annexure-A/5), which is impugned in this OA.

3. The applicant, thereafter, submitted another representation to respondent no.2 (Annexure-A/7), who “turned deaf ear towards the legitimate claim” of the applicant and finally, the respondent no.1 rejected this representation at Annexure-A/7 vide order dated 27.8.2015 (Annexure-A/8 of OA) which is also impugned in this OA.

4. The grounds advanced in the OA are that by rejecting the claim of the applicant, there has been violation of the Article 14 and 16 of the Constitution as he was discriminated and the authorities selectively engaged the seasonal Khalasis who were applicant’s junior ignoring the applicant’s case. The applicant has relied on the judgment in the case of M/s Kasturi Lal Lakshmi Reddy vs. The State of Jammu and Kashmir and others, reported in AIR 1980

SC 1992 in which it was held that the action of Government should not be arbitrary and must be based on some principles. In this case although it has been pointed out by the applicant that similarly placed persons have been allowed some benefits while ignoring the applicant, but on such submission no answer has been given by the authorities to the applicant.

5. Counter filed by the respondents stated that there is a complete ban on fresh recruitment of seasonal Khalasi and the circumstances leading to some of the similarly situated Khalasis are not available with the respondents. It is further averred that “the preset applicant had neither offered his willingness during the last 22 years for engagement as Seasonal Khalasi, nor have mentioned any sustainable ground for not turning up for service in any subsequent year.” It is stated that appointment of seasonal khalasi is done for 4 months in a year during monsoon season and the applicant did not turn up for service for monsoon season 1993 nor he has informed about the reasons for not reporting for work as seasonal khalasi. All seasonal khalasis on roll were granted temporary status as per the Scheme for Grant of Temporary Status & Regularization-1997 (in short ‘1997 scheme’). Hence, no injustice has been done to the applicant in this matter.

6. Heard learned counsel for the applicant and learned counsel for the respondents, who reiterated the submissions as per their respective pleadings. The applicant’s counsel submitted that similar matter has already been adjudicated in OA No. 375/2016 and a copy of the order dated 13.5.2020 has been submitted by him vide his Memo dated 7.10.2020.

7. In OA No. 375/2016, the applicant was appointed as a seasonal khalasi under Central Water Commission (in short CWC) since 1985 and had discontinued after 1993. His plea was that though similar persons who had discontinued service, were engaged subsequently and were given the benefits which were not allowed to the applicant. In that OA also grounds similar to the present OA were urged by the applicant. The respondents had also opposed the OA on grounds similar to the present OA. In OA No. 375/2016, it was held in order dated 13.5.2020 as under:-

“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."

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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."

8. In the present OA before us, main ground advanced by the applicant is that similarly situated persons who had discontinued their service as seasonal khalasi, were allowed to be re-engaged by the authorities. The serial numbers 217, 227, 235, 247 and 248 of the seniority list at Annexure-A/3 have been mentioned in para 4.6 of the OA. Similar ground taken in OA No. 375/2016 was not accepted by this Tribunal since all those persons were allowed to rejoin before 2006 and the applicant did not approach the authorities to rejoin work as seasonal khalasi prior to 2006 like those persons referred to in the OA. The applicant approached the authorities only in 2015. Even if the ground of illness as stated in para 4.11 of the OA is considered, it is seen that as contended in para 4.11, the applicant was ill till 2012 for which he could not agitate the matter before authorities earlier. Then the reason for not approaching the authorities immediately after his recovery from illness in 2012 has not been explained. Hence, it is clear that the case of the applicant is not similar to the case of the persons cited in para 4.6 of the OA.

9. Since the factual circumstances in OA No. 375/2016 are similar to the present OA before us, the order dated 13.5.2020 passed by this Tribunal will squarely cover the present OA as well. Hence, we are unable to allow the reliefs sought for by the applicant in this OA. However, taking into consideration the fact that the applicant was undisputedly working as a seasonal khalasi from 1985 to 1992, this OA is disposed of with direction to the respondents to consider the case of the applicant while 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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