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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 113, 114 and 124 of 1988.

Date of decision: February 9, 1990.

In O.A.113/88	Sananda Das	Applicant.
	Versus	
	Union of India and others ...	Respondents.
In O.A.114/88	Subash Naik	Applicant.
	Versus	
	Union of India and others ...	Respondents.
In O.A.124/88	Karunakar Pradhan	Applicant.
	Versus	
	Union of India and others ...	Respondents.
In all the three cases;	For the applicant ...	M/s. S. B. Mishra, B. K. Sahoo, Advocates.
	For the respondents ...	M/s. B. Pal, O. N. Ghosh, Advocates.
	...	

C O R A M :

THE HON'BLE MR. B. C. MATHUR, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

...

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

B. C. MATHUR, VICE-CHAIRMAN, Since in all the three cases common

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questions of facts and law are involved, we have the same disposed of by a common order. The short point in these three cases is whether the period of casual services prior to their regularisation be counted towards their seniority over the persons who are being appointed in the open line on regular basis.

2. The applicant in O.A.113 of 1988 was appointed as a Casual Khalasi on 20.4.1970 and was appointed as a Gangman on 2.2.1979 in the regular scale of pay. The applicant in O.A.114 of 1988 was appointed as a casual Khalasi on 30.4.1970 and was appointed as a Gangman on 24.9.1977 in the regular scale of pay. The applicant in O.A.124 of 1988 was appointed as a Casual Khalasi on 24.5.1971 and was appointed as a Gangman on 19.8.1983 in the regular scale of pay. The prayer of the applicants is that the applicants' casual services should be counted to reckon their seniority and as such they should be made senior to the persons appointed on regular basis. Learned counsel for the applicants cited paragraph 2512 of Chapter 25 of Railway Establishment Manual under which the casual workers are given temporary status and allowed all privileges admissible to temporary employees. This paragraph however says that the period of casual employment is not counted towards the seniority. Learned counsel for the respondents pointed out to sub-rule (13) of Rule 102 of the Indian Railway Establishment Code, Vol. I. This defines a

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Railway servant but casual workers are excluded from the categories of Railway employees. The question of counting of seniority on the basis of casual service therefore does not arise. It is also noted that the applicants have not made other persons whose seniority are challenged as parties to this application.

3. In these circumstances, no relief could be granted to the applicants. These three applications stand dismissed. No costs.

N. Sengupta
..... 9.2.90

(N. SENGUPTA)
MEMBER (JUDICIAL)

B.C. Mathur
..... 9/2/90

(B.C. MATHUR)
VICE-CHAIRMAN



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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Review application Nos.21,22 & 29 of 1990.

Date of decision ~~is~~ February 13, 1992.

R.A.21 of 1990.

Sananda Das	...	Applicant.
Versus		
Union of India and others ...		Respondents.

R.A.22 of 1990.

Karunakar Pradhan	...	Applicant.
Versus		
Union of India and others ...		Respondents.

R.A.29 of 1990.

Subash Naik	...	Applicant.
Versus		
Union of India and others ...		Respondents.

In all the three cases:

For the applicant ...	M/s. B.K. Sahoo, S. Misra, Advocates.
For the respondents ...	M/s. B. Pal, O. N. Ghosh, Advocates.

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Review Application Nos.21, 22 & 29 of 1990.

Date of decision : February 13, 1992.

n R.A.21 of 1990.	Sananda Das	...	Applicant.
Versus			
Union of India and others ...			Respondents.
n R.A.22 of 1990.	Karunakar Pradhan	...	Applicant.
Versus			
Union of India and others ...			Respondents.
n R.A.29 of 1990.	Subash Naik	...	Applicant.
Versus			
Union of India and others ...			Respondents.
n all the three cases	For the applicant	...	M/s. B. K. Sahoo, S. Misra, Advocates.
	For the respondents ...		M/s. B. Pal, O. N. Ghosh, Advocates.

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

J U D G M E N T

K. P. ACHARYA, V.C. These review applications arise out of judgments passed in O.A.113 of 1988, O.A.124 of 1983 and O.A.114 of 1983 respectively delivered on 9.2.1990. The applicants in all the said original applications were appointed as Casual Khalasi on a particular date and thereafter as Gangman and their prayer was that their services should be reckoned with their seniority with retrospective effect making them senior to the persons appointed on regular basis. The Bench did not accept the case of the

applicants and hence dismissed all the three applications.

2. The review applications have been filed on the ground that the Chief Engineer(Construction) vide his circular No.PD/E/579/002946 dated 26.4.1989 on the subject, "Regularisation of service of casual labourers against construction reserve (Group-D)posts" has directed regularisation of casual labourers who have complied with ingredients 1,2 and3 mentioned therein with effect from 1973. Hence, it was urged by Mr.B.K.Sahoo, learned counsel for the applicants that while the Bench pronounced the judgments in the above mentioned original applications this circular was not taken notice of because the applicants in those original applications had no knowledge of the same and it was not furnished. Issuance of this circular came came to the notice of the petitioners on 9.2.1990 and therefore these review applications have been filed to review the judgments passed in those original applications on the basis of the above circular.

3. We have heard Mr.B.K.Sahoo, learned counsel for the applicants and Mr.B.Pal, learned Senior Standing Counsel (Railways) for the respondents at considerable length. This common order will govern all the review applications mentioned above.

4. Law is well settled that exercise of jurisdiction to consider a review application is very limited. It must come within the purview of the provisions contained under Order 47 Rule 1 of the Code of Civil Procedure.

5. On two grounds only a Court can entertain a review

application and they are as follows:

- i) Error apparent on the face of record; ^{and}
^{or}
- ii) Any document which could not be unearthed despite due diligence of the party and existence of which was not within the knowledge of the party but could be discovered later after due diligence exercised by him.

6. Mr. Sahu, fairly conceded that there was no error apparent on the face of record. Mr. Sahoo wants to bring these cases within ingredient No.(ii) namely the document was circulated on 26.4.1989 which was not within the knowledge of the applicants till the filing of the application and was discovered later. Unfortunately, we find from the record that the applicants have not at all made out a case that after due diligence exercised by them the document could not be unearthed before 9.2.1990 or at least before the judgment was delivered. This is not a private document. It is an official communication issued by the Chief Engineer(Construction) to all the concerned officers and one can presume that this communication must have been received in the Office of the applicants. In such circumstances we are of opinion that due diligence were never exercised by the present applicants and they are now coming up with a case which is unworthy of credit to be accepted. Hence we find no merit in these review applications which stand dismissed.

7. Though we have dismissed the present review applications on the ground of not having attracted the provisions contained in order 47 Rule 1 of the Code of Civil Procedure but we feel for the end of justice, that

the petitioners should not be denied their claim if they are legitimately entitled to it, in view of the changed circumstances. In order to determine the justifiability of the claim certain questions of fact are to look into especially in regard to the determination of the fact as to whether the petitioners are entitled to the relief claimed keeping in view the conditions mentioned in the Circular dated 26-4-1989. Admittedly, no representation has been ever made by the Petitioners before the Competent Authority who would have investigated into the facts constituting the grievance of the applicants who could have expressed ^{an} ~~the~~ ^{an} opinion as to whether retrospective benefit could be given to the Petitioners with effect from 1973. In the absence of such order passed by the competent authority due to non-filing of any representation we are considerably handicapped to determine as to whether actually the applicants are entitled to the relief claimed. Mr. Sahoo submitted that leave be granted to the applicants to make a representation to the competent authority to determine this issue. We have no objection. If so advised, the applicants may file representation before the competent authority stating the detailed facts on which they base their claim to be regularised with effect from 1973 ^{and} ~~such~~ representation be filed within 30 days from today. In case, such a representation is filed, the competent authority should consider the case ~~of~~ ^{by} the applicants

and should also give a personal hearing to the applicants if they so desire and thereafter pass a reasoned order according to law within 90 days therefrom. We however, give liberty to the applicants that in case they feel aggrieved by any orders passed by the competent authority they may approach the Bench and reagitate the matter.

Miss - USHA SAYARA.
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MEMBER (ADMINISTRATIVE)

Sd/ K.P. Acharya
.....
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack, February
13, 1992/Sarangi.