

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 221 OF 1983.

Date of decision :- April 4, 1990.

Chintamani Routray Applicant
Versus.
Union of India Respondent
For the Applicant M/s. S.N.Misra, S.K.
Nayak and Mrs.
R. Sikdar.
For the Respondent :... ... Mr. Tahali Dalai,
A.S.C. (Central).

C O R A M :

THE HON'BLE MR. B.R. PATEL, 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 ?
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.

N. SENGUPTA, MEMBER (J). The reliefs that the applicant claims in this application under section 19 of the Administrative Tribunals Act, 1985 are that he should be given a regular appointment as Khalasi with effect from the date of his juniors being given such appointments i.e. 11.11.1985, and if there be no existing vacant post, the applicant may be

[Handwritten signature]

②

accommodated by creating a supernumerary post.

2. The facts alleged by the applicant are that he was appointed as a seasonal Khalasi under the Executive Engineer, Central Water Commission, Suvarnarekha Division in 1981 and the first spell of his appointment was from 26.6.81 to 31.10.81 and thereafter he was appointed in the subsequent years i.e. in all the years upto 1987. He was also issued an order of appointment and he joined in the year 1988 i.e. on 1.6.88. During October, 1985 some persons i.e. Mr. K.S.N. Murty and Mr. Bhramarbar Jena who were appointed as Seasonal Khalasis subsequent to him (the applicant) were employed on ad hoc basis for some time and thereafter their appointments have been extended until further orders i.e. they have been appointed almost on regular basis for an indefinite period even though their appointment might have been termed as temporary or ad hoc. The grievance of the applicant is that since he is senior in having joined and worked in the Division earlier than those two, he could not be refused such appointment as has been allowed to Mr. K.S.N. Murty and Mr. Bhramarbar Jena. Making these allegations, the reliefs above stated have been prayed for.

3. The substance of the counter filed by the respondent is that Khalasis are not regular employees and they belong to work-charged establishment who work for a specified term. The applicant though might have joined to work as Khalasi two months earlier to the two i.e. Mr. Murty and Mr. Jena, the latter two had served

Healey
4/4.

for ~~the~~ longer spell and got more number of days in the aggregate. Therefore, the applicant cannot claim to be appointed basing on the appointment of Mr. Bhramarbar Jena and Mr. K.S.N. Murty. In their counter the respondents have stated that a previous decision of this Tribunal in O.A.No.208 of 1987 (Kalandi Charan Sahu v. Union of India and others) will not hold good as at that time some of the material facts could not be placed before this Tribunal and the applicant's reliance on that decision would avail him of nothing.

4. We have heard Mrs. Sikdar for the applicant and Mr. Tahali Dalai for the respondent. So far as the second part of the counter of the respondent ~~is concerned~~, i.e. reliance on the decision of this Tribunal in O.A. No.208/87 is concerned, we have no hesitation to say that such a stand is wholly untenable and without any substance. So long as the decision is not set aside either in appeal or by any other recognised mode, it would stare at the face of the parties against whom the decision was given. In that case all the respondents were practically the same as those of the present. Therefore, the ratio of that decision, in our opinion, would bind the respondents.

5. Now coming to the merits of the case, it may be stated that it is undisputed that the applicant joined two months earlier to Mr. Bhramarbar Jena and Mr. K.S.N. Murty. It is also undisputed that as would be evident from Annexure-2 to the application, those two persons have been given appointments for an indefinite period

Bealapur
4.4.90.

(7)

in the Work-charged establishment. The only ground on which Mr. Dalai wants to contest the claim of the applicant is ^{- that -} the aggregate number of days that the applicant has served is less than the aggregate of the days worked by those two. This ground also, in our opinion, is untenable, because how long a person is to continue was a matter within the power of the Administration and the Administration cannot be allowed to take advantage of it, ~~in~~ not allowing a person to work and giving opportunity to a junior to work for more number of days. Apart from that, a directive issued from the Central Water Commission would go to show that a person who had been appointed earlier was to be regularised first unless, of course, his services were unsatisfactory or he could not be regularised for some valid reason vide letter No.HOFFC/A-22017/2/84/Admn./7095-7101 dated 25.10.85. The same principles were reiterated by the Superintending Engineer, CWC, Hyderabad in the letter dated 25.8.1986 a copy of which is at Annexure-A/6 to the application.

In this connection, it is also pertinent to ⁱⁿ note that ~~the~~ Recruitment rules for Khalasis in the Work-charged establishment, a copy of which is at Annexure-R/1 to the counter, there is no reference to the number of days a person has to work as a Khalasi to be regularised.

6. In the face of these facts, we have no difficulty in saying that since admittedly the applicant was appointed earlier to Mr.K.S.N.Murty and Mr. Bhramarbar Jena, he cannot be refused the relief of appointment

Handwritten signature
4/4

though on a temporary basis in the Work-charged Establishment as a Khalasi for an indefinite period or till the termination of services of those two i.e. Mr.K.S.N.Murty and Mr.Bhramarbar Jena. This order should be implemented within three months from the date of receipt of a copy of the same.

The application is accordingly disposed of.

No costs.

[Signature]

.....

VICE-CHAIRMAN.



[Signature]
4.4.90

.....

MEMBER (JUDICIAL)