

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No.81 of 1989.

Date of decision : July 10, 1990.

I.Srinivasan ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant .. M/s.M.R.Panda,
P.K.Panda, Advocates

For the respondents .. M/s. Bijay Pal and
O.N. Ghosh, Advocates.

C O R A M:

THE HON'BLE MR.P.S.HABEEB MOHD., MEMBER (ADMN.)

A N P

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

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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

N.SENGUPTA, MEMBER (J) The applicant has prayed for a direction to the respondents to regularise his services with retrospective effect i.e. from the date when the services of his juniors are said to have been regularised and for promotion and other consequential service benefits.

2. Some of the admitted facts may be stated at the outset. The applicant was appointed as a casual labourer.

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according to him in November, 1968 and according to the Respondents in January, 1970. It is also the admitted case that the applicant and three others were removed from services on the ground of giving wrong dates of their birth. Two of those removed from service filed writ petitions in the High Court of Orissa and according to the judgments delivered in those writ petitions they were reinstated in service. Another person pursued the departmental remedies was and he/also later ~~was~~ reinstated in service. The applicant's appeal to the appropriate authority against his order of removal did not bear any fruit. So, he made an application for revision. The revisional authority by his order communicated to the applicant on 19.2.1986 (copy at Annexure-1) reinstated the applicant observing;

" Since the reason for removal from service for all the 4 Bridge Khalasis is the same and 3 out of 4 have already been taken on duty, it is considered that Sri Srinivasan may also be taken back to duty on humanitarian grounds. The period from 1.7.1977 to the date of re-instatement should be treated as dies-non. "

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The applicant's allegations are that he has been discriminated against and that the services of some of his juniors were regularised and some of them have got promotions to the grades of highly skilled and skilled labourers. In paragraph 4.11 he has named those persons. The grievance of the applicant is that the order of the revisional authority treating the entire period as 'dies-non' is improper, and discriminatory, as such he is entitled to the reliefs that he has prayed for.

3. The respondents in their counter have alleged that

the applicant had filed another original application in this Tribunal being numbered as O.A.77 of 1986 where similar questions were raised but they were answered against the applicant. A panel of casual labourers was prepared by the competent Railway authority and appointments on regular basis are being given in order of seniority. The panel consisted of 43 persons and the applicant's place is at serial No.43. Out of those 43, 29 persons have already been absorbed and 14 are yet to be absorbed. The 14 persons not yet absorbed are still continuing as temporary labourers C.P.C. scale of pay. They have denied the applicant's allegation of any junior of the applicant to have been absorbed in the regular cadre of the Railways. The averments in paragraphs 4.10 and 4.11 of the application have been denied in paragraph 19 of the counter. They have also taken a further plea that the applicant has not subjected himself to the screening test. Therefore, he has not fully qualified himself for being absorbed. They have taken the plea of limitation and also the plea of res judicata saying that the judgment delivered in O.A.77 of 1986 operates as res judicata.

4. As there was no appearance for the respondents at the Bar, the matter was heard ex parte. As would be evident from the reliefs, the questions that arise for consideration are; whether there has been any discriminatory treatment so far as the applicant is concerned. The admitted position is that 4 persons were removed from

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service on the ground of having given wrong dates of birth, two of them approached the Hon'ble High Court of Orissa and another availed the departmental remedies available to him and all those three were reinstated in service. Of the three others who are reinstated in service, K.G.Gopinathan Nair approached this Tribunal in O.A.170 of 1987 for quashing that part of the order of reinstatement which related to the period from the date of removal till the date of reinstatement as ' dies-non'. This Tribunal by its judgment dated 11.8.1989 in the circumstances of the case, found that Gopinathan was entitled to the wages for the period from 4.7.1977 till 22.5.1979. This direction was based on the observations in the order impugned in that original application. The impugned order of that application specifically stated that Mr. Nayar committed a mistake unintentionally and without any malafide intention and that the mistake that was made was that inspite of writing 14.2.1944 he wrote 14.11.1944 as his date of birth. It is also worthwhile to bear in mind that at times the month in a date is given in Roman figures. Therefore, there was a cause for some confusion. In that background the Railway authorities ordering reinstatement observed ^{as} above, and this Tribunal was of the view that a person should not be punished for an unintentional error. The decision in that case being completely distinguishable on facts cannot be pressed into service by the applicant because the applicant stated his date of birth 8.6.1947 whereas in reality it was 8.6.1938 i.e. he wanted to pose himself 9 years young.

Mr. Gopinathan

than what actually he was and that period of 9 years would be so pronounced that no person would have committed such a mistake. So far as the case of Kirtan Behera and Dharani Rout, the two who approached the High Court for redress, are concerned, none of the two was allowed back wages from the date of their service being terminated till they were reinstated in service. Therefore, the cases of those two were disposed of in a manner similar to that of the present applicant. We are therefore, not impressed by the argument of Mr. Panda that infact there has been any differential treatment in the case of the present applicant.

5. It has next been alleged that the services of the persons junior to the applicant were regularised. Therefore, his services should also be regularised with effect from the dates of his juniors' services being regularised. He has named the persons in paragraph 4.11 of his application. In reply to this allegation of the applicant is to be found in paragraph 19 of the reply in counter. Arjun s/o Bagal no doubt was appointed later than the applicant but he being a scheduled Tribe candidate, his services were regularised and he got promotion. Mangal Das is a scheduled caste and as such he belongs to another preferential category. Of the other two Shri Ch. Appalaswamy is a Scheduled Caste person. Therefore, his case cannot be compared with that of the applicant who belongs to the general Category. Apart from that as Ch. Appalaswamy and Mangal Das were appointed earlier than the applicant, the

Recd 10/12/90

applicant was appointed on 24.1.1970 whereas those two Mangal Das and Basanta Das were appointed on 6.1.1970. In such circumstances, we have no difficulty in saying that the allegation of the applicant that the services of his juniors were regularised in preference to him cannot be accepted in the circumstances of the case. It is also pertinent to note that Annexure-2 where instructions were given to the senior Divisional Engineer, Khurda Road to examine the case of the applicant and to regularise his services if the service of any person junior to him was regularised. Thus, it cannot be said that the Railway Administration meted out any unfavourable treatment to the applicant.

6. We would hasten to add that if the services of any person other than the ones named by the applicant in the application and junior to the applicant have been regularised, the Department should take steps to regularise the services of the applicant. As there is no material to show that any junior has been given preferential treatment, we cannot but make the above observation. Since the applicant has not been able to show that the services of any of his juniors have been regularised in preference to his, the question of grant of consequential service benefits including pecuniary benefits would not arise.

7. Though in the paragraphs of the relief sought it has not been clearly mentioned that the applicant claims back wages from 1978-79 to 1989, such a prayer may be inferred from paragraph 9 i.e. interim prayer at page 8 of the application. In this connection, it may be stated

Mr. S. S. D. P.

that in the previous application ^{which} when the applicant filed in this Tribunal, this Tribunal specifically stated: therefore, in all fitness of things, rightly the reviewing authority ordered the aforesaid period to be treated as ' dies-non'. This finding/observation of this Tribunal in the earlier application would undoubtedly stare at the face of the applicant as res judicata and he cannot be allowed back wages from the date of termination of his services i.e.

1.7.1977 till he was reinstated.

8. This application is substantially dismissed except to the extent indicated above, if the services of any of the juniors of the applicant have been regularised, the services of the applicant be regularised. No costs.

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Member(Administrative)

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Member(Judicial)

