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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 42 OF 1990

Date of decision: April, 19, 1991.

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: Applicant

versus

Union of India and others

: Respondents

For the applicant

: Mr. Ramanath Das, Advocate

For the Respondents

: M/s B.Pal, B.Baus, O.N.Ghos,
N.N.Mohapatra, S.Maharan,
Sr.Standing Counsel
(Railway Admn.)

CORAM:

THE HON'BLE MR. B.R.PATEL, VICE CHAIRMAN

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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.R.PATEL, VICE CHAIRMAN: The applicant has moved the Central Administrative Tribunal (the Tribunal) for an early implementation of the seniority position in the open Line Bridge Department of the South Eastern Railway, Cuttack and its consequential benefits such as promotion, Increments and the arrears etc.

2. The applicant had earlier moved the Tribunal in T.A. No. 63 of 1986 (O.J.C. No. 1261 of 1979) dated 14th August, 1986. In that case as well as in the present case before us the facts mentioned by the petitioner were that he had been working as Casual Labourer under the Bridge Inspector (Open Line) Khurda Road and during the course of his employment as such he has worked in the construction of the Kuakhai and Birupa Bridges. In 1972, a combined Division-wise seniority list was prepared and in that list the name of the petitioner appeared much below the correct place and in the year 1974 another list was prepared in which the name of the petitioner did not appear at all. In such circumstances, the petitioner tries to make out a case of prejudice because his continuous period of work not having been taken into consideration according to Rules, the authorities had illegally deprived the petitioner to acquire temporary status. In our judgment

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in that case we have held as follows:

"From the above mentioned provisions it is crystal clear that any casual labourer has worked for a continuous period of more than four months (which has been amended) is entitled to acquire temporary status. The total length of service as casual labour should be taken into consideration for giving temporary status to the casual labour. Applying the provisions contained in the said rule to the facts of the present case it would be found from the contents of Annexure-2 that the total number of working days of the petitioner in Kuakhai Bridge was 574 and the total number of working days in Birupa was noted to be 1120 $\frac{1}{2}$. Therefore the total number of days of work in both the bridges goes to 1694 $\frac{1}{2}$ days. Annexure-2 is an extract from the portion of the seniority list prepared by the office at Khurda under S.E. Railway which has been numbered as ANE/II/CTCSMP-E/8/234 dated 26.5.1973. Without least intention to repeat we may say that this fact not having been controverted in a counter affidavit on behalf of the Respondents and Annexure-2 being a document published by the Department itself, we cannot but place implicit and full reliance on this document. There is no evidence before us indicated by the Respondents that the aforesaid period of service of the petitioner was not continuous. Therefore, on the basis of the above mentioned undisputed facts we cannot but hold that Rule 2512(i) of the Railway Establishment Manual applies mutatis mutandis to the petitioner who is entitled, under the Rules to gain temporary status and accordingly we would direct that the petitioner be given temporary status and his seniority be decided by the concerned authorities according to rules. (Underlining is for emphasis)

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The applicant has stated in paragraph-4 of his application that ~~the applicant~~ is aggrieved for non-implementation of the aforesaid judgement ~~decision on 16.8.1986~~ as yet for its consequential benefits, such as promotion, increments and the arrears etc. and has prayed in paragraph-5 for early implementation of the seniority position and its consequential benefits.

2. The Respondents in their counter have stated that the applicant is not entitled to the relief he has sought since he was working on Kuakhai and Birupa Bridges but not under the Bridge Inspector Open line, Cuttack for the year 1972 to 1974 and his name does not appear in the seniority list. They have further mentioned that he had all along worked in Special Works, such as Kuakhai and Birupa Bridges, hence he is not entitled to the benefits of the Open Line. They have in this connection quoted from the letters of various officers in their counter affidavit.

3. We have heard Mr. Ramanath Das the learned Counsel for the applicant and Mr. B. Pal the learned Senior Standing Counsel (Railway Administration) for the Respondents and perused the relevant records. The present application is nothing but a prayer for implementation of the judgment of the Tribunal in TA 63 of 1986 though

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relief sought has been somewhat differently worded. The Railway Administration despite time given to them did not file any counter to the facts alleged by the petitioner in TA 63 of 1986. In paragraph-3 of our judgment in the aforesaid case we have observed as follows:

"Since Respondents have been indolent from 1979 we do not like to make them rise from their slumber by granting an adjournment to Mr. Mohapatra".

Apparently Mr. Mohapatra was the Standing Counsel in that case. As Judgment has already been given in TA 63 of 1986 and the Railway Administration had an opportunity to make their submissions there we are not inclined to alter that judgment for what has been stated in the counter affidavit and Mr. B. Pal at the Bar. The applicant is entitled to the benefits of the judgment in TA 63 of 1986 and that judgment should be implemented within two months from the date of receipt of a copy of this judgment. If it will not be so implemented law will take its own course.

4. The application is accordingly disposed of.
No costs.

