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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 678 OF 1994

Cuttack, this the 26th day of July, 2000

Babaji Moharana

.....

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO.678 OF 1994

Cuttack, this the 26th day of July 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

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Babaji Moharana, s/o Baraju Moharana,
Vill-Madharahat, P.O.-Jagatsinghpur,
Dist-Jagatsinghpur, worked as Gangman
(Casual) under open line permanent Way
Inspector, S.E.Railways, Jajpur Keonjhar Road,
District-Jajpur

....

Applicant.

Advocate for applicant - M/s S.K.Dey
B.B.Patnaik
B.K.Mohapatra
C.R.Nandy.

Vrs.

1. Union of India, represented by the
General Manager, S.E.Railways, Garden Reach Road,
Calcutta-43.
2. Senior Divisional Engineer (Co-ord.),
S.E.Railways, Khurda Road, P.O.-Jatani, Dist.Khurda

....

Respondents.

Advocate for respondents - Mr.D.N.Misra.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.
In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has prayed
for quashing the order at Annexure-4 rejecting his
representation and for a direction to the respondents to
absorb the applicant on the basis of his past service.

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2 .The applicant's case is that he worked as casual gangman in 1970 under P.W.I, Jajpur-Keonjhar Road for 359 days continuously without any break. Thereafter, he was retrenched. He did not get further employment under S.E. Railway. He made a series of representations and his representation in 1987 to Additional General Manager was forwarded by the Personal Assistant to Additional General Manager in his letter dated 29.7.1987 to Senior Divisional Engineer, S.E. Railway, for appropriate order . In 1988 and thereafter several retrenched casual workers were re-appointed under P.W.I., Jajpur-Keonjhar Road. As the applicant's case was not considered, he came up before the Tribunal in OA No. 360 of 1988 which was disposed of in order dated 23.1.1990 (Annexure-1). The Tribunal held that the applicant's claim was barred by limitation. However, it was observed by the Division Bench that as it was not disputed that the applicant worked as a casual gangman for almost a year, the Railways were directed to consider his case sympathetically if permissible under the rules . As his case was not considered, he filed M.A.No.27 of 1992 which was disposed of in order dated 24.12.92 (Annexure-2). The Tribunal observed, while disposing of this M.A., that it is hoped that the concerned authority would give due respect to the judgment of the Division Bench and without any further delay, consider the case of the petitioner for regularisation of his service. As the applicant's case was not considered again, he filed another MA No. 594 of 1993 which was disposed of in order dated 23.3.1994 (Annexure-3)

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with the observation that the Tribunal shall be happy if Senior Divisional Engineer takes a sympathetic view of the case of the applicant and give him some work. Thereafter his case was apparently considered in order at Annexure-4 and his representations were rejected. The applicant states that in 1987, pre-1981 retrenched casual workers were given one time exemption for consideration of their cases for re-engagement. The applicant's case is that he accordingly applied and appeared at the screening, but the respondents have erroneously held that he did not appear at the screening. It is also stated that some of his juniors have been considered and regularised and in view of this, the applicant has come up with the aforesaid prayer.

3. The respondents in their counter have admitted that the applicant was a casual employee who worked under Permanent Way Inspector, Jajpur-Keonjhar Road and was retrenched in 1971, and no further engagement was given to him after that. In 1987 a panel was prepared of the retrenched casual workers for their engagement for monsoon patrolling. Those retrenched casual workers who attended the screening test were empanelled. The applicant did not attend the screening test and therefore, he could not be empanelled. The applicant filed OA No. 360 of 1988. The respondents have mentioned about the orders of the Tribunal in OA No. 360/88, MA 27/92 and MA No. 594/93. The respondents have stated that in MA No. 27/92 the applicant had falsely averred that three of his juniors Raghunath, Biswanath and N. Venkat Rao

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who were retrenched casual labourers have been re-engaged.

The respondents have stated that these three persons are much senior to the applicant, having worked for 621, 715 and 506 days whereas the applicant has worked only for 359 days. It is further stated that in obedience to the order of the Tribunal, the Senior Divisional Engineer, Khurda Road, gave a personal hearing to the applicant and after hearing the applicant, a reasoned order at Annexure-4 was passed. The prayer of the applicant for engagement could not be acceded to as the Division has no power as per the present policy to re-appoint casual workers. The respondents have also stated that the case of the applicant is barred by limitation. He did not appear at the screening test in 1987 and therefore, he cannot be re-engaged. The question of his regularisation in Railway service therefore does not arise. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri B.B.Patnaik, the learned counsel for the petitioner and Shri D.N.Misra, the learned Additional Standing Counsel appearing for the respondents and have also perused the records. Learned counsel for the petitioner has filed the order of the Tribunal in dated 2.4.98 disposing of OAs 153 & 154/97 which has been taken note of.

5. The admitted position is that the applicant worked for 359 days as casual labourer under Permanent Way Inspector, Jajpur-Keonjhar Road. He was retrenched in 1971. Thereafter he was not re-engaged. The applicant states that he made several representations for re-engagement. The

respondents have stated that he never turned up for getting re-engagement. As regards the screening of pre-1981 retrenched casual labourers in 1987, the applicant has stated that he applied and also appeared at the screening test. The respondents have submitted that the applicant did not appear at the screening test. In the impugned order at Annexure-4 it has been mentioned that during personal hearing given to the applicant he could not submit any proof of his attending the screening in 1987. It is for the applicant to prove before the Senior Divisional Engineer (Co-ordination) who gave him the personal hearing to prove that he did appear at the screening test in 1987. As he has failed to prove the same before the Senior Divisional Engineer (Co-ordination) and has also not filed any document in this O.A. in support of his contention of having attended the screening test in 1987 it cannot be held that he appeared at the screening test in 1987. In the impugned order at Annexure-4 Senior Divisional Engineer (Co-ordination) has stated that with regard to his past service the applicant produced a torn service card the authenticity of which could not be established then. This conclusion of the Senior Divisional Engineer (Co-ordination) cannot be accepted because the respondents in their counter have admitted that the applicant was a casual labourer engaged in 1970 and retrenched in 1971 after he had put in 359 days of engagement. In their order dated 23.1.1990 in OA No. 360/88 the Tribunal did not issue a direction for

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for re-engagement of the applicant according to his seniority. The Tribunal had also taken note of the assertion of the applicant that he had filed representations during 1971 to 1975 at regular intervals. The Tribunal had also noted that receipt of those representations has been denied by the Railway Administration. As the Tribunal had held that his claim is barred by limitation, obviously, he cannot be regularised in service. But the Tribunal had observed that as a retrenched casual labourer, he should be given some engagement. The Senior Divisional Personnel Officer in his order at Annexure-4 has stated that the applicant's past service could not be established. We have already held that this is not correct because in their counter in the present OA the respondents have admitted that the applicant had put in 359 days of work as casual labourer under Permanent Way Inspector, Jajpur-Keonjhar Road. In view of this, as a retrenched casual labourer he will have preference over fresh recruits from the open market. In our order dated 2.4.1998 disposing of OA Nos. 153 and 154 of 1997 we had indicated that the names of the petitioners in those cases who were also retrenched casual labourers should be included in the live casual register and engagement should be offered to them as and when available in terms of their position in the live casual register. On the same line in the case of the present applicant before us it is ordered that his name be included in the live Casual register and he may be given preference over fresh faces from open market when such persons are engaged as casual labourers. This will of course be subject to the applicant's physical fitness and age at the time of such re-engagement.

6. In the result, the Original Application is disposed of in terms of the observation and direction above but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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SOMNATH SCM
VICE-CHAIRMAN