

7

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.158 OF 1995

Cuttack, this the 21st day of January, 1998

Shri Laxmeedhar Behera and others Applicants

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.1.98

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.158 OF 1995

Cuttack, this the 21st day of January, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

...

1. Shri Laxmeedhar Behera,
s/o Purna Chandra Behera, At/PO-Pangatira,
Via-Parjang, Dist. Dhenkanal.
2. Shri Birendra Kumar Nayak,
s/o Arjuna Nayak, At/PO-Kotpad, District-Koraput.
3. Shri Kasi Venkatarao Acharya,
S/o Kasi Jaga Rao, Trinath Mandir Street,
P.O./Dist. Koraput.
4. Shri Nalinikanta Sethy, S/o Maguni Charan Sethy,
At-Raghabapur, P.O-Mandia, Dist. Kendrapara.
5. Shri Debaraj Rout, S/o Mahantara Rout,
AEF Daily Market, Sunabeda-1, Dist. Koraput.
6. Smt. Snehamayee Bibasini Dukku, D/o Brajamohan Dukku,
At/PO-Kotpad, Dist. Koraput.
7. Shri Hiranmaya Jati, s/o Kangali Charan Jati,
At/PO-Nathapur, Dist. Jajpur.
8. Shri Sabat Kumar Majhi, S/o Eswara Majhi, Hal Township,
Sunabeda-2, Dist. Koraput.
9. Shri M. Prasad Patnaik, S/o MTR Patnaik, At/PO-Parvathipuram
Dist. Srikakulam (AP)
10. Shri Tankadhar Takri, S/o Pitabas Takri, Vill-Podapallama,
P.O-Dumuriput, Dist. Koraput.
11. Shri Prakash Khora, S/o Narayan Khora, Vill-Kolatiguda,
P.O-Dasamantapur, Dist. Koraput.
12. Shri Saheb Khora, S/o Laxman Khora, Vill-Kalatiguda,
Via-Dasamantapur, Dist. Koraput

Somnath Som
21.1.98

Contd....P/2

(9)

.-2-

13. Shri Belabhadra Majhi, s/o Mulia Majhi, Vill-Balda, P.O-Dumuriput, Dist.Koraput.
14. Shri Pithu Jani, s/o Gora Jani, Vill-Balda, PO-Dumuriput, Dist.Koraput.
15. Maguni Charan Mangaraj, s/o Chand Mangaraj, Plot No.327, Bhimtangi H.B.Colony, Bhubaneswar-2.
16. Krishna Prasad Sahu, S/o Nilamani Sahu, At/PO-Naugada, Via-Dharakote Dist.Ganjam.
17. Shri Seepana Appala Naidu, S/o S.Suryanarayana, Hanuman Market, At/PO-Sunabada-1, Dist.Koraput.
18. Shri Krishna Gopal Debnath, S/o Radhakrishna Debnath, D.P.Camp, At/PO-Sunabada-3, Dist.Koraput.
19. Shri Jagu Challan, S/o Budu Challan, At/PO-Bodaput, Via-Dumuriput, Dist.Koraput.
20. Shri Jayaram Jani, S/o Hari Jani, At-Janjariya Guda, PO-Semiliguda Dist.Koraput.
21. Shri Kolluru Venkata Satya Surya, Durga Prasad Sharma, s/o Narasimha Murty, NAD Colony, PO-NAD PO Visakhapatnam-9 (AP)
22. Sada Jani, S/o Budha Jani Vill-Balda, P.O-Dumuriput, Dist.Koraput.
23. Shri Ghasi Sukiya, S/o Dhana Sukiya, Vill-Balda, P.O-Dumuriput, Dist.Koraput.
24. Sukadev Raut, S/o Nagamani Rout, Vill-Dahimachha, PO-Badukul, Via-Marshaghai, Dist.Kendrapada.
25. B.Gourisankar Rao, S/o B.T.Raju, Gandhi Nagar At/PO-Rayagada, Dist.Rayagada.
26. Narayana Khora, S/o Jamadhar Khora Rajeev Colony, PO-Sunabada-1, Dist.Koraput

.....APPLICANTS

By the Advocates

- M/s Ramesh Ch.Behere & Arjun Ku.Predhan.

Submitted
21.1.98

Vrs.

1. Union of India, represented by the Secretary, Ministry of Defence, New Delhi.
2. Chief of Naval Staff, Naval Headquarters, New Delhi.
3. Flag Officer, Commander-in-Chief Headquarters, Eastern Naval Command, Visakhapatnam, Dist. Visakhapatnam.
4. Deputy General Manager, Naval Armament Depot, Sunabeda, PO-763 001.

.....Respondents

By the Advocate - Mr. Akhaya Ku. Mishra,
Addl. Central Govt. Standing Counsel.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the twenty-six applicants have prayed for quashing the order, dated nil, at Annexure-5 rejecting the representations dated 24.1.1994 and 17.9.1994 of applicant no.1 and for regularising the services of the applicants from the date of their first appointment and for giving them all consequential benefits.

2. The short facts of this case are that the applicants were given offer of appointment in temporary casual capacity and accordingly they joined Naval Armament Depot, Sunabeda. One offer of appointment issued to applicant no.1 has been enclosed as Annexure-1. This shows that the appointment was from 8.10.1987 to 30.12.1987 and the services were terminable at any time without notice even before the above period. The applicants' case is that they have been continuously engaged in casual

Somnath Som.
21.1.98

capacity from the date of their initial engagement with one or two days break after every spell of engagement lasting eighty-nine days. The details of days of engagement and the break of one or two days for the applicants are available at Annexure-2. Annexure-2 also indicates the dates on which the services of the applicants have been regularised. In this petition, the applicants have prayed that their services should be regularised from the date of their initial engagement along with consequential service benefits. After their regularisation, they made representations to respondent no.3. In his representation at Annexure-4 applicant no.1 submitted that services of certain other persons similarly placed have been regularised from the dates of their initial appointment in pursuance of the orders of the Central Administrative Tribunal, Cuttack Bench, in O.A.Nos.112 of 1993 (decided on 17.11.1993) (S.N.Pati and another v. Union of India and others) and O.A.No.197/93 (decided on 1.12.1993) (B.P.Samanta and others v. Union of India and others) and he wanted that the same benefit should be extended to him. In Annexure-5 rejecting his representation, the departmental authorities have informed applicant no.1 that as per existing instructions/administrative order, Court judgments are applicable only in respect of the petitioners covered therein and as the applicant was not a petitioner in the earlier cases in which Central Administrative Tribunal, Cuttack Bench, have passed the orders for regularising the services of certain other persons from the dates of their initial engagement, the benefit of the same judgments pronounced in O.As. filed by others cannot be extended to him. In view of this, the applicants have come up with the aforesaid prayers.

11
Jomun M. Sam.
21.1.98

12

-5-

3. Respondents in their counter have relied upon Ministry of Defence's letter dated 26.9.1996, as amended by letters dated 6.3.1967 and 24.11.1967. In these letters, it has been laid down that in cases involving break in casual service, the benefits of the orders will be admissible from the commencement of only the latest spell of continuous service without break and the period of service rendered earlier to the break would be ignored even if their duration may have been more than a year. For the purpose of adjudicating this petition, it is not necessary to further go into the averments of the parties.

4. I have heard the learned lawyer for the applicants and the learned Additional Standing Counsel, Shri Akhaya Kumar Misra appearing on behalf of the respondents and have also perused the records.

5. A matter similar to the subject-matter of this petition came up before the Hon'ble Supreme Court in the case of Union of India and others v. M.Dharani and others, 1997 SCC (L&S) 1484. In that case, relief granted by the Administrative Tribunal directing regularisation from the date of initial appointment ignoring the breaks in service was held as not sustainable because the instructions expressly provided that seniority of employees appointed to regular establishment will be reckoned with only from the date of regular appointment. In view of this, going by the above decision of the Hon'ble Supreme Court, I hold that the applicants have no case under the instructions to get their services regularised from the dates of their initial engagement. No doubt, this works out

Sanjay M. Jm.
21.1.98

adversely and unjustly against some of the petitioners. To give an example, from Annexure-3 to the O.A., we find that four persons including applicant no.1 in the present O.A. were regularised from 1.1.1992. One of these four persons, R.N.Pradhan, whose services were regularised from 1.1.1992 came up before the Tribunal in OA No.197/93 (supra) where he was applicant no.3 and the Tribunal in their order dated 1.12.1993 directed that the deemed date of regularisation of services of all those petitioners in that case would be with effect from their initial date of appointment. Accordingly, R.N.Pradhan, whose services were regularised on the same date as applicant no.1 in this case, got his services regularised from the date of his initial appointment by virtue of the above order of the Tribunal in OA No.197/93. But the same facility has not been allowed to applicant no.1 and presumably the other applicants in this case. In this connection, it will be worthwhile to quote the observations of their Lordships of the Hon'ble Supreme Court in the case of M.Dhareni and others (supra) :

"5. The respondents also drew our attention to a letter of 26.6.1995 issued by the Ministry of Defence under which judgments of the Central Administrative Tribunal, New Bombay Bench in applications which are mentioned therein, were implemented. The letter states that the question of extending the benefits of the above judgments to non-petitioners who are similarly placed has also been considered by the Government in accordance with the Central Administrative Tribunal's directives and it has been decided to implement the Central Administrative Tribunal, Bombay's directions. This letter, however, refers to applications made in 1988 before the Central Administrative Tribunal, New Bombay Bench. The judgments of the Central Administrative Tribunal, New Bombay Bench, have not been produced before us and we are not in a position to consider whether any directions given in those judgments would be applicable to the respondents herein or not. Hence we can only observe that if the respondents are entitled to

13
J. S. Narain J. S. Narain
21.1.98

the benefit of the letter of 26.6.1995 they will be entitled to make a representation to that effect before the appropriate authority who will decide the same in accordance with law."

From the above observation, it appears that on 26.6.1995 some order has been issued by Ministry of Defence under which order of Central Administrative Tribunal, New Bombay Bench, has been made applicable to non-petitioners similarly placed. Going by the observation of their Lordships in the above quoted paragraph, I direct that in case the present applicants are entitled to the benefit of letter dated 26.6.1995, then they should make a representation to that effect before the appropriate authority who will decide the matter in accordance with law and departmental instructions. Needless to say that if the petitioners are aggrieved by the order they will be at liberty to approach the Tribunal.

6. With the above observation, the O.A. is disposed of.

No costs.

Somnath Som
(SOMNATH SOM) 98
VICE-CHAIRMAN