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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 29 of 1995
Cuttack this the 26th day of February, 1998

J. Venkata Raman & another ... Applicant(s)

-VERSUS-

Union of India & Others .1. Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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

S.K. Agarwal
(S.K. AGARWAL) 26/2/98
MEMBER (JUDICIAL)

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(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 29 of 1996
Cuttack this the day of February, 1997

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. S.K.AGARWAL, MEMBER (JUDICIAL)

...

1. J. Venkata Ramana, S/o.
J.Appa Rao, At/PO:Rayagada
Dist:Koraput
2. P.Ravi Prasada,
S/o.B.Janardhan Rao,
At/PO:Rayagada
Dist :Koraput

...

Applicants

By the Advocate

M/s.G.A.R.Dora
V.Narasingha

-VERSUS-

1. Union of India through
the Chief Administrative
Officer (Construction),
S.E.Railway
At-Chandrasekharpur
Po-Bhubaneswar
Dist:Khurda
2. Senior Personnel Officer
(Construction) S.E.Railway
Visakhapatnam(A.P.)
3. Senior Project Manager (KR-I)
S.E.Railway, Rayagada
Dist:Koraput

Respondents

By the Advocate

M/s.B.Ku.Behura
D.N.Mishra

O R D E R

MR.S.K.AGARWAL, MEMBER (J):

This is an application under Section 19

of the Administrative Tribunals Act, 1985, with the prayer
that respondents may be directed to appoint/engage the
applicants as casual employees forthwith.

2. In brief the facts of the case as stated are

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that the applicants have worked as casual Khalasis (Jungle Cutters) for 336 and 297 days respectively in Waltair construction Division under the S.E. Railways and they were retrenched for want of work. A list of Jungle Cutters including the applicants who have completed more than 180 days service is also filed with this application. It is stated that no works have been undertaken by the department and the department, as a matter of rule, should engage on preferential basis the retrenched staff. It is also stated that one Mr. T. Joseph have worked for less than 180 days whose name does not appear in Annexure-1 and has been re-engaged as per order dated 15.3.1990. It is also stated that many juniors have been re-engaged totally ignoring the legitimate claims of the applicants and many freshers who did not work in the Railway at all have been appointed in Class IV service on casual basis ignoring the legitimate claims of the applicants. It is also stated that after repeated representations a meeting was held between the representatives of the Union and the Chief Administrative Officer, Chief Engineer, Chief Personnel Officer on 8.3.1989 and it was decided that retrenched Jungle Cutters putting in 180 days and more should be appointed against future vacancies, but freshers and persons putting in less than 180 days service have been reengaged. The applicants submitted representations to the Senior Project Manager. It is also stated that on the representations made by the applicants, the

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Senior Project Manager, as per his letter dated 4.8.1993 has requested the Chief Project Manager to appoint the applicants on casual basis, but with no result. It is, therefore, requested that respondents be directed to appoint/engage the applicants as casual employees forthwith.

3. On behalf of Respondents 2 and 3 counter was filed. It is stated in the counter that there is no application by the applicants to provide them engagement and if so, when it was refused and by whom? It is also stated that the applicants have failed to assert as to any representations made by themselves for engagement and if so, such representations are disposed of or are pending. It is also submitted that the applicants have come after eight years before this Tribunal after ~~sixteen~~ retrenchment. Therefore, the application is hopelessly barred by limitation. The applicants did not file the copies of their order of appointment or of retrenchment. The list at Annexure-1 doesnot appear to be an authentic document so also Annexure-A/3, prima facie does not bear the signature of any officer of the Respondents nor does it show as to when and where the persons were appointed. The applicants failed to give particulars of any rule policy or/enforceable in law as they have alleged in the application. Annexure-A/4 appears to be an office note and no right to relief can be found out upon

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such inter-departmental correspondence or note. It is also stated that the persons whose names are contained at Annexure-A/2 or Annexure-A/3 have not been impleaded as necessary parties to the application. Therefore, the applicants cannot complain of the appointment of persons under Annexures-2 and 3. The alleged appointments as per applicants, have been made as back as in the year 1990 and the applicants have filed this application in the year 1995. Therefore, claim of the applicants is a stale claim and this Tribunal should not interfere after such a long lapse of time. It is also stated that the claim of the applicants that they have worked as casual khalasis for number of days has not been supported by any document. The Survey and Construction work was undertaken in connection with Koraput-Rayagada broad gauge line and after that Engineers of the Survey and Construction Organisation engaged labourers locally available for Jungle cutting wherever necessary on account of the terrain, from out of the imprest money available with them and the applicants were engaged as such labourers and not as casual Khalasis as claimed by them. It is admitted that some of the jungle cutters in Survey and Construction were considered for engagement against casual vacancies arising, if they had put in more than 180 days of service.

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It is further stated that engagement of the applicants and others in this way does ~~not~~ ~~does~~ not create any right in favour of them for engagement as casual labourers and there is no bar under any service rule or law in engaging casual labourers in public interest or in exigencies of work. In this way the respondents have requested the Tribunal to dismiss the application filed by the applicants with costs.

4. We have heard the learned counsel for both sides and perused the whole record.

5. It is submitted by the learned counsel for the applicants that the applicants have worked for more than 180 days with the respondents, but inspite of this, they have not been considered for reengagement wheras their juniors and freshers have been engaged as casual labourers by the respondents. It is submitted that the case of the applicants should also be considered and suitable directions be issued to respondents for their reengagement.

6. On the other hand learned Add.Standing Counsel on behalf of Respondents, while opposing the arguments putforarded by the learned counsel for the applicants submits that the claim of the applicants is not maintainable. It is rather time barred. He has also argued that the respondents have passed orders ² ~~to~~ banning the absorbtion of ex-Jungle Cutters working in Koraput-Rayagada Construction Division, vide its

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order dated 20.10.1992 (Annexure-R/1). Hence there is no scope for consideration to the engagement of the applicants.

7. From the pleadings it appears that the applicants never offered themselves for engagement as Jungle Cutters and no representation was filed by them till 1993 before the competent authority to consider their grievance. It also appears that the applicants worked as Jungle Cutters during the period 1985-87, but no order of appointment and retrenchment have been produced before this Tribunal. From the counter filed by the respondents it appears that Field Engineers of Survey & Construction Division, Koraput-Rayagada Broad Gauge Line have engaged certain labourers locally available for completing the said project and payment was made to them out of the imprest money. It also appears that the nature of the job was contractual. Further, it is seen that the applicants were never engaged as Khalasis as has been stated by them, but it appears that the applicants were engaged as casual labourers on the basis of their engagement earlier. The applicants have also placed reliance on Annexures-1, 2 and 3. But on the perusal of these annexures it appears that Annexure-1 is only a rough statement prepared by the office. On the perusal of Annexures-2 and 3 it is not acceptable that respondents while ignoring

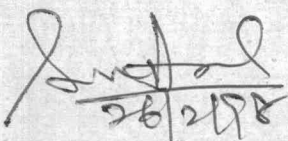
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the claims of the applicants re-engaged their juniors.

3. Learned Counsel for the applicants has also referred to Railway's Establishment Manual No.E(NG) 11-80/CL/25, dated 22.10.1980, NR 7677, page 769 which reads as under:

"The principles of 'Last go first Come' will be followed while re-engaging CLs. i.e. those who were discharged last, will be the first to be engaged. This is based on the corollary of the principle of discharge of C.L., i.e. 'first come, last go', that the senior man will be the last to be discharged, and as such, first to be re-engaged. If a person complains about his non-engagement, his record of service may be checked and engaged in preference to juniors if his claim is found correct".

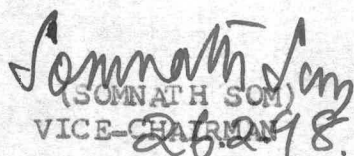
9. In view of the above, we are of the opinion that the applicants have failed to establish their case for re-engagement as casual labourers - (Jungle Cutters). The applicants have also failed to prove that the respondents have decided in a meeting on 08.03.1989 to engage the Jungle Cutters only against any future vacancy of casual labourer as no such decision has been produced before the Tribunal. Therefore, this averment of the applicants does not hold good.


10. Casual Labourers are engaged only for the intermittant period when the work is available. They are dis-engaged when the project work is over. In the circular dated 22.10.1992, the Respondents have made it very clear that there is hardly any scope for engagement of ex- Jungle Cutters. We are, therefore, of the view that the applicants

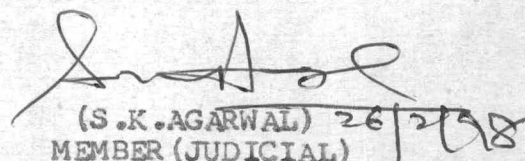
have failed to make out any case for their re-engagement.

11. The applicants have filed this application in the year 1995 claiming on the basis of their engagement made in the year 1985-87, but after this period of 1985-87, they have never offered themselves to the respondents for their engagement. No representation was filed by the applicants before the competent authority to consider their claim till 1993, but the applicants have approached this Tribunal after a long lapse of time. In *Ratan Chandra Samanta & Others v. Union of India & Others* (AIR 1993 SC 2276) it was held by the Hon'ble Apex Court that if a person comes after along lapse of time for enforcement of his right then by lapse of time itself he loses his right. In the instant case the applicants have failed to prove their claim for re-engagement as casual labourers. More over, the claim of the applicants is a stale claim. Therefore, on the basis of above all, we are of the opinion that the applicants have failed to make out any case for their re-engagement as casual labourers.

12. We, therefore, reject the application filed by the applicants with no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN

B.K.Sahoo/C.M.


(S.K.AGARWAL) 26/2/98
MEMBER (JUDICIAL)