

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 325 OF 1998
Cuttack this the 18th day of Oct. /2000

Bishnu Charan Jena

...

Applicant(s)

-versus-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAMAN 18.11.2000

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

15
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 325 OF 1998
Cuttack this the 18th day of October/2000

CORAM:

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

...

Sri Bishnu Charan Jena,
S/o. Late Nunguri Jena,
Village/PO: Ranapur,
District - Jajpur - presently working
as Helper (Khalasi) in the Office of the
Assistant Engineer(Elect), Bhubaneswar
Central Electrical Sub-Division No.1,
Qr.No. H/60, Unit - IV, Bhubaneswar

...

By the Advocates

Applicant
M/s.N.K.Mishra
M. Rath
S.K.Mishra

-VERSUS-

1. Union of India represented through
Director General of Works, Nirman Bhawan
New Delhi
2. Superintending Engineer, Patna Central
Electrical Circle, CPWD, Rim Jhim Building
Khajpura Bailey Road, Patna-800014
3. Executive Engineer(E), Bhubaneswar Central
Electrical Division, C.P.W.D., Unit-VIII,
Bhubaneswar-751012
4. Assistant Engineer(Elect) Bhubaneswar
Electrical Sub-Division No.1, Qr.No.H/60,
Unit - IV, Bhubaneswar-751001

...

By the Advocates

Respondents
Mr.B. Dash
Addl.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : In this Original Application
for regularisation or in the alternative for conferment of
Temporary Status the case of the applicant is that he has been
working as Helper on daily rated basis since 2.5.1990 continuously
and uninterruptedly under the Assistant Engineer (Elect.), C.P.W.D.,
Bhubaneswar Sub-Division (Respondent No.4. He has been receiving

16
wages by signing on hand-receipts. Even though he has been attending the job of Peon, ~~and~~ he has been shown and designated as Helper (Electrical) and all along been paid wages in respect of employee meant for that category. His name has been duly registered in the Employment Exchange bearing Registration No. U/3773/89.

The Government of India in the Department of Personnel and Training formulated a scheme for grant of Temporary Status and regularisation of casual workers in the Ministry's letter dated 10.9.1993, which came into force with effect from 1-1.1993 (Annexure-1 series). As per this scheme, Temporary Status would be conferred on all casual labourers, who are in employment on the date of issue of the Office Memorandum, and who had rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in case of offices observing 5 days' week). Such conferment of Temporary Status would be without reference to the creation/availability of regular Group D posts. Casual labourers, who acquired Temporary Status would not however, be brought on to the Permanent Establishment unless they are selected through a regular process of selection for Group D post. Conferment of Temporary Status would not involve any change in the duties and responsibilities of casual labourers. The engagement will be on daily rates of pay and need basis. He can be deployed anywhere within the Recruitment Unit/Territorial Circle on the basis of availability of work. However, Temporary Status would entitled the casual labourers the benefit of wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group - D official, including D.A.,

H.R.A. and C.C.A. Even benefit of increments at the same rate as applicable to Group D employees would be taken into account for calculating prorata wages for each year of service subject to performance of duties for at least 240 days or 206 days, as the case may be. Leave entitlement will be on prorata basis at the rate of one day for every 10 days of work. After rendering three years of continuous service or after conferment of Temporary Status casual labourers would be treated at par with temporary Group D employees for the purpose of contribution to the G.P.F. and for getting the benefit of sanction of Festival Advance and so on. They would be also entitled to Productive-linked Bonus/ad-hoc bonus at the rates as applicable to casual labourers. 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after regularisation. These in substance are the benefits conferred in the Scheme.

After the scheme was made applicable to the C.P.W.D., the applicant submitted several representations for conferment of Temporary Status but in vain. On 10.12.1997 Respondent No.1 in his Memorandum issued a clarification that the principle of Equal Pay for Equal Work will be applicable to daily rated Muster roll/hand receipt workers. The applicant thereafter immediately submitted a representation to Respondent No. 4 for revision of his wages. Respondent No.4 in his turn sought instruction from Respondent No.3, who in turn sought clarification from Respondent No.2, who did not take into account the period of service rendered by the applicant. Hence this Application.

2. Respondents (Department) in their counter deny that the applicant was ever working as casual labourer under them. According to them, the applicant was undertaking the work of

Department intermittantly as a petty contractor, the details of which have been furnished in the Chart under Annexure-A. Thus the applicant was engaged as a petty contractor ^{on} hand receipt basis and had never done any work as a Peon. As a petty contractor his attendance was never marked. In fact there is no post of Helper (Electrical) in the Department.

3. In the rejoinder the applicant denied that he was engaged by the Department as a petty contractor and reiterated the facts as averred in the Original Application.

4. On the direction of this Bench on 9.2.2000, Respondents filed some documents which have been kept on record. Thereafter by way of clarification to these documents, the Respondents filed an additional counter.

5. On 5.8.1999, the applicant filed a Misc.Application 488/99 stating that after receipt of notice in this Original Application, the Department subjected him to lot harrassment. On 4.7.1999 in connection with certain personal work he had gone to his native place at Jajpur. Due to maleria fever he could not join duty on 5.7.1999. On 8.7.1999, he intimated to Respondent No.4 through a letter requesting him to grant leave upto 11.7.99 along with a Medical Certificate(Annexures-5 & 6). When he attended the office to resume duties on 12.7.1999, he was not allowed to do so. Hence in this Misc.Application the applicant prayed for issue of direction to respondents to allow him to resume duties with back wages and benefits. The Respondents opposed this prayer in the Misc.Application stating that as a petty contractor question of applicant's resuming duties would not arise. This Misc.Application has been heard along with the Original Application and ordered to be disposed of at one go.

6. We have heard Shri S.K. Mishra, the learned counsel for the applicant and Shri B.Dash, the learned Addl.Standing Counsel appearing for the Respondents (Department). Also perused the records.

7. There is no dispute that a scheme as narrated above under Annexure-1 series has been formulated by the Government and this scheme has been made applicable to the C.P.W.D. It is also not in dispute that the applicant has been on engagement now and then from May/90 onwards. The question for consideration is whether he was in engagement as casual labourer on daily rated basis or as a petty contractor. If he was on daily wage basis and had completed 240 days engagement at least in one year by the time this Scheme was made applicable to the C.P.W.D., he would be entitled to conferment of Temporary Status. In this connection it is relevant to take note of letter dated 19.10.1995 addressed by the Executive Engineer to the Seuperintending Engineer in regard to regularisation of services of daily rated workers engaged after 19.11.1995. Xerox copy of this letter was filed along with other letters by the Department on 9.2.2000 as stated above. In this letter along with this letter there is an enclosure containing the details of engagement of the applicant from May/90 to October/95. The applicant was described as belonging to Scheduled Caste community and shown as working as Helper on daily rated basis through hand receipts. His Employment Exchange Registration Number renewed upto 7.7.1995 also finds mention. Further it was shown that in the year 1990 the applicant was engaged for 119 days; 184 days in 1991; 283 days in 1992; 365 days in 1993; 365 days in 1994 and 292 days in 1995 upto 19.10.1995. There is no mention in this letter that he had undertaken the work of the Department as a petty

contractor at any point of time. On the other hand the letter reveals that he was engaged on casual basis and wages were paid to him on daily rated basis through hand receipts. This letter was issued in response to letter dated 29.9.1995 received from Calcutta Head Office, a copy of which also was filed on 9.2.2000. In this letter dated 29.9.1995 the Executive Engineers of different Divisions were asked to submit necessary particulars of daily rated workers engaged after 19.11.1985, when a ban order was admittedly imposed for further engagement of casual workers. In the additional counter filed by the Department clarifying these letters it has been pointed out that the letter addressed to the Superintending Engineer is only an extract concerning the applicant taken out from the hand receipt register. In fact particulars of the applicant should not have been intimated and the error was actually committed by the then Executive Engineer, Bhubaneswar Division and this error was detected at the higher office and that is why the name of the applicant was not sent by the Chief Engineer to the Director General (Works) C.P.W.D. That hand receipt register would show the nature of different works, quantum of payment and so on, maintained for the execution of petty works. In other words, what the respondents mean to say that this letter containing the particulars of the applicant addressed to the Calcutta Head Office contains the number of days in each year the applicant had taken up the work of the Department as a petty contractor along with the amount received from the Department. However, the letter dated 19.10.1995 addressed to the Superintending Engineer, Calcutta by the Executive Engineer, Bhubaneswar Division nowhere reveals the amounts paid to the applicant. As

earlier stated, all that the letter reveals the number of days the applicant was engaged through hand receipts from the year 1990 till 19.10.1995 and there is no mention that the applicant had ever taken up any work of the Department as a petty contractor. The particulars of engagement mentioned in this letter would clearly reveal that from 1990 upto the end of 1992 the applicant had the engagement of 686 days and in the years 1993-94 he was engaged on all the 365 days in each year. Even on the basis of the clarification made in the additional counter all that can be seen that the applicant had undertaken the works of the Department as a petty contractor on all these days. In other words there should not be any dispute with regard to number of days mentioned in this letter. The only dispute centres round is whether he had taken up the work of the Department on all these days as a petty contractor or engaged as a casual labourer through hand receipts basis. At this stage it is relevant to refer to Annexure-A which as per the averments in the main counter contains the relevant particulars of the applicant as a petty contractor of the Department. This Annexure-A starts from May/90. At very many places the applicant was shown for his services as a Peon and was also for arrangements of files etc. and distribution of Dak and so on. Almost in each month without showing the number of days sweeping, charges have been shown to have been paid at a consolidated rate of Rs.50/- for other works like arrangement of files, work of service as Peon and so on, At least upto March/94, it would be clear that the applicant was paid at the rate of Rs.20/- per day. For instance in May/90, he was shown to have been engaged in this type for 16 days and paid Rs.320/-. Similar is also the case in June/90. In August/90 for 15 days he was paid Rs.300/- and so also in September, 1990.

From July/92 onwards number of days have been indicated. But in July and August/92 he was paid Rs.300/- in each of the month which would mean that the applicant was engaged for 15 days in each of these two months. From September/92 onwards he was paid Rs.400/- in each month which would go to show that from those months onwards the applicant was paid for 20 days of work in each month. In this way if the number of days are calculated under Annexure-A the number of days of work entrusted upon the applicant would be 120 days in 1990, 151 days in 1991, 210 days in 1992, 222 in 1993 and 229 in 1994. These days under Annexure-A are completely different from the days shown in the aforesaid letter dated 19.10.1995 addressed to the Calcutta Head Office, as indicated above. Thus it is clear that the stand of the Department is not at all consistent. The fact however, remains that letter dated 19.10.1995 addressed to the Calcutta Head Office, as clarified in the counter is supposed to be an extract of one of their official registers and this letter, as earlier stated does not at all reveal that the applicant had ever taken up the work of the Department as a petty contractor. On the other hand the letter is clear that the applicant was engaged in each year as per the number of days mentioned therein on daily wage basis and paid wages through hand receipts and that the applicant had the Employment Registration bearing number U/3773/89. In other words, this letter would clearly establish that the applicant was in casual engagement from May/90 onwards and he was in engagement for more than 240 days in the years 1992 as well as 1993. This being so, as per the Scheme, the applicant is entitled to conferment of Temporary Status.

* Question of regularisation will come up only in respect of casual workers acquiring Temporary Status and subject to

availability of vacancy. However, as earlier discussed, the applicant has made out a convincing case for conferment of Temporary Status as per the scheme with effect from the date it was made applicable to the C.P.W.D.

9. For the reasons discussed above, we direct the Respondents to confer Temporary Status on the applicant as per the scheme referred above with effect from the date when the scheme was made applicable to the C.P.W.D. along with consequential benefits mentioned in that scheme. We also direct the Respondents to consider the case of the applicant for regularisation subject to availability of vacancy in future.

10. Since we held that the applicant had never taken up the work of the Department as a petty contractor, the Department could not have denied him engagement from 12.7.1999 onwards. Misc.Application No.488/99 is disposed of accordingly.

11. In the result, Original Application is allowed as per observations and directions made above, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.10.2000

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)
18.10.2000

B.K.SAHOO//