

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 352 Of 1998
Cuttack, this the 19th day of April, 2000

Banamali Maity ... 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
19.4.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 352 OF 1998
Cuttack, this the 19th day of April, 2000

CORAM:

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

Banamali Maity, aged about 34 years, son of late Asutosh Maity, village Kaliswar, PO-Dehati, Dist.Midnapur, West Bengal

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Applicant

Advocates for applicant - M/s R.B.Mohapatra
N.R.Routray
M.M.Senapathy

Vrs.

1. Union of India, represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta-43 (WB)
2. Senior Divisional Engineer-II, South Eastern Railway, At/P/O-Chakradharpur, Dist.Singhbhum (Bihar)
3. Assistant Engineer-I, Bandhomunda, SE Railway, PO/PS-Bandomunda, Dist.Sundargarh

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Respondents

Advocate for respondents - Mr.D.N.Misra
S.C.(Rly).

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 a direction to the respondents to regularise his services and for giving him temporary status to him with effect from 5.3.1988, the date of his initial engagement.

2. The respondents have appeared and filed counter and the applicant has filed rejoinder. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railway) for the respondents and have also perused the records.

3. For the purpose of considering this petition it is not necessary to go into too many facts of this case.

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According to the petitioner he was engaged as a Casual Gangman under C.P.W.I-I, Bandomunda, on 5.5.1988 and worked till 16.8.1988. On 17.8.1988 without any reason his engagement was terminated. The applicant made various representations for getting re-engaged but no consideration was shown to him for several years. He was again engaged as a Casual Gangman from 1.7.1992 to 16.10.1992. His further representation made on 18.2.1993 did not yield any result. The applicant has stated that in a similar matter Casual Labourers who had been granted temporary status were disengaged and this became subject-matter of dispute before the Industrial Tribunal who in their Award dated 18.12.1992 (Annexure-A/3) held that services of casual labourers with temporary status cannot be terminated. This proposition has also been upheld by the Hon'ble Supreme Court in the case of Union of India v. Basant Lal and others, 1992 AIRSCW 3124. It is submitted that the applicant is entitled to be granted temporary status and in view of this, his services could not have been terminated. In the context of the above facts, the applicant has come up in this petition with the prayer referred to earlier.

4. Respondents in their counter have stated that the applicant was engaged as a casual labourer under CPWI, Bandomunda on 20.6.1988 and continued as such till 16.8.1988. It is further submitted that it was later on discovered that the past service certificate submitted by the applicant was false. This was checked up on the basis of report of Finger Print Inspector, Chakradhapur and thereafter he was disengaged after 16.8.1988. The respondents have denied that the applicant was engaged as a Casual Gangman from 1.7.1992 to 16.10.1992. It is further submitted that as

the applicant has worked only for 58 days under the respondents and therefore he is not entitled to be conferred with temporary status. It is also submitted that disengagement of the applicant having occurred on 17.8.1988, he cannot make a grievance of the same in Original Application filed in 1998 after ten years. It is also submitted that the prayer in the OA is for conferring temporary status with effect from 5.3.1988 and this grievance has also been raised for the first time after 10 years. Thus the prayer of the applicant is also opposed by the respondents on the ground of limitation.

5. It is submitted by the learned counsel for the petitioner that in a similar matter filed by some other casual labourers which came up before the Tribunal in OA No.559 of 1993, disposed of on 16.5.1999, the respondents did not produce the pay-sheets for the months of February-March 1988 and March-April 1988 on the ground that these records being more than ten years old are not available. It is submitted by the learned counsel for the petitioner that for non-production of these records adverse inference could have been drawn against the respondents in that case and the matter is already under consideration of the Hon'ble High Court in a writ petition which has been filed against the order dated 26.5.1999. It is urged by the learned counsel for the petitioner that adverse inference should be drawn against the respondents in this case. We find that in this case the pay-sheets for February-March 1988 and March-April 1988 are not relevant because the respondents have admitted that the applicant was engaged as a casual labourer by the respondents and it is admitted by both sides that he worked

till 16.8.1988 and was disengaged on 17.8.1988. Our observation in OA No.559 of 1993 regarding non-production of records relates to certain months of 1988 and has no bearing on the alleged engagement of the applicant in 1992 from 1.7.1992 to 16.10.1992 which has been denied by the respondents. As the applicant has not produced any record in support of his contention that he has been actually engaged from 1.7.1992 to 16.10.1992 his contention cannot be accepted. The respondents on the other hand have specifically averred that on 17.8.1988 he was disengaged because it was detected that the past service certificate produced by him was false. In view of this it is difficult to accept the contention of the applicant that in spite of this finding against him, he was again engaged during July to October 1992. Thus the position is that the applicant had worked only for 58 days and is not entitled to be conferred with temporary status. In any case the prayer of the applicant is that he should be conferred with temporary status from his initial date of engagement. This is also without any basis.

6. In consideration of all the above, the Original Application is held to be without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)

19.4.2000
VICE-CHAIRMAN