

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 678 OF 1998
Cuttack this the 13th day of December, 1999

Arakhita Behera

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? **Y**

2. Whether it be circulated to all the Benches of the **N^o** Central Administrative Tribunal or not ?

13-12-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Q

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 678 OF 1998
Cuttack this the 13th day of December, 1999

CORAM:

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Arakhita Behera,
aged about 57 years
Son of Bula Behera of Village Rengala
PO: Godiputmatiapada, Dist:Puri
at present employed as Chowkidar,
Railway Recruitment Board,
Bhubaneswar, Dist: Khurda

...

Applicant

By the Advocates : Mr. P.K. Padhi

-Versus-

1. Union of India represented through
the General Manager, South Eastern Railways
Garden Reach, Calcutta
West Bengal
2. Divisional Railway Manager
South Eastern Railways,
Khurda Road,
Dist: Khurda
3. Railway Recruitment Board
Bhubaneswar, Dist: Khurda

...

Respondents

By the Advocates : Mr. C.R. Mishra

...

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application filed on 21.12.1998, against the Respondents(Railways), counter has not been filed in spite of repeated adjournments. On 31.5.1999, time was allowed as last chance for filing counter by 15.7.1999. Even on 15.7.1999 counter having not been filed further time was allowed till 19.8.1999 for filing counter and Registry was directed not to accept counter filed beyond 19.8.1999 and the case was ordered to be listed for final disposal at the admission stage. Even thereafter on 19.8.1999 and 17.9.1999 at the instance of learned Addl. Standing Counsel the case was adjourned for final disposal at the admission stage on 12.11.1999. On 12.11.1999, because of cyclonic havoc, the case was adjourned to 8.12.1999 for final disposal at the admission stage. This is how the case was heard on 8.12.1999 without the counter being filed.

2. Applicant, Arakhita Behera, who was aged 57 years on the date of filing of this application, and a casual employee under the Railways prays for his regularisation from the year 1958 or in the alternative from 27.10.1983 when he was appointed as Chowkidar under Respondent No.3 on casual basis or from the date his juniors were absorbed with all consequential service and pecuniary benefits.

According to applicant, he was engaged as labourer on casual basis and worked under Inspector of Works (Line) in Khurda Road Division of S.E.Railways and had rendered service for 1403 working days till 22.3.1981, as per the certificate dated 27.4.1982 (Annexure-A/1) granted by the

Assistant Engineer of the Division. Thereafter his engagement was discontinued by this Division though his juniors were retained. On 27.10.1983, he was appointed as Chowkidar oncasual basis by Res.3, i.e., Railway Recruitment Board, Bhubaneswar. Despite this casual appointment, he was still in the rolls of the Division and was being paid monthly salary from the Division till 27.10.1983. After completion of period of 120 days under Res.3, he was allowed to continue on C.P.C. scale of Rs.196-232/- with effect from 24.2.1984 vide Office Order date 20.3.1984 (Annexure-A/2) and since then hehas been continuing under Res.3.

On 27.11.1985, Assistant Engineer under Res.2 published a provisional seniority list of casual labourers of the Khurda Road Division as on23.3.1984. In that seniority list his name appears at Sl. No.7 though with remark not working. Through that list complaints, if any, were invited from all the casual labourers of the Division numbering 230. Since the applicant was attached to Res.3, had no knowledge of this list and therefore, could not submit any representation in time.

Railway Board in letter dated 21.2.1984 issued guidelines for screening/empanelment of casual labourers for the purpose of their absorption in regular vacancies and in order to safeguard inclusion of bogs/unauthorised casual labour service. As per this guidelines absorption in regular vacancies is confined to those casual labourers whose names appeared in the casual labour register. According to applicant, he had fulfilled all the conditions for the purpose of consideration for appointment in the regular vacancy, ~~because~~, but barring him other casual labourers in the said list under

4

Annexure-A/3 have since been regularised. Inspite of several approaches in person to the concerned railway authorities, the matter did not move. In fact Res.3, the Railway Board, through a series of letters addressed to the Senior Divisional Personnel Officer, Khurda Road Division recommended for his regularisation. These letters are dated 20.11.1991(Annexure-A/4), 24.8.1992(Annexure-A/5), 5.8.1994(Annexure-A/6), 20.2.1996(Annexure-A/7), 15.3.1996(Annexure-A/8) and 20.1.1998(Annexure-A/9).

In fact the Railway Board in letter dated 3.9.1996, copy of which had been forwarded to Chief Personnel Officer, S.E.Railway (Annexure-A/12) gave directions for regularisation of all the casual labourers about 56, 000 approximately by the end of December, 1997. Yet the applicant's case was not considered even though on one occasion he was awarded a sum of Rs.500/- on Efficiency Badge and a Merit Certificate at General Manager's level during 1994 (Annexure-A/11). He had also attained temporary status and granted C.P.C. scale on 24.2.1984(Annexure-A/5). Since he has not been regularised and ~~he~~ has two more years of service/retire, he has filed this application with the aforesaid prayers.

As already stated, Respondents had not filed any counter opposing the prayer of the applicant. Since counter has not been filed, it is presumed that the facts mentioned in the application to the extent they are borne out in the annexures are correct.

2. The specific averment of the applicant is that he has been in casual service since 1958. In support of this he has filed Annexure-A/1, a certificate dated 27.4.1983

issued by the Assistant Engineer, S.E.Railway, Khurda Road. But this certificate does not reveal that he has been under casual engagement since 1958. All that it reveals that till 23.3.1984 he served as casual labourer borne list for 1403 days and was in the seniority of casual labourers of the year 1981 as published on 8.1.1982. Hence I am not inclined to accept his version that he has been serving as casual labourers since 1958.

Be that as it may, the fact remains he was disengaged by the Khurd Road Division from 24.3.1981 onwards. He has not challenged before any Court/Tribunal about his disengagement. Even in this application also he has not challenged the same. Yet the fact remains that his assertion barring him other 229 casual labourers mentioned in the list published on 23.3.1984 (Annexure-A/3) have since been regularised stands uncontroverted. His position in the seniority list being at Sl.No.7, it comes to this, about 223 casual labourers who are junior to him have since been regularised. Admittedly, he has rendered service more than 360 days as casual labourer under Res.2 and had been in continuous service though on adhoc basis under Res.3 since 27.10.1983 and attained temporary status on 24.2.1984 for C.P.C. scale of Rs.196-232/-.

In view of these uncontroverted facts I am of the view that the applicant deserves to be regularised in the interest of justice.

3. Respondents are, therefore, directed to regularise the service of the applicant with effect from the date his immediate juniors in the seniority list published on 2.3.1984 under Annexure-A/3 were regularised or from 27.10.1983, i.e., from the date of his appointment

10 6

as Chowkidar under Res.3, whichever is earlier, within a period of 60(sixty) days from the date of the receipt of this order.

4. Application, in the result, is allowed, but there shall be no order as to costs.

(Signature over)

13.12.91
(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO