

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 624 OF 1999.
Cuttack, this the 1st day of October, 2001.

RABINARAYAN MOHAPATRA.

....

APPLICANT.

:VERSUS:

UNION OF INDIA & ORS.

....

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)

S. N. S. (SOMNATH SONG)
VICE-CHAIRMAN
11/10/2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 624 OF 1999.

Cuttack, this the 1st day of October, 2001.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAI RMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.)

..

RABINARAYAN MONAPATRA,
S/o. Late Balmik Mohapatra,
Supervisor, Grade B,
under Section engineer(Con.),
Chandrasekharpur, Bhubaneswar,
permanent address: At/PO: Mangalpur,
via: Pipili, Dist: Puri. ... Applicant.

By legal practitioner: Mr. P. C. Panda, Advocate.

: VERSUS:

1. Union of India represented through the
General Manager, S. E. Railways, Garden
Reach, Calcutta.

2. The Chief Administrative Officer(Con.)
S. E. Railway, Chandrasekharpur, Bhubaneswar.

3. The Chief Project Manager,
S. E. Railway, Chandrasekharpur,
Bhubaneswar. ... Respondents.

By legal practitioner: Mr. S. R. Patnaik, ASC(Rly.s)

S. R. Patnaik

...

O R D E R

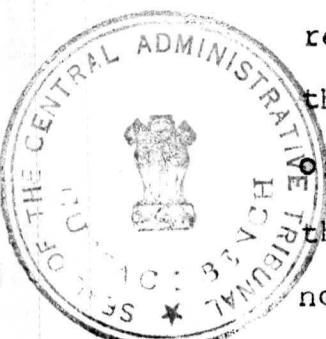
MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for a direction to the Respondents to regularise his service w.e.f. 1-4-1973 in pursuance of the circular dated 20.4.1989 (Annexure-1) from the date his juniors have been regularised with all consequential service and financial benefits.

2. Respondents have filed their counter and the applicant has filed rejoinder. After amendment of the O.A., the Respondents have filed an Additional Counter and a reply to the rejoinder. We have perused the pleadings of the parties. On our direction, learned ASC has produced the original service book of the applicant and we have perused the same. For the purpose of considering this petition it is not necessary to refer to all the averments made by the parties in their pleadings. The case of the applicant can be briefly stated.

3. Applicant has stated that he joined the DBK Railway as a casual chainman in 1960 and worked in the railways in different capacities like chainman, mate, Supervisor, Gr.I, Dak runner Record Sorter and is currently working as Supervisor Gr.B in Construction Organisation. Applicant has stated that the Railways have issued circular dated 20.4.1989(Annexure-1) dealing with regularisation of service of casual labourers against Permanent Construction Reserve(PCR) Gr.D Posts. It has been noted in the circular that PCR posts were created w.e.f.

S. Som

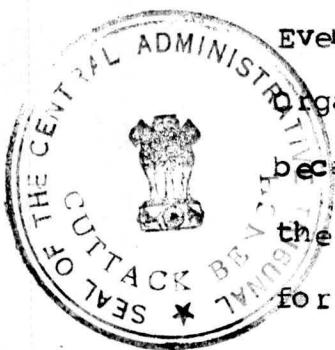


1-4-1973 but services of casual labourers were regularised against the posts from various dates subsequent to 1.4.73. In view of this it has been ordered that the date of regularisation of casual labourers who fulfil the three conditions laid down in the circular should be put back to 1.4.1973. The three conditions are that the concerned casual labourers should be on roll of the construction organisation on 1.4.1973 and would have rendered three years or more aggregate casual service on 1.4.1973. The third condition is that they were on turn for regularisation w.e.f. 1.4.1973. It is further provided that those casual labourers whose date of regularisation would, thus, be put back to 1.4.1973 should be allowed differential pay and allowances. Applicant has stated that the screening committee took up screening of casual labourers of construction unit between 1.4.1990 to 10.4.1990 and a supplementary screening of absentees on 12.6.1990 and 22.11.1990 for filling up of Class-IV posts of Khalasies for regularisation against 60% PCR posts but the applicant was not called to the screening nor was his service regularised. Applicant made and several representations/ultimately his service was arbitrarily regularised, from 1.2.1991 instead of 1.4.1973. Applicant has stated that one Shri K.C. Barik, who is junior to the applicant, was regularised w.e.f. 1.4.1973. He has also stated that in order dated 7.4.1983, applicant was debarred from empanelment for a period of one year in a vigilance case. This order is at Annexure-3. The punishment imposed in letter dated 7.4.1983 had expired on 7.4.1989 and therefore, the applicant is eligible to appear before the screening committee but he was not called for the screening without any reason. Applicant has made several representations but

without any result and in the context of the above facts, he has come up in this petition with the prayers referred to earlier.

4. We have heard Shri P. C. Panda, learned counsel for the applicant and Shri S. R. Patnaik, learned ASC for the Respondents. Before considering the submissions made by the learned counsel for both sides, some elements of the scheme of creation of PCR posts have to be noted. Originally casual labourers working in the Construction Organisation were entitled to be regularised against the posts in Open Line. Even now they are so entitled. But as the Construction Organisation have acquired more or less a permanent character because of large number of construction project going on under the Railways, the Board had created PCR posts from 1.4.1973 for the first time. The posts were 40% of average casual labourers as on roll in the preceding three years i.e. on 31.3.1971, 31.3.1972 and 31.3.1973. Again on the basis of average number of casual labourers as on rolls on 31.3.1982, 31.3.1983 and 31.3.1984, PCR posts were created from 1.4.1984. This time, the number of posts were 60% of the average of casual labourers on rolls in the preceding three years. PCR posts were again created on 1.4.1988 at the level of 60% on the basis of average figures of the preceding three years. Even though PCR posts were created from 1.4.1973, the actual orders of regularisation came much later and regularisation against PCR posts were taken up on different dates after 1.4.1973. As posts were available from 1.4.1973 in the circular dated 20.4.89 (Annexure-1) it was directed that those casual labourers who have already been regularised from

S. Jom.



dates after 1.4.1973, their dates of regularisation should be antdated to 1.4.1973 provided that they fulfil the three conditions. From the above it is clear that the circular dated 20.4.1989 only relates to those who have already been regularised against PCR posts and is meant for anti-dating the date of regularisation of such of the regularised workers who fulfil the three conditions mentioned in the circular and noted by us earlier. Applicant in this case has been admittedly regularised from 1.2.1991 but he had not claimed for dating back his regularisation to 1.4.73.

He has asked for regularisation from 1.4.1973. Even if we take it that the applicant's prayer is one for antdating his date of regularisation from 1.2.1991 to 1.4.1973, it has to be seen whether the applicant fulfills the three conditions mentioned therein. ~~xxxxxxxxxxxxxx~~ ^{JMM}
The first condition in the above circular is that such casual labourers should be on the rolls of the construction organisation as on 1.4.1973. Applicant in his O.A. has made a vague averment that he has been working in the Railways from 1960. Alongwith O.A. he has not produced any document to show that he has been working as casual labourer under the Railways from 1960. It is only with his rejoinder he has annexed certain documents of the officers under whom he was purportedly working showing that he has been working as casual labourer. Casual labourers are given a Card in which their period of service and other particulars are mentioned. Applicant has not produced any such Card. What is more from the Original Service Book of the applicant, we find that in page 1 of the Service Book which has been signed by his the applicant himself the date of first appointment has been ^{JMM}

16

mentioned as 1.8.1977. It has also been mentioned that he has been granted temporary status from 1.1.1984. In view of this, it is not possible to accept the contention of applicant that he was in service of the Railways in Construction Organisation prior to 1.4.1973. The other aspect of the matter is that he was regularised w.e.f. 1.2.1991. The applicant has stated that he was arbitrarily regularised from 1.2.1991 and he should have been regularised from 1.4.1973, by virtue of the circular at Annexure-1. As we have already noted the circular at Annexure-1 is only meant for anti-dating the date of regularisation of the casual labourers who have been regularised after 1.4.1973. Applicant has been regularised w.e.f. 1.2.1991 in an order issued on 23.3.1992 and he has approached the Tribunal after seven years in 1999. Respondents have taken the stand that the O.A. is barred by limitation. In the amended O.A. the applicant has stated that he was not aware that his juniors have been regularised earlier and that is why he could not approach the Tribunal earlier. Applicant has mentioned that his junior Shri K.C. Barik was regularised and the date of regularisation of Shri Barik was anticated to 1.4.1973. Respondents have stated that Shri Barik is senior to the applicant. It has been submitted by learned counsel for the applicant that the applicant was screened and empanelled in 1981 in the order which is at Annexure-6 enclosed to the rejoinder and in this list applicant's name appears against Sl. No. 18 and the name of Shri Barik does not appear in this list. From this, the applicant has stated that Shri K.C. Barik is junior to him. It is not possible to accept the contention because seniority of a casual labourer is different from empanelment. Shri K.C. Barik might have been empanelled

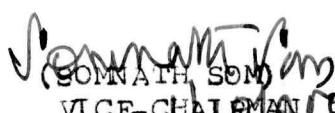
S Jm

in 1981

earlier or he might had not been empanelled even though he is senior to the applicant in the order at Annexure-6. Therefore, in the absence of any document showing that the applicant is senior to Shri K.C. Barik in the rank of casual labourers, it is not possible to accept this contention. Besides, the above, the applicant has not given any reason why he could not approach the Tribunal. Along with his petition he has also not filed a petition for condonation of delay. In view of this, we up-hold the contention of the Respondents that the Original Application is barred by limitation. The last point mentioned by learned counsel for the applicant is that by way of punishment issued on 7.4.1988 he was debarred from empanelment for one year and this punishment has spent itself in 1989 and atleast he should have been regularised in 1989. Here also the applicant has approached the Tribunal with unreasonable delay without any reason explaining the delay. Therefore, this contention is also can not be accepted.

5. In the result, we hold that the O.A. is without any merit and the same is rejected. No costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

KNM/GM