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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO.636 of 1999

CUTTACK THIS THE 22nd DAY of June, 2001

Sivarati Barua & Others

Petitioner

- Vrs -

Union of India & Others

Respondents

For Instructions

1. Whether it be referred to reporters or not ? 45.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 22.6.01

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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.636 of 1999

CUTTACK THIS THE 22nd DAY OF, JUNE, 2001

CORAM :

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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

.....

1. Sivarati Barua, aged about 38 years, son of Sukhanath Barua, Vill-Kukuda, P.O./P.S-Bandhomunda, Dist-Sundergarh.
2. Trilochan Moharana, aged about 28 years, S/o-Khaleswar Moharana, Main Road, P.O/P.s Bandhomunda, Dist-Sundergarh.
3. K. Jogeswar Rao, aged about 26 years, S/o-K. Joga Rao, At:Gundichapalli, Sector-D, P.O/P.s-Bandhamunda, Dist-Sundergarh.
4. K. Koteswar Rao, aged about 29 years, S/o-K. Venkat Rao, Main Road, At/P.O/P.S-Bandhomunda, Dist-Sundergarh.
5. Madan Prasad, aged about 30 years, S/o-Bitoo Prasad, Main Road, At/P.O/P.s-Bandhomunda, Dist-Sundergarh.

.....Petitioner (S)

By the Advocate (s)

M/s R. B. Mohapatra
N.R. Routray
R. Mishra
M.M. Satpathy

- VERSUS -

1. Union of India represented by its General Manager, SER, Garden Reach, Calcutta-43, West Bengal.
2. Senior Divisional Engineer-II, SER, At/Po-Chakradharpur, Dist-Singhbhum, Bihar.
3. Assistant Engineer-I, Bandhomunda, SER, P.O/P.S-Bandhomunda, Dist-Sundergarh.

.....Respondent (s)

By the Advocate (s)

Mr. S.R. Patnaik

ORDER

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G. NARASIMHAM, MEMBER (JUDICIAL): Five applicants and eleven others earlier approached this Bench in O.A. 559 of 1993 for issue of direction to the Respondents to regularise their services after conferment of temporary status with all consequential financial and service benefits with effect from 5.3.1988 by claiming that they were initially orally appointed as casual Gangman under permanent CPWI, Bhandhomunda on 5.3.1988 and were allowed to work as such till 16.8.1988. They were again engaged as casual Gangman from 1.7.1992 to 16.10.1992. That original application was opposed by the Railway Respondents claiming that they were in engagement from 7.5.1988 to 2.9.1988 and that they were never in engagement thereafter. Since none of them ^{had} completed 120 days of continuous work they would not be entitled to conferment of temporary status. During hearing of that original application this Bench verified the relevant pay sheets of April, 1988 to September, 1988 and ~~till~~ ^{till} 1992 to October, 1992. This Bench ultimately ~~felt~~ ^{held} that the applicants had never worked on casual basis from 1.7.1992. It was further held that ~~barring~~ ^{holding} these 5 applicants before us in this application applicant No.4 of that application had worked only for 58 days, applicants 5,6,8,13 and 14 for 57 days, applicant 9, 15 and 16 for 47 days and applicant 10 only for 40 days from May, 1988 to September, 1988. The five applicants however, worked for 117 days from 7.5.1988 to 2.9.1988. However, entertaining doubt as to whether these 117 days are inclusive of Sundays and Holidays we directed the Respondents to check up once again the days of casual engagements of these 5 applicants from 7.5.1988 ~~to~~ till the dis-engagement as borne out in the pay sheets for August, 1988, and ~~that~~ they should also check up if during this period, particularly in the pay sheets of April and May, 1988, i.e. 24.04.1988 to 23.5.1988

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▲ and pay sheets of August and September, 1988 i.e. from 24.4.1988 to 23.9.1988, payments made were inclusive of Sundays and Holidays. There was further direction that in case Sundays and Holidays were not included and on-inclusion of Sundays and Holidays they would have completed 120 days, then they would be entitled to be included in the Live Casual Register and re-engagement and w.e.f. their re-engagement they should be conferred with temporary status and they would be entitled to all the privileges of a Railway Casual Labour with temporary status.

2. In this application it has been pleaded that after the order of the earlier O.A. was passed the Divisional Railway Manager (Eng.), Chakradharpur in order dated 17.9.1999 (Annexure A/11) held that these 5 applicants were in casual engagement from 7.5.1988 till 17.8.1988 only and during this period the total number of working days comes to 103 days inclusive of Sundays and Holidays and as ^{such} there is no scope to include their names in the Live Casual Register and no scope for further engagement and conferment of temporary status. This order was passed pursuant to the direction of this Bench in the earlier O.A. This latest calculation of 103 days engagements includes Sundays and Holidays, is contrary to the stand taken by the Department in the earlier O.A. that the applicants were in engagement from 7.5.1988 to 2.9.1988. It is further pleaded by the applicants that when Respondents Department in the earlier O.A. did not produce other relevant records relating to the engagement for the period from 5.3.1988 to 7.5.1988 and from 1.7.1992 to 16.10.1992, this Bench should have drawn adverse inference against the Department and accepted the case of the applicants. The applicants thus pray that order dated 17.9.1988 (Annexure A/11) should be quashed and directions should be issued to respondent No.3 to regularise the services of the applicants

after conferment of temporary status with all consequential services and financial benefits w.e.f. 5.3.1988.

3. The Respondents in their counter maintain that the applicants were in engagement from 7.5.1988 till 17.8.1988 and they were never in engagement after 17.8.1988. As per the direction of this bench in earlier O.A. the total no. of days inclusive of Sundays and Holidays during this period from 7.5.1988 to 17.8.1988 comes to 103 days only. Since 120 days of engagement as per rules is required for conferment of temporary status the applicants were not entitled for conferment of temporary status.

4. The applicants filed rejoinder reiterating their stand.

5. We have heard Shri R.B. Mohapatra, Learned Counsel for the applicants and Shri S.R. Patnaik, Learned Additional Standing Counsel for the Railway Department. Also perused this record as well as the record of O.A. 559 of 1993.

6. In the earlier O.A. inspite of the pleadings of these 5 applicants and 11 other that they had worked as Casual Gangman from 5.3.1988 and again from 1.7.1992 to 16.10.1992, this Bench held that the applicants were in casual engagement from 7.5.1988 till 2.9.1988 and thereafter they were never in engagement from 1.7.1992 to 16.10.1992 through judgement dated 25.6.1999 (Annexure A/9). These 5 applicants had not challenged this judgement in higher Judicial Forum. They have also not filed any review before this Bench. Hence the pleading ^{that} ~~but~~ this bench should have drawn adverse inference because of none production of some documents by the Respondents and should have

allowed the prayer that they should get all consequential service and financial benefits w.e.f. 5.3.1988, needs no consideration in this original application.

7. What is required in this original application for determination is whether the Respondents i.e. the Railways are correct in interpreting that the applicants had not worked for 120 days as casual labourers including Sundays and Holidays. Since the stand of the Department in the earlier O.A. was that they were in engagement from 7.5.1988 to 2.9.1988, we cannot ^{but} deprecate their contrary standing in this original application that they were in engagement only till 17.8.1988. The question for consideration is whether from 17.5.1988 to 2.9.1988 they had completed 120 days of service even when Sundays and Holidays are included. Month of May being 31 days, their working period from 17th May to 31st May inclusive of all holidays comes to 15 days. The entire month of June consists of 30 days. Similarly months of July and August each consists of 31 days. The number of working days in September upto 2nd September is 2. In this way the total number of days from 17.5.1988 to 2nd September, 1988 comes to 109 days only. The applicants worked as casual Gangman in open line. They would be entitled to conferment of temporary status only on completion of 120 days, as per rules. Even the entire period from 17.5.1988 to 2nd Sept, 1988 is taken into account for their engagement it would come ^{to} only 109 days. This being the position they are not entitled for conferment of temporary status and as such question of the regularisation does not at all arise.

8. In the result we do not see any merit in the original application but dismissed without any costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.8.01

22.8.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

K.B//