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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK


ORIGINAL APPLICATION NO. 513 OF 2000
Cuttack this the 12th day of October/2001

Chintamani Mohanty & Ors. ... Applicants

-VERSUS-

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

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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 ? 14-

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
12.10.2001

12.10.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 513 OF 2000
Cuttack this the 12th day of October/2001

CORAM:

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

1. Chintamani Mohanty, aged about 48 years,
Son of Late Kartik Mohanty - presently working
as Head Clerk (Store) Office of the C.E. (Cons-II),
S.E. Railway, Bhubaneswar, Dist-Khurda
2. R. Sinha Ray, aged about 50 years,
Son of Late D.C. Sinha Ray - presently working
as Head Clerk (Store) Office of the Chief Engineer
(Con-II), S.E. Railway, Bhubaneswar, Dist-Khurda
3. Simon Singh, aged about 51 years,
Son of Late D.B. Singh, present working as Head Clerk
Office of the Superintendent (Reg) (Store) Cons.,
S.E. Railway, Cuttack
4. Sunil Kumar Behera, aged about 53 years,
S/o. Late Banamali Behera, presently working as
Head Clerk, Office of the District Store Keeper (Const)
S.E. Railway, Cuttack
5. Prafulla Kumar Sethy, aged about 54 years,
Son of Late Bined Sethy, presently working as Head Clerk
Office of the J.E. (P. Way) / Con / RTGO / S.E. Railway, Cuttack
6. Arakhita Das, aged about 52 years,
Son of Late Narottam Das, presently working as Head Clerk
Office of the Chief Engineer (Con (P)), S.E. Railway,
Bhubaneswar
7. Sri Dasarathi Sahoo, aged about 49 years,
Son of Late Batakrushna Sahoo, presently working as
Head Clerk, Office of the Dy. Chief Engineer (Con) / HQ/
S.E. Railway, Bhubaneswar
8. Nilamani Mishra @ Mohanty, aged about 53 years,
Son of Niranjan Mohanty, presently working as Head Clerk
Office of the Chief Engineer (Const-II), S.E. Railway,
Bhubaneswar
9. Y. Veerabaradhu,
S/o. Late Patna, presently working as Head Clerk,
Office of the Chief Engineer (Con-II), S.E. Railway,
Bhubaneswar

...

Applicants

By the Advocates

M/s. A. Kanungo
S.R. Mishra

-VERSUS-



1. Union of India represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43
3. Chief Administrative Officer(C), S.E.Railway, Chandrasekharpur, Bhubaneswar
4. Chief Engineer(Cons), S.E.Railway, Chandrasekharpur Bhubaneswar
5. Divisional Railway Manager, S.E.Railway, Khurda Road, At/PO/PS/Dist-Khurda

...

Respondents

M/s.D.N.Mishra
S.K.Panda
S.K.Swain

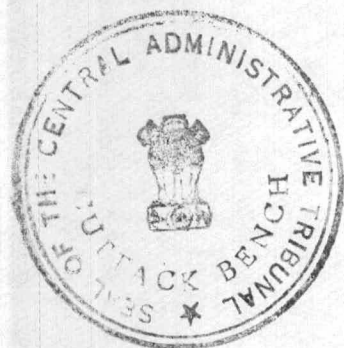
Mr.Ashok Mohanty

By the Advocates

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Nine applicants, who initially joined as Casual Labourers on several dates ^{in during} 1969 and 1970 in the Construction Organisation of the S.E. Railways under Khurda Road Division were regularised as Group 'D' employees in the Open Line on various dates in the years 1978 and 1979. Few months thereafter they joined in the Construction Organisation and are continuing in the Construction Organisation till now, keeping their lien in the Open Line. In this application basing on the circular/letter dated 26.4.1989 (Annexure-3) issued by the Chief Engineer (Construction), S.E.Railway, Garden Reach, Calcutta pray for issue of direction to respondents to regularise them in the Construction Organisation against the P.C.R. vacancies in the Grade/Cadre, as per their existing scale of pay with retrospective effect along with consequential benefits.

2. Their case is that they were brought to Construction Organisation after their regularisation in the Open Line in



the interest of the administration. Even applicant Nos. 3, 4 and 5 were taken back to Construction Organisation on the very date(s) they were regularised in the Open Line. They were promoted as Store Issuers in the scale of Rs.225-308/- in the year 1980 and again in the year 1985 further promoted as Junior Clerks on adhoc basis in the scale of Rs.260-400/-. While continuing as Junior Clerks on adhoc basis they appeared at the selection test against the Limited Departmental Promotional Quota, pursuant to letter dated 8.8.1989, issued by the Chief Engineer(Con), S.E.Railway, Garden Reach, Calcutta for filling up of the posts of Junior Clerks/Typists in the scale of Rs.950-1500. The applicants appeared at the written examination followed by viva voce test and were qualified in that test. In the provisional panel dated 7.6.1990 (Annexure-2) their names find place. In letter dated 12.5.1993 (Annexure-4) options were called for from the Open Line lien holders for retention in the Construction Organisations. Though the applicants opted for Construction Organisation, the authorities did not consider the same. Be that as it may, the applicants were again promoted as Senior Clerks in the year 1991-92 and again further promoted as Head Clerks due to increase in the work load and in the interest of administration, vide order dated 2.6.1997(Annexure-6) and are continuing as such till now.

In the circular dated 26.4.1989(Annexure-3) it was made clear that ~~the~~ casual labourers, working under the Construction Organisation as on 1.4.1973 and completing three years aggregate service by that ^{date} shall be regularised

as against the P.C.R. posts, created w.e.f. 1.4.1973, and pay of those employees would then be put back to 1.4.1973. Hence they preferred this Original Application mainly on the ground that their lien in the Open Line is only a paper lien and they have been in the Construction Organisation in the ^{interest of} administration allthrough.

3. Out of the five respondents, impleaded, only Respondent Nos. 3 and 4, i.e., Chief Administrative Officer (Construction) and Chief Engineer (Construction) S.E. Railway, Chandrasekharpur filed counter. The other three respondents, viz., General Manager, Chief Personnel Officer, Garden Reach Calcutta and Divisional Railway Manager, Khurda Road though duly noticed had not responded. Respondent Nos. 3 and 4 vehemently opposed the prayer of the applicants stating that they have not been regularised in the Construction Organisation and the promotions given to them in the Construction Organisation are adhoc in nature, necessity of which arose on account of acute shortage of manpower in the Construction Organisation. The Circular dated 26.4.1989 is applicable to regular Class-IV staff in the Construction Organisation who had completed three years of service in that Organisation. The applicants not having been confirmed as regular Class-IV in the Construction Organisation are ineligible to be considered with reference to that circular. P.C.R. posts are meant to be utilised for organising/conforming those personnels who were locally recruited by the Construction Organisation and were available and eligible for confirmation at the material time against the vacant posts. The said posts were mainly created for absorbing those casual labourers



who could not be regularised in the Open line and were liable to be retrenched as surplus. Further options called vide letter dated 12.5.1993 were ^{not} meant for regularising the persons like the applicants, in P.C.R. posts. The options were called for their willingness to move to new projects. At present there are no P.C.R. posts available in the relevant Grades.

4. In the rejoinder the applicants reiterated their stand enclosing thereto some more annexures. Respondents 3 and 4 filed reply to this rejoinder, as against which the applicants filed additional reply/rejoinder. There is no necessity to reproduce in detail the averments made in the rejoinder, reply to rejoinder and additional rejoinder, as the same would be discussed hereunder.

5. We have heard Shri S.R.Mishra, the learned counsel for the applicants and Shri Ashok Mohanty, learned special counsel for the respondents and also Shri D.N.Mishra, learned Standing Counsel for the Railways.

6. The cause of action for filing this Original Application on 6.11.2000 is the Circular/letter dated 26.4.1989 (Annexure-3) issued by the Chief Engineer (Construction), S.E. Railway, Garden Reach, Calcutta. Since the prayer made in the O.A. by the applicants depends upon the interpretation of the circular/letter dated 26.4.1989, we may as well reproduce the said circular hereunder:

SOUTH EASTERN RAILWAY

NO.PD/E/579/002946

Office of the
Chief Engineer (Con)
Garden Reach: Cal: 43
Dated : 26.04.89

To

All Dy.HODs and
DENS under the Administrative Jurisdiction
of C.E. (CON): GRC

Sub: Regularisation of service of casual labourers against construction reserve (Group-'D') Posts

P.C.R. posts were created with effect from 1.4.73 on the basis of average strength of Group 'D' posts as on 31.3.71, 31.3.72 and 31.3.73, but service of casual labourers were regularised against the posts from various dates subsequent to 1.4.1973.

It has now been decided that the date of regularisation of the casual labourers who fulfill the following conditions should be put back to 1.4.73 :-

- i) the concerned casual labourers should be on roll of the construction organisation on 1.4.73
- ii) they rendered 3 years or more aggregate casual service on 1.4.73 and
- iii) they were on turn for regularisation with effect from 1.4.73

Pay of those whose date of regularisation would thus be put back to 1.4.73 should be fixed in the appropriate regular scale of pay with effect from 1.4.73 and difference of pay and allowances due and drawn, if any, be paid.

Absence and/or breaks in casual service on or after 1.4.73 of those who fulfilled the above conditions, if any, may be regularised by grant of leave/extraordinary leave which they would be entitled to on regularisation of casual service.

This issues with the approval of the competent authority".

Sd/-

(C.G. SAHA)

SR.PERSONNEL OFFICER (CON)
for CHIEF ENGINEER (CON):GRC

The aforesaid circular applies to casual labourers under the Construction Organisation, who would satisfy the following four conditions.

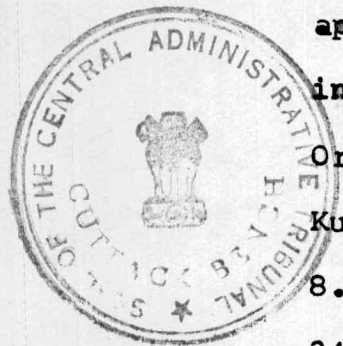
- i) casual labourers who were regularised subsequent to 1.4.1973;
- ii) the concerned casual labourers should be on the roll of the Construction Organisation on 1.4.1973;
- iii) such casual labourers must have rendered three years or more aggregate casual service on 1.4.73; and
- iv) they were on turn for regularisation w.e.f. 1.4.73

Admittedly the applicants though were casual labourers




in the Construction Organisation were ultimately regularised as Group 'D' employees in the Open Line. Thus the very 1st condition of the circular is not applicable to the applicants, in view of their regularisation as Group 'D' employees in the Open line. The contention of the applicant is that few months after their regularisation in the Open line they were brought back to the Construction Organisation in the interest of administration. Even applicants 3, 4 and 5 were brought to the Construction on the very dates they were regularised in the Open Line. In the reply to the rejoinder the respondents strongly denied that the applicants 3, 4 and 5 were taken by the Construction Organisation on the date(s) they were regularised in the Open line. According to them, the applicant No.3, viz., Simon Singh was regularised in the Open line on 2.11.1978 and reported in the Construction Organisation on 8.11.1979, i.e., one year after the regularisation. Similarly applicant No.4., viz., Sunil Kumar Behera, who was regularised in the Open line w.e.f. 24.10.1978 reported in the Construction Organisation on 17.7.1979. Applicant No.5, viz., Prafulla Kumar Sethi joined in the Construction Organisation on 8.11.1978 though he was regularised in the Open line on 24.10.1978. Be that as it may, the fact remains that the applicants were not regularised in the Construction Organisation, but were regularised in the Open line. The theory of paper lien as advanced by the applicants is not acceptable.

7. We are aware that the applicants placed reliance on the decision of C.A.T., Calcutta Bench in O.A.765/89 (Annexure-7) wherein by order dated 17.6.1992, the respondents-railways were directed to consider the case of the applicants therein



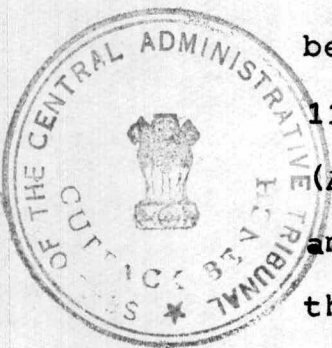
who based their claim on the circular/letter of 1989 (Annexure-3) and who were not regularised in the Construction Organisation because of their non-appearance in the screening test in the year 1989, even though called for, to consider regularisation of their services against the P.C.R. posts w.e.f. 1.4.1973, in case any vacancy in the P.C.R. posts were available in the Construction Organisation Unit at Kharagpur. Again on 7.7.1994 (Annexure-7/A) in the same Original Application the Bench clarified that since the applicants therein were absorbed in the Open line, they should give their options to come to the Construction Organisation against the P.C.R. posts and if such an option is given, the respondents shall consider in terms of the appropriate rules and if possible absorb them in the P.C.R. posts in the line of the vacancies available. Thus it is clear even the Calcutta Bench did not direct the respondents (Railways) for automatic absorption of the applicants therein in the P.C.R. posts, contrary to rules, but to consider their cases in case they give option to come to the Construction Organisation in terms of appropriate rules.



4. The present application was filed in November, 2000 claiming the benefit arising out of the circular dated 26.4.1989 (Annexure-3). It is not the case of the applicants that they were not aware of this circular all these years. Hence the question of limitation in filing this Original Application at a belated stage of 11 years cannot remain unnoticed, ^{more so}, when there is no application for condonation of delay, as required under Rule-8(4) of the C.A.T. (Procedure) Rules, 1987. ^A The Larger Bench of the Apex Court in Chandra

Kumar Case reported in AIR 1997 SC 112 (Para-16) even went to the extent of observing that Section 21 of the A.T. Act, 1985 specifies strict limitation period and does not vest the Tribunals under the Act with power to condone delay. This observation of the Apex Court in a way had put an embargo on the Tribunals to exercise the discretion to condone delay, as provided under Section 21(3) of the A.T. Act. In Remesh Chandra Sharma vs. Udham Singh, reported in AIR 1999 SC 3837 the Apex Court, following their earlier decisions in Secretary to Government of India vs. S.M. Gaikwad reported in (1995) 30 A.T.C. 635, held that when in a time-barred application no condonation of delay has been sought under Section 21(3) of the A.T. Act, the Tribunal cannot admit the application and dispose of on merits. In fact in the present application notice has been issued for hearing on admission and has not been admitted till now. Hence this O.A. having been filed 11 years after the issuance of the circular dated 26.4.1989 (Annexure-3), on which the prayer of the applicant is based, and that too without any application for condonation of delay, the application cannot but be rejected as barred by time. In this view of the matter there is no necessity for us to discuss in detail the merits of this case, after taking note of the averments made in the Original Application, counter, rejoinder, reply to rejoinder and additional rejoinder.

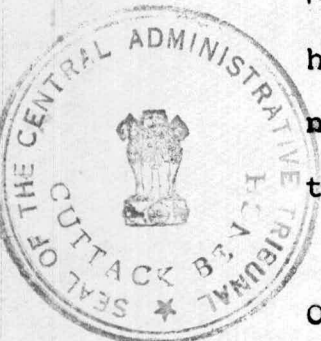
9. Viewed from another angle ~~also~~ this application is not maintainable. The circular dated 26.4.1989 (Annexure-3), which is the basis for filing this O.A. was issued by the Chief
(Con)
Engineer/ S.E. Railway, Garden Reach, Calcutta and this circular of the Chief Engineer (Construction) was addressed to various



authorities by the Sr. Personnel Officer (Construction) for Chief Engineer (Construction), S.E. Railway, Garden Reach. Hence the real import of this circular could have been well explained either by the Chief Engineer (Construction) or Senior Personnel Officer (Construction), S.E. Railway, Garden Reach, Calcutta. But either of them has not been impleaded as respondent. They being necessary parties, this application cannot but fail in their absence.

10 Similar prayers in O.A.365/2000 and O.A.382/2000 have since been disallowed by this Division Bench. We see no reason to take a different view from the view already taken in above two O.As.

11. In view of our discussions held above, this Original Application is rejected without being admitted. No costs.


 (SOMNATH SOM)
 VICE-CHAIRMAN

12.10.01
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

B.K.SAHOO//