

18
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLI-CATION NO. 210 OF 2001
Cuttack this the 17th day of July/2002

Ananda @ Ananda Ghadel

...

Applicant(s)

-VERSUS-

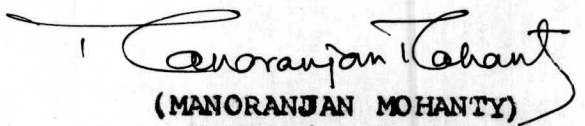
Union of India & Others

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Respondent(s)

(FOR INSTRUCTIONS)

1. whether it be referred to reporters or not ? Yes.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

17/07/2002

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLI-CATION NO. 210 OF 2001
cuttack this the 17th day of July/ 2002

CORAM;

THE HON'BLE SHRI MANORANJAN MOHANTY, MEMBER (JUDICIAL)

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Sri Ananda @ Ananda Ghadei, aged about 65 years,
Son of Late Nabina Ghadei, village/PO-Manitira,
P.S. - Sukinda, Dist-Jajpur, Retired Khalasi Helper,
Carriage Repair Workshop, S.E. Railway, Mancheswar

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Applicant

By the Advocates

M/s. N.R. Routray
S.N. Mishra

-VERSUS-

1. Union of India represented through the General Manager,
South Eastern Railway, Garden Reach, Calcutta-43, West Bengal
2. Chief Engineer, Construction, South Eastern Railway,
At/PO/PS - Chandrasekharpur, Town-Bhubaneswar, Dist-Khurda
3. Deputy C.P.O. Construction, South Eastern Railway,
At/PO/PS-Chandrasekharpur, Town-Bhubaneswar, Dist-Khurda
4. District Engineer (Reg), South Eastern Railway,
At/PO: Station Bazar, Town/Dist-Cuttack
5. Divisional Railway Manager, S.E. Rly., Khurda Rd. Divn.,
At/PO/PS: Jatni, Dist-Khurda

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Respondents

By the Advocates

Ms. S.L. Patnaik,
Addl. Standing
Counsel (Rlys.)

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O R D E R - (ORAL)

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL): Heard Shri N.R.

Routray, Advocate for the Applicant and Ms. S.L. Patnaik, Addl.
Standing Counsel appearing on behalf of the Respondents (Railways)

2. The Applicant was engaged by the Railways on casual
basis from 27.12.1966 to 8.12.1981. He was again reengaged
as such from 5.1.1972. He was conferred with Temporary Status

w.e.f. 1.1.1981 and, ultimately, regularised as ^{against} a Group D Post from 7.2.1986. While the Applicant was continuing as casual Khalasi, several regular posts were created w.e.f. 1.4.1973 on the basis of fresh strength of Group D posts as on 31.3.1971, 31.3.1972, and 31.3.1973. However, the services of casual labours were regularised against the posts (created w.e.f. 1.4.1973) on various dates, subsequent to 1.4.1973. It may be noted here that while regularisation of casual labours, as aforesaid, was in the process, the Applicant received temporary status on 1.1.1981 and his services were regularised w.e.f. 7.2.1986. On his retirement on 30.6.1994, he was not given the terminal benefits by computing the entire period of service he rendered for the Railways and, as a consequence, he was given the benefit of 50% period between 1.1.1981 and 7.2.1986 and for the entire period between 8.2.1986 and 30.6.1994 only. Since the entire period of his services were not reckoned for the purpose of payment of pensionary/terminal benefits, the Applicant has filed the present Original Application for redressal of his grievances.

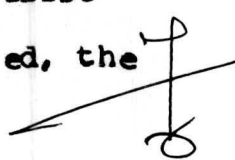
3. It is the case of the Advocate for the Applicant that for the reason of Circular/letter dated 26.4.1989 (as placed at Annexure-2 to the O.A.) the services of the Applicant ought to have been regularised w.e.f. 1.4.1973 and benefits arising out of the same ought to have been given to him as pensionary/terminal benefits.

4. It appears from Annexure-2 dated 26.4.1989 that the Railways decided to ante date/put back the date of regularisation of casual labours to 1.4.1973, provided that they fulfilled the following three conditions, —

- 21
- 1) The concerned casual labours should be on roll of the Construction Organisation on 1.4.1973
 - ii) They rendered three years or more aggregate casual service on 1.4.1973 ; and
 - iii) They were on turn for regularisation w.e.f. 1.4.1973

5. A plain reading and incisive analysis of this document at Annexure-2 dated 26.4.1989 goes to show that although the process of regularisation of casually engaged labours in the Construction Organisation started sometimes in 1973, it could not take a final shape with immediate effect; for which casually engaged persons were given regularisation on different dates, subsequent to 1.4.1973, and that is why this circular under Annexure-2 dated 26.4.1989 was issued to ante date/put back the date of regularisation to 1.4.1973. As it appears, the Applicant, in the present Case was engaged in the Construction Organisation as a casual labour and was regularised subsequently, on 7.2.1986, in regular establishment (that may be against a posting in the Open Line) and since this circular under Annexure-2 dated 26.4.1989 is meant for persons like that of the Applicant, who were already regularised on dates subsequent to 1.4.1973, this circular is/was applicable in case of the Applicant; provided he is/was covered by the three conditions as aforementioned vide Annexure-2.

6. Now let us examine as to whether the Applicant is/was covered under the aforementioned three conditions. Since the Applicant was on the role of the Construction Organisation as a casual labour on 1.4.1973, he fulfilled the first condition. So far as the 2nd condition is concerned, the



Advocate for the Applicant states that since the Applicant served the Railways from 27.12.1966 to 8.12.1971 on casual basis and, again, he served as such from 5.1.1972 till he was conferred with temporary status on 1.1.1981; the Applicant fulfilled the 2nd condition. To this Ms.S.L.Patnaik, Addl. Standing Counsel for the Railways states that the break up periods between 8.12.1971 and 5.1.1972 being ~~there~~ there, it cannot be said that the Applicant rendered three years or more casual service by 1.4.1973. This objection of the learned Addl. Standing Counsel for the Railways is liable to be overruled; which hereby so held; simply because Clause-ii of Annexure-2 has been worded with the word "aggregate". The circular issuing authorities being conscious that there may be breaks in casual engagement, have used the word "aggregate" in Clause-ii of the Circular at Annexure-2. Thus, the Applicant is covered by the aforesaid 2nd conditions.

7. Next coming to the 3rd condition, it is to be seen as to whether the Applicant, while continuing on casual basis, was 'on turn for regularisation' w.e.f. 1.4.1973. It has not been disputed in the counter^{filed} by the Railways that the Applicant had 'no turn to be regularised w.e.f. 1.4.1973'. It ^{is} seen from Annexure-1 to the O.A. that the Applicant served as Khalasi from 27.12.1966 and continued as such till 8.12.1971; covering a period of five years 11 months and 11 days. He was again~~st~~ engaged, on casual basis, on 5.1.1972 and, by 1.4.1973, he had served 1 year 2 months and 24 days. Thus by 1.4.1973, the Applicant had served the Railways as a casual labour^{on aggregate} for 7 years 1 month and 4 days.

That apart, he continued to serve the Railways for more than seven year-sfrom 1.4.1973. Keeping this factual aspect in mind it cannot also be said that the Applicant was not on turn for regularisation w.e.f. 1.4.1973.

Since the Applicant fulfilled all the three conditions as required under Annexure-2 dated 26.4.1989, his regularisation (which was done w.e.f. 7.2.1986) was to be ante dated w.e.f. 1.4.1973.

8. Once it ^{is} held that the Applicant's regularisation was to take effect from 1.4.1973, the Applicant is entitled to get the terminal benefits/pensionary benefits by computing the entire period between 1.4.1973 and 30.6.1994 (the date on which the Applicant retired from service).

9. It is the case of the Railways that the Applicant's present claim is grossly barred by limitation; because the Applicant is trying to take shelter under Annexure-2 dated 26.4.1989, in the year 2001; when this case was filed. Annexure-2 dated 26.4.1989 was issued by the Railways to grant benefits to persons like that of the Applicant and this document dated 26.4.1989 was an instruction to all Deputy Heads of the Department for granting the benefits arising out of Annexure-2 to persons like the Applicant. There was no obligation on the part of the Applicant to act under Annexure-2 dated 26.4.1989 and, therefore, it cannot be said that the present case is barred by limitation. The Applicant faced retirement on 30.6.1994. Apparently after his retirement, ^{when} he was given a very paltry sum towards pension, he could know that his entire period of service has not been

24
taken into account by the Railways^{and} that is why, he approached this Tribunal in the year 2001(23.5.2001) after approaching his authorities in the Railways. This Tribunal, in the case of Chandiramani Nayak vs. Union of India & Ors. reported in 2002(1) CJD (AT) 27 observed as under :

"The Advocate for the Respondents has also raised a hyper technical question of limitation. But when injustice is glaring, such hyper-technical objection, with regard to limitation, cannot stand in the way for dispensation of justice. Thus, this objection is overruled".

Further in the case of Prataap v. Secretary to Govt. reported in 2002(II) OLR - 8, the Hon'ble High Court of Orissa has also ruled that mere objection relating to limitation should not tie down the hands of the Tribunal for granting relief. But since financial implications are involved in this case, I direct, while granting the pensionary/terminal benefits to the Applicant by computing the entire period of service from 1.4.1973 to 30.6.1994, no arrears as salary should be paid to the Applicant. However, his pay as on 1.4.1973 should notionally be fixed and annual incremental benefits and pay revisions thereon should also notionally be carried out to findout his last pay on the date of his retirement and, accordingly, grant him only pensionary/terminal benefits w.e.f. 1.7.1994 (without giving him arrears of differential pay). This exercise should be completed within a period of three months from the date of receipt of copies of this judgment.

Thus, the O.A. is allowed, but without any order as to costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

27/07/2002