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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 454 OF 2001
Cuttack this the 8th day of July 2004

Baikuntha

...

Applicant(s)

-VERSUS-

Union of India & Ors. ...

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 ? *yes*

M.R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 454 OF 2001
Cuttack this the 8th day of July 2004

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE - CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

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Baikuntha, Son of Ghana, aged about 41 years,
Vill-Birigadia, PO-Baral Pokhari, PS-Charampa,
Dist-Bhadrak, retired Sr.Trackman, Engineering
Department, S.E.Railway, Bhadrak

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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, S.E.Railway, Garden Reach, Kolkata-43
2. Divisional Railway Manager, S.E.Railway, At/PO/PS-Jatni, Dist-Khurda
3. Senior Divisional Personnel Officer, S.E.Railway, At/PO/PS-Jatni, Dist-Khurda
4. A.E.N.-I, South Eastern Railway, At/PO-Station Bazar, Town/Dist-Cuttack
5. P.Way Inspector, S.E.Railway, At/PO/Town/Dist-Cuttack

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Respondents

By the Advocates

Mr.R.C.Rath, S.C.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Baikuntha) a retired Group-D Railway Servant has filed this Original Application challenging the principle of reckoning ^{half} of the period of service as casual labour after attainment of temporary status as qualifying service for the purpose of pensionary benefits as contained in Railway Establishment Sl. No.239/80 dated 31.10.1980 and xxxxxx has prayed for counting the entire period of casual service in addition to service rendered by him after attainment of temporary status for the

purpose of pensionary benefits.

2. The facts of the case in a nutshell are that the applicant was initially engaged as casual Gangman under P.W.-I, Bhadrak in 1968 and worked continuously for a period of 1078 days. He was reengaged from 22.7.1986 to 17.11.1986 and thereafter from 8.9.1988 to 20.10.1988. He was again engaged as casual labourer on 31.5.1990 and regularised in Group-D with effect from 28.6.1994 and ultimately, he retired on superannuation with effect from 31.7.2001. For the purpose of pension the period of service from 16.10.1990 to 31.7.2001 only has been taken into account and he has been paid superannuation benefits accordingly. His grievance is that the casual service that he had rendered earlier to October, 1990 having not been reckoned, he could not complete 10 years of qualifying service for grant of superannuation pension. Such a situation has arisen purely on the ground that the Respondents-Department illogically decided to count 50% of casual service (with T.S.) till regularisation for the purpose of working out the pensionary benefits. It is his case that had 50% of his casual service of 2722 days from 1968 onwards been added to the period of his service after regularisation, he would have earned 3 years and 9 months of more pensionary service period and in all, he would have been entitled to minimum pension having attained the qualifying period of service of 10 years. He has, therefore, approached the Tribunal with the prayers referred to earlier.

3. Respondents have opposed the application on all counts. They have submitted that it is incorrect to

state that the applicant had joined the Department as casual labourer in the year 1968 and worked continuously for a period of 1078 days. On the other hand, they have stated that the applicant was initially engaged as casual labourer at local approved market rate on daily wage from 22.7.1986 and not from 1968, which would be amply proved from a perusal of Annexure-2 to the O.A. It is their case that the applicant was earlier engaged on daily rated casual labourer for a period less than two months during September - October, 1988 followed by engagement of four months from May, 1990 to September, 1990. It has also been argued by the Respondents that the applicant has also not been able to produce any documentary evidence in support of his claim of casual service from 1968. The fact of the matter is that the applicant earned temporary status only on 16.10.1990 followed by regularisation as permanent Gangman on 20.6.1994, which was confirmed on 28.6.1995. They have, therefore, submitted that the claim of the applicant for counting the period of his casual service prior to 1990 is without any basis.

4. We have heard the learned counsel of both the sides and also perused the materials placed on record.

The central issue sought to be raised by the applicant in this O.A. is that the Respondents should not set apart the period of casual service from the period of casual service rendered with temporary status followed by regularisation for the purpose of counting the minimum qualifying service for the purpose of superannuation pension. However, as the Respondents in their counter have disclosed

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(which has not been effectively rebutted by the applicant by producing documentary evidence) that the applicant never worked continuously for 1078 days from 1968, that he was engaged on long term basis as casual labourer only from 16.10.1990, we do not find any justifiable reason to go into the issue raised by the applicant in this O.A. being purely academic. Suffice it to say that the Railway Board had issued Est. Sl. No.239/80 dated 31.10.1980 after due consultation with the staff side as well as the Ministry of Finance. It is not open to the applicant to assail it after his superannuation. This Estt. Serial being an agreed condition of service it can hardly be challenged by the applicant after subjecting himself to this condition of service during his service period. In fact the constitutional validity of this circular has already been tested and upheld by the Hon'ble Supreme Court in the case of K.G. Radhakrishna Panikkar reported in 1998 SC(L&S) 1283.

5. For the reasons discussed above, we are of the view that the applicant has not been able to make out a case for any of the reliefs prayed for in this O.A., which is accordingly dismissed. No costs.

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(M.R. MOHANTY)
MEMBER (JUDICIAL)

Arb
(B.N. SOM)
VICE-CHAIRMAN

BJY