

7

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NOS. 208,211 AND 513 OF 2001
Cuttack, this the 13th day of November, 2002

CORAM:

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

In OA 208/2001

Shri Babaji @ Babaji Sahoo, aged about 57 years, son of late Arjun Sahoo, Village Barimul, P.O-Barithengarh, P.S-Badachana, under I.W.I, Haridaspur, S.E.Railway, Khurda Division.

In OA 211/2001

Shri Dibakar @ Dibakar Swain, aged about 58 years, son of late Narayan Swain, Village Talapada, P.O Bantala, P.S. Badachana, Dist.Jajpur, at present working as Gangman, under IWI, Haridaspur, S.E.Railway, Khurda Division.

In OA 513/2001

Sri Pravakar, aged about 61 years, son of Eswar, permanent resident of Biridi, P.O. Manjari Road, P.S. Bhandaripokhari, Dist.Cuttack, at present working as Store Watchman, under O.A.S., Cuttack Applicants

Advocates for the applicants - M/s N.R.Routray & S.Mishra.

Vrs.

1. Union of India, represented through the General Manager, S.E.Railway, Garden Reach, Calcutta 43, West Bengal.
2. Chief Engineer, Construction, S.E.Railway, At/PO P.S Chandrasekhpur, Town Bhubaneswar, Dist. Khurda.
3. Dy.C.P.O., Construction, S.E.Railway, At PO P.S-Chandrasekhpur, Town Bhubaneswar, District Khurda.
4. District Engineer (Reg.), S.E.Railway, At PO Station Bazar, Town/Dist.Cuttack.

.....Respondents

Advocates for the respondents - Mr.S.R.Patnaik, Rly.Panel Counsel
(In OA 208 2001)

&
Mr.R.Ch.Rath, Rly.Panel Counsel
(in OA Nos. 211 & 513 2001)

ORDER

SIRI B.N.SOM, VICE-CHAIRMAN

These three Original Applications involve common questions of fact and law. The applicants in their O.As. and Rejoinders and the respondents in their Counters have made similar averments in these cases. As the applicants are similarly situated and the reliefs prayed for by them are similar, these three O.As. are being disposed of by this common order.

2. In these three Original Applications No.208/2001, 211/2001 and 513/2001, filed on 23.5.2001, 23.5.2001 and 12.10.2001 respectively, under Section 19 of the Administrative Tribunals Act, 1985, the applicants sought for a direction to the respondents to put back the date of regularisation of their service to 1.4.1973 instead of 1.4.1984, as per circular No. IDE 579/0029461, dated 26.4.1989 issued by the Chief Engineer (Construction), S.E.Railway, Garden Reach, Calcutta, at par with similarly situated persons and to grant them consequential service and financial benefits. While issuing notices to the respondents to file their counters, this Tribunal kept the question of limitation open.

3. For the purpose of deciding these three Original Applications, the material averments made by the applicant in O.A.No.208 of 2001 and the reply given by the respondents through their counter are noted by us.

4. In O.A.No.208 of 2001, the applicant prayed for the following reliefs:

(a) To admit this original application and issue notices to the Respondents, call for the relevant records and after hearing both the parties allow this original application by directing the Respondents to put back the date of regularisation of the service of the applicant to 1.4.1973 instead of 1.4.1984.

(b) And pass necessary order by directing the Respondents to pay the consequential services and financial benefits as per circular dt.26.4.1989.

And pass any other appropriate order as deems proper and fit in the interest of justice."

According to the applicant, he was initially appointed as a Khalasi with effect from 24.4.1967 and continued till 23.8.1968, again from 24.9.1968 to 23.3.1972, from 3.5.1972 to 29.8.1977, then again re-engaged on 14.5.1979 and from 14.5.1979 onwards. He was granted temporary status with effect from 1.1.1983 and PCR status with effect from 1.4.1984. The applicant's case is that respondent no.2 had issued a circular No. I.D.E/579/002946, dated 26.4.1989, to put back the date of regularisation of service of casual labourers against Permanent Construction Reserve (Group D) posts to 1.4.1973. In the said circular, it was stated that absence and/or breaks in casual service on or after 1.4.1973 of those who fulfilled the conditions contained in that circular might be regularised by grant of leave/ extraordinary leave which they would be entitled to on regularisation of casual service. He further stated that the Memorandum No.E 45/738 of the Chief Engineer (Construction), S.E.Railway, dated 16.7.1992, by virtue of which his service in PCR post was regularised from 1.4.1984 did not do justice to his case as some of his juniors, like, one at Serial No. 42, Shri Satrughna Prasad, son of Saraju, Sl.No.44 Shri Srilant Sharma, son of B.R. Sharma, and Sl.No.48 Swaminathan, son of D.Chamu, were absorbed in Group D category PCR posts earlier than him with effect from 7.11.1975, 7.11.1974 and 1.4.1973 respectively whereas he was absorbed in the Group D category PCR post with effect from 1.4.1984 against Serial No. 26. He further submitted that his casual labour career started from 24.4.1967 whereas the casual labour career of the other three individuals at Sl.Nos.42,44 and 48 in that Memo, started from some dates in 1975.

1974 and 1973 respectively. He also submitted that his case was covered under the ratio of this Tribunal's order in OA No. 494 of 1994, Budhi Swain v. Union of India and others, reported in 2000(2)OLR 523. With the above facts and circumstances of the case, the applicant sought the reliefs from this Tribunal, as enumerated above.

5. Respondents in their counter refuted the pleas of the applicant. They also urged that the O.A. was hopelessly barred by law of limitation. On the merit of the case, the respondents refuted the facts of the case, as pleaded by the applicant. They stated that the claim of the applicant that he was working in various units as casual labourer from 24.4.1967 to 29.8.1977 was highly doubtful as no such records were available in the Service Book of the applicant. The respondents, however, admitted that the applicant was initially engaged as a Casual Chowkidar Casual Trackman with effect from 14.5.1979 on daily rated wages and that temporary status was granted to him from 1.1.1983 and his services were correctly regularised against PCR Group D post with effect from 1.4.1984, taking his total number of casual working days as 8016 as on 1.4.1991. They further submitted that the circular at Annexure 2 of the O.A. was issued with the instructions to ante-date PCR regularisation of those casual labourers who had fulfilled three conditions, namely, that the casual labourers were on roll of the Construction Organisation as on 1.4.1973, that they had rendered three years or more aggregate casual service as on 1.4.1973, and that they were on turn for regularisation with effect from 1.4.1973. The applicant had not fulfilled the third condition, i.e., he was not on turn for such regularisation with effect from 1.4.1973 and therefore, the said circular was not applicable to the applicant's case. The respondents also submitted that Shri Satrughna Prasad had a total credit of 9760 number of casual working days, Shri Srikanta Sharma had a total credit of 9639 days.

and Shri O.Swaminathan had a total credit of 8769 casual working days, i.e., all the three had more number of casual working days than the applicant and, therefore, they were senior to the applicant to be regularised earlier than him. It was further pointed out that his case was not covered by the ratio of the Tribunal's judgment in OA No. 494/94.

6. During the hearing, Shri N.R.Routray, the learned counsel for the applicant, pressed the point for waiving the condition of limitation in this case. He had filed MA No.515 of 2001, an application under Section 21(3) of the Administrative Tribunals Act, 1985, read with Section 5 of the Limitation Act, to condone the delay. In support of this, the applicant stated that as his claim was to put back the date of regularisation of his service to 1.4.1973 on the basis of the circular, dated 26.4.1989, it amounted to demanding higher scale of pay and promotion facilities, which constituted a continuous cause of action. It was also stated that the applicant had made a representation to respondent no.3, which was pending before the authority on the date of filing of the O.A. Hence it was argued that there was no delay caused by the applicant in approaching the Tribunal for redressal of his grievances. He also submitted that if there was any delay caused in approaching the Tribunal, the said action was not a mala fide one but a bona fide one and therefore, the delay should be condoned.

7. We have given our most anxious thoughts to the plea for condonation of delay in filing the O.A. by the applicant. Section 21 of the Administrative Tribunals Act, 1985, dealing with limitation in submission of application to the Tribunal, lays down the following:

"21. Limitation.-(1) A Tribunal shall not admit an application,-

7

- (a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.
- (b) In a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

According to the provisions of Section 21, the point of limitation for making an application to the Tribunal is to be determined with reference to the date when the cause of action would have arisen. As clearly pointed out in the O.A., the applicant has challenged the action of the respondents in not applying the provisions of the circular, dated 26.4.1989, regarding the date of regularisation of service of casual labourers against Construction Reserve (Group D) posts. At the outset, it is necessary to understand the implication of the circular, dated 26.4.1989, to examine the reliefs sought by the applicant. In the circular, it was clearly stated that although Permanent Construction Reserve posts were created with effect from 1.4.1973 on the basis of average sanctioned strength of Group D posts as on 31.3.1971, 31.3.1972 and 31.3.1973, the services of casual labourers were regularised against the posts from various dates subsequent to 1.4.1973. The Railway authorities, by virtue of this circular, decided to put back the date of regularisation of service of casual labourers to 1.4.1973 in cases of all those who fulfilled the following three conditions:

- i) that the concerned casual labourers were on roll of the Construction Organisation as on 1.4.1973;
- ii) that they had rendered three years or more aggregate casual service as on 1.4.1973; and

13
 iii) that they were on turn for regularisation with effect from 1.4.1973.

The Railway authorities also asked all the Zones/Divisions to set up Screening Committee to prepare panel of candidates for appointment against PCR (Group D) posts with the approval of the competent authority. One such panel was prepared by the Chief Engineer (Construction), S.E.Railway, Cuttack on 16.7.1992 (Annexure 2), which included names of individuals regularised from 1.4.1973, 1.4.1984 and 1.4.1988. The name of the applicant finds place in the said Memo, as having been regularised against a PCR post from 1.4.1984, vide Sl.No.26 of the said Memo. In the said Memo, it was also stated that the appointment of the candidates provisionally empanelled would be subject to their passing the prescribed medical examination and verification of their service particulars by the authorities. It was also stated that the Construction Reserve posts would constitute a floating cadre and the actual appointment would be offered to the candidates as per the order of the panel and on the basis of Regularisation Roster maintained according to the availability of vacancies. As the applicant is demanding his regularisation from a date earlier than 1.4.1984, he is effectively challenging the correctness of the assessment of the Screening Committee, based on whose recommendations, the Memorandum, dated 16.7.1992, was issued by the District Engineer(Reg.), S.E.Railway, Cuttack. In other words, the cause of action for the applicant arose on 16.7.1992 and therefore, we are inclined to accept the plea of the respondents that the applicant was agitating the issue after eight years.

8. Considering the applicant's plea that the Tribunal should condone the delay, we have referred to the judicial pronouncements made by this Tribunal as

well as by the Apex Court. In the case of H.Rudraswamy v. The Director General (Posts), New Delhi and others, 1992 (2) ATJ 424, Bangalore Bench of this Tribunal held that it is now well established that Courts should be slow to disturb settled matters in cases where the applicants do not promptly approach the Tribunal for redressing their grievances. The Hon'ble Supreme Court, in the case of Bhoop Singh v. Union of India and others, JT 1992 (3) SC 322, held as follows:

"It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim....."

In this case, the petitioner approached the Hon'ble Supreme Court for relief after twentytwo years of termination of his service along with many others. In dismissing the petition, the Apex Court in paragraph 8 of the judgment held as follows:

".....Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly....."

In the instant case also, the applicant knocked at the door of this Tribunal after eight years, putting up certain vague excuses for delay. His representation, dated 23.3.2001, to the competent authority is devoid of facts and full of vague references. This representation as well as his O.A are shorn of any cogent reason to explain the circumstances which held him back to approach either the authorities concerned or the Tribunal for redressal of his grievances. In fact, his case could be better described as one of long silence over eight years and this silence was surely caused because of

his carelessness and lack of interest in the matter. These surely are not good enough reasons to merit any consideration. That apart also, from the facts, as submitted by the respondents through their counter as also during the hearing, the persons, who were cited by the applicant as junior to him, had more number of days of casual service to their credit than the applicant, and in any case, these officials were not impleaded as respondents in the O.A., which effectively stands in the way of adjudicating the matter of interse seniority between those individuals and the applicant.

9. It is also seen from the records of O.A.Nos. 211 and 513 of 2001 that both the applicants therein have made vague representations to their authorities on 23.3.2001 and 8.9.2001 and approached this Tribunal on 23.5.2001 and 12.10.2001 respectively, challenging the Memo, dated 16.7.1992. They have also failed to explain the delay of eight years in making the applications to the Tribunal. The persons, who were stated by the applicants as junior to them, had also to their credit more number of days of casual service than the applicants and were also not made parties.

10. In the aforesaid premises, we reject all the three Original Applications not only on the point of limitation but also on merit. No costs.

10.1
 Sd/- M. R. Mohanty
 Member (Judl)
 (M.R.MOHANTY)
 MEMBER(JUDICIAL)

Sd/- B. N. Sasmal
 Vice-Chairman
 (B.N.SASMAL)
 VICE-CHAIRMAN

CAFCU 30 NOV 2002
 ANPS

November 1, 2002