

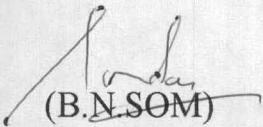
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

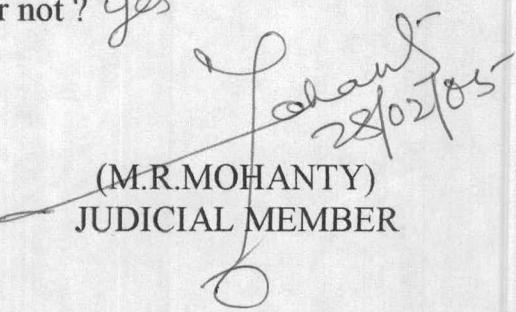
ORIGINAL APPLICATION NO.189 OF 2003
Cuttack, this the 28th day of February, 2005.

MUKTIKANTA MOHANTY APPLICANT
Versus
UNION OF INDIA AND OTHERS, RESPONDENTS.

FOR INSTRUCTIONS

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


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
JUDICIAL MEMBER
28/02/05

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 189 OF 2002
Cuttack, this the 28th February, 2005.

C O R A M:

THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M.R.MOHANTY, JUDICIAL MEMBER

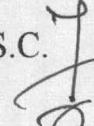
SHRI MUKTIKANTA MOHANTY, 50 years,
Son of Laxmi Narayan Mohanty,
Vill./Po-Mouda, PS/Dist- Bhadrak
At present working as Khalasi under Sr. Supdt. Engineer,
(signal)development, East Coast Railway, Khurda Raod,
under the control of the Deputy Chief Signal and Telecom
Engineer (con.), Bhubaneswar. APPLICANT.

BY LEGAL PRACTITIONER: M/s. Damodar Mishra, S.K. Mishra,
S.P. Jena, Advocate.

-VERSUS-

1. UNION OF INDIA, represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Po/Dist-Chandrasekharpur, Dist-Khurda.
2. Divisional Railway Manager (P), East Coast Railways, Khurda Road, Po/Ps- Jatni, Dist. Khurda.
3. Dy. Chief Signal and Telecom Engineer (CON.) Bhubaneswar East Coast Railways, At/Po-Bhubaneswar. PS-New Capital, Dist. Khurda. RESPONDENTS

BY LEGAL PRACTITIONER: Mr. C.R. Mishra, A.S.C.

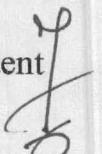


O R D E R

MR.MANORANJAN MOHANTY,JUDICIAL MEMBER:-

Applicant,Shri Muktikanta Mohanty,by filing this Original Application under section 19 of the Administrative Tribunals Act,1985 has sought for a direction (to the Respondents/Railways) to treat the period of his service rendered on casual basis(in Railway Institute at Bhadrak; a quasi administrative office of the Railways) from 02.08.1971 to 08.09.198, as qualifying service for the purpose of promotion and pension . He has also prayed for a direction (to the Respondents/Railways) to calculate and pay him the wages in the scale of Rs. 750-950/- w.e.f. 09.02.1989 (instead of Rs.15/- per day already paid to him) and for a direction to the Respondents/Railways to fix his seniority retrospectively w.e.f. 02.08.1971 for the purpose of promotional benefits.

2. Respondents have filed a counter stating therein (a) that the Applicant was initially engaged on 08.08.1971 in the Railway Institute at Bhadrak, (which is a quasi administrative office of the Railways) and continued there up to 07.02.1989;(b) that in terms of Departmental letter dated 24.03.1992 (circulated under Estt. Sl.No.56/92) the competent



authority had decided that such of the staffs (after rendering five years service in quasi administrative offices, like the present applicant) would be eligible for screening for appointment as against the Gr.'D' posts in the Railways and (c) that, on receipt of demands from the organized labourers, the period of five years was reduced to three years (by keeping other terms and conditions unchanged) and the said decision was circulated vide CPO's letter dated 17.03.1994 under Estt.Sl.No. 32/94. It is the case of the Respondents that (d) the Applicant and many other employees were screened by the duly constituted committee and (e) that the Applicant was empanelled, along with others for regular Gr.D service in the Railways (with a clear stipulation that his regular absorption was subject to availability of the regular vacancy in Open line in S& T Department of the Railways) and (f) that the applicant continued as Khalasi (in Scale of Rs.750-940/-) against worked charged post under Deputy Chief Signal and Telcome Engineer (construction) at Bhubaneswar and (g) that he was finally posted as Khalasi by taking into account his seniority (as Khalasi) w.e.f. 4.1.1994. It has further been stated by the Respondents (h) that since the Applicant was engaged in the Quasi administrative organization(Railway Institute at Bhadrak) the contention of the Applicant to treat the period from 2.8.1971 to 7.2.1989 as Ty. Status Khalasi is not tenable. However, it has been averred by them that

trade test for the post of Khalsi Helper in the scale of Rs. 2650-4000/-(RSP) is in process and the applicant is eligible to be called for such Trade Test and, if he comes out successful in the said trade test, he will be given promotion.

3. We have heard learned counsel for both sides and perused the materials placed on record.

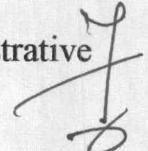
4. By placing reliance on various decisions of the Hon'ble Supreme Court of India, it has been argued by the learned counsel appearing for the applicant that since the applicant rendered uninterrupted service followed by regularization by no stretch of imagination it can be said that he is not entitled for counting the period from 02.08.1971 to 08.09.1989 for the purpose of promotion and pension and that, therefore, following the dictum laid down by the Hon'ble Supreme Court in the cases of BALESHWAR DASS AND OTHERS ETC. vrs. STATE OF U.P. AND OTHERS etc.(reported in 1981(I) SCR 449); of RAJBIR SINGH AND OTHERS vrs. UNION OF INDIA AND OTHERS (reported in AIR 1991 SC 518); and in the case of THE DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION AND OTHERS vrs. STATE OF MAHARASHTRA AND OTHERS (reported in 1990 LAB. I.C. 1304), the Respondents ought to have counted the entire period of service rendered by

the Applicant starting from his engagement in quasi administrative organization of the Railways till his regular absorption in the Railways and thereafter, for the purpose of promotion and pension etc.

5. Per contra, it has been submitted by the learned counsel appearing for the Respondents that the above arguments of the learned counsel for the Applicant have no legs to stand; inasmuch as this Tribunal has no jurisdiction to entertain and decide the cases pertaining to the period when the Applicant was in quasi administrative organization of the Railways; being not the employees of the Railways. In this connection learned counsel for the Respondents has also drawn our attention to the decision rendered by the Hon'ble Supreme Court of India in the case of ALL INDIA RAILWAY INSTITUTE EMPLOYEES ASSOCIATION THROUGHTHE GENERAL SECRETARY vrs. UNION OF INDIA THROUGH THE CHAIRMAN (AIR 1990 SC 952) wherein it has been held that the Employees, whether on part time or full time basis, working in Railway Institutes and Clubs are not railway employees nor can they be equated with the employees working in the statutory railway canteens. Based on the above decisions, learned counsel appearing for the Railways/Respondents has vehemently opposed the very maintainability of this O.A. before this Tribunal.

6. We have given our anxious thoughts to the various arguments advanced at the bar. The main thrust of the Original Application is three folds. Firstly, the Tribunal is to deal with the matter in respect of service benefits as claimed by the Applicant from the year 1971 (when the Applicant was first engaged in a quasi administrative organization like the Railway Institute on casual basis) till 1989(when he was empanelled/engaged as a Temporary/Casual Khalasi); secondly, his temporary service from 1989 till 1994 (when he was regularly absorbed against Gr.D post) and thirdly the period from 1994(when he was engaged as a regular Gr. D employee of Railways).

7. As regards, his prayer for direction to the Respondents to count his seniority and/or to give him temporary status from 1971 till 1989, interference by this Tribunal, in the said regard, is unwarranted and uncalled for; in view of the decision rendered by the Hon'ble Apex Court of India in the case of All India Railway Institute Employees Association (supra). To add to this we would also like to observe that when the Applicant did not borne in the regular establishment of the Railways from 1971,his claim to count the pensionary benefits from that date is misconceived as no such rule has been laid down by the Railway Administration entitling a casual worker (engaged in a quasi administrative

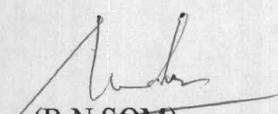


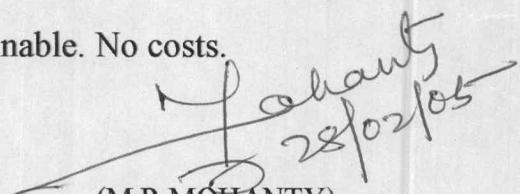
establishment) for grant of pensionary benefits .In view of this, the prayers of the Applicant are not just.

8. In so far as his prayer for considering grant of regular scale of pay from 1989 (till his regularization as Gr. D in 1994) is concerned, it is altogether a separate cause of action for which the Applicant should have approached the Departmental Authorities at the appropriate time. No materials have been placed on record to show that the Applicant had ever agitated this matter before the Departmental Authorities. This being the fact of the case, this prayer, apart from being hit by delay and laches is also devoid of any merit.

9. As regards third fold of the issue, since the Respondents in their counter have admitted that the Applicant is eligible to be considered for Khalasi Helper and, in case he comes out successful in the Trade Test ,he will be given due promotion; we do not feel inclined to issue any direction in the said regard.

10. For the reasons discussed above, this Original Application stands dismissed being not maintainable. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
JUDICIAL MEMBER
28/02/05