

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 348 of 2004
Cuttack, this the 30th day of June 2005

Gajendra @ Gajendra Patra

..... Applicant

-Versus-

Union of India & others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO

30/06/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

30/06/05
(B.N. SONI)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...

Gajendra @ Gajendra Patra, aged about 61 years,
S/o. Late Basudev Patra, of Village-Damodarpur, PO:Mantire,
P.S. Jajpur Road, District-Jajpur. (A Retd. Nd. Trackman/
P. Way/JJKR/Engg.)

..... Applicant

Advocates for the applicant

..... Mr.S.K.Swain

Versus-

1. Union of India, represented through the General Manager, East Coast Railways, At/PO:Chandrasekharapur, Bhubaneswar, Dist:Khurda.
2. The Divisional Railway Manager, East Coast Railways, Khurda Road Division, At/PO:Jatni, Dist:Khurda.
3. The Senior Divisional Personnel Officer, East Coast Railways, Khurda Road Division, At/PO:Jatni, Dist:Khurda.
4. The Finance Administrator & Chief Account Officer, South Eastern Railway, Garden Reach, Kolkatta-43.

..... Respondents

Advocates for the Respondents

..... M/s.S.K.Ojha,
A.K.Sahoo.

.....

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN: Shri Gajendra Patra has filed this O.A. praying for a direction to be issued to the Respondents to pay him pension by taking into consideration his total length of service as qualifying service for pension and in the alternative to direct the Respondents

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to dispose of his representation in Annexure-2 in a reasonable time.

2. The case of the applicant is that he has joined the Respondents Department as casual worker in construction line under the administrative control of Res.No.2. He was further appointed as Gangman on 24.2.1966 and continued upto 30.6.2003 after which he was superannuated. On his retirement he was given a service certificate wherein it was shown that he was regularised w.e.f.10.7.1988. His grievance is that although others who had joined along with him, like, one Shri Bimba was regularised from an earlier date, i.e. from January 1973, and thereby get better service benefits than him, both before and after the service. He has also referred to the case of one Shri Bhaga who entered service on 24.12.1967 i.e. after he was appointed and was regularised from 24.5.1973 whereas he was regularised from 10.7.1988. He has, therefore, alleged that he has been discriminated while in service. Not only that, his representations to the authorities have not yet been resolved.

3. Per contra, the Respondents by filing a detailed counter have opposed the application. They have submitted that the applicant was appointed as a Gangman under permanent Way Inspector, Bhadrakh on 24.2.1966 and regularised in that post on 10.7.1982 (and not on 10.7.1988 as alleged) and confirmed on the post on 10.7.1983. Thereafter, he was promoted to the post of Senior Gangman w.e.f. 9.10.91 and further promoted as Head Trackman w.e.f. 1.9.92.

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Thereafter, the applicant refused to appear in the selection test for promotion to the post of Keyman. He ultimately retired from Railway service on superannuation w.e.f. 30.6.83 as Head Trackman. His pension entitlement was calculated strictly according to the provisions of Pension Rules and in terms of Estt.Srl. No.239/80 which stipulates that 50% of the casual service will be taken into account for the purpose of pensionary benefits and cent percent of service period after regularisation. In this way, his total qualifying service for pension was calculated as 29 years 1 month and 24 days, rounded to 29 years and his pensionary benefits were settled accordingly. It is also submitted by the Respondents that the applicant during his service career never challenged his date of regularisation nor did he represent to the authorities claiming any equity with the other persons as indicated in the O.A. They have, therefore, stated that the applicant having kept quiet all these years is estopped to raise the issue of date of regularisation after 30 years on any ground and that on this ground of delay, this O.A. is not maintainable and is liable to be dismissed prima-facie.

4. We have heard the Ld.Counsel for rival parties and have perused the records placed before us.

5. The prayer of the applicant in this O.A. is that his entire period of casual service should be counted towards qualifying service for pension. On the other hand, the Ld.Counsel for the Respondents by drawing our

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notice to Estt.Srl.No.239/80 dtd.31.10.1980 containing the OM.No.F.12(1).SV/68 issued by Government of India, Ministry of Finance dtd.14.5.1968 pointed out that it is the long declared policy of the Government that half the service paid from the contingencies will be allowed to count for pension at the time of absorption in regular employment and this order having not been challenged by the applicant at any forum, the prayer of the applicant deserves no consideration. They have also pointed out that the allegation of discrimination has no legal basis as Sarvashri Bimba and Bhaga have not been impleaded as parties in this O.A.

6. The applicant, on the other hand, has sought the following reliefs:

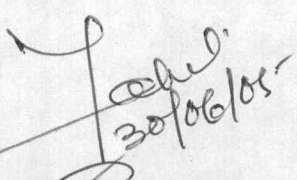
- "a) This original application may be allowed.
- b) The Respondents may be directed to ante-date the regularisation to 15.1.1973 and to consequential benefits.
- c) The Respondents may be directed to revise the pension by taking into consideration the earlier period of the Applicant.
- d) The Respondents may be directed to dispose of the representation in Annexure-2 within a reasonable time.
- e) And any other order/orders may be passed in granting full relief to the applicant."

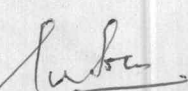
He has mainly made two prayers here, firstly, that his date of regularisation be ante-dated to 15.1.1973 and secondly, that his pension should be revised taking into account the period of his casual service. The question of ante-dating his date of regularisation has been opposed by the Respondents on the ground of long delay. We see lot of force in their argument. The applicant, neither

in his O.A. nor during the oral arguments, has been able to adduce any good reason before us as to why he had remained quiet all these years regarding delay in his regularisation. We are not impressed by the argument of the applicant that he was never informed about the actual date of his regularisation. We also find no strength in his argument that he became aware of his career movements only after superannuation. Be that as it may, having accepted the date of his regularisation as 10.7.1982 it is not now open to him to challenge it after his retirement. The settled facts cannot be allowed to alter after about three decades, that also when there is no ostensible reason available in the matter to take a different view.

7. His other prayer regarding treatment of entire casual service as qualifying for pension has no merit as the Respondents have pointed out that by virtue of the Presidential order issued on 14.5.1968 it was decided that half of the service paid from the contingencies (i.e. casual service) will only be allowed to count towards pension.

8. In view of these facts and circumstances of the case, this O.A. is dismissed being devoid of merit. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN