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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

OA No. 187 of 2005  
Cuttack, this the 4<sup>th</sup> day of November, 2008

~~December~~

Lingaraj .... Applicant  
Versus  
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

13. Whether it be referred to the reporters or not?
14. Whether it be circulated to all the Benches of the CAT or not?

(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

(C.R. MOHAPATRA)  
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.187 of 2005  
Cuttack, this the 04th day of ~~November~~  
~~December~~, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Lingaraj aged about 64 years son of Late Chakrapani, retired  
Mason Gr.I under Section Engineer (Works)  
(Construction)/Chandrasekharpur at present staying at Village  
Sabulia, PO. Sabulia, Dist. Ganjam.

.....Applicant

Legal practitioner : Mr. Achintya Das, Counsel

- Versus -

1. Union of India service through General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN 751 023.
2. Chief Administrative Officer (Construction), E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN 751 023.
3. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO Jatni, Dist. Khurda, PIN 752 050.
4. Deputy Chief Personnel Officer (Con.), E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN 751 023.
4. Deputy Chief Engineer (D-1), E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN 751 023.

....Respondents

Legal Practitioner : Mr.Ashok Mohanty, Senior Counsel  
P.C.Panda, Counsel

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O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Briefly stated the facts are that the Applicant had joined as  
Casual Manson under the Permanent Way Inspector, S.E. Railway (as then  
was), Rambha in Khurda Road Division on 24.04.1967 and worked under  
different subordinate-in-charge up to 30.12.1985 in open line. Thereafter, in  
administrative interest, he was transferred to work under District Engineer  
(Construction) Cuttack on 31.12.1985. The Applicant was granted temporary

status w.e.f. 01.01.1981 and regularized against 60% Permanent Construction Reserve (in short PCR) posts w.e.f. 01.02.1991 as Group 'D' staff. As his juniors, who joined the Railway after the joining of the Applicant were regularized w.e.f. 01.04.1973 whereas the Applicant was discriminated for non-regularization of his service with effect from that date. Representations submitted by him did not yield any result, he approached this Tribunal in OA No. 289 of 2003 which was heard and disposed of on 23.05.2003 with the following directions:

"In the aforesaid premises, without entering into the merits of the case, we direct the Respondents Railways to place the grievances of the applicant (as raised in this OA) before the Committee constituted in pursuance of circular/letter dated 13.08.2001 provided that the said Committee is a standing Committee and is considering the cases of this nature otherwise the Respondents will be well advised to constitute a Committee to consider the case of this nature, which shall consider the case of the applicant under the relevant rules and instructions on the subject at the earliest dispatch."

2. According to the Applicant, pursuant to the above directions of this Tribunal the case of the Applicant was examined by a Committee Constituted by the Railway and though the Applicant's grievance for antedating his date of regularization to 01.04.1973 was found genuine and accordingly informed him vide letter dated 08.10.2004, for the reasons best known to them it was informed to the applicant that his case is still to be examined by a competent authority and since then the matter is pending with the Respondents and thereby he is facing financial hardship for the reason of receiving lesser amount towards pension than he is entitled to. As such, by filing the present Original Application, he has prayed the following relief:

"(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 O.A. by directing the Respondents to give effect to the Committee's recommendation of antedating of the date of regularization to 1.4.1973 (Annexure-A/6);

- (B) To direct the Respondents to grant and pay the consequential benefits due to anti-dating the date of regularization 1.4.1973.
- (C) To grant any other relief as the Hon'ble Tribunal would deem fit and proper in the interest of justice."

3. Respondents by filing the counter opposed the prayer of the Applicant both on the law of limitation as also on merit. Their contention is that applicant was granted temporary status w.e.f. 1.1.1981 and regularization w.e.f. 1.2.1991 which he having accepted and keeping quiet quite is estopped to challenge as law of limitation does not permit to entertain claim of regularization prior to 1.2.1991 at this distance of time. As regards merit of the matter, it has been averred by the Respondents that the Applicant once again came to this Tribunal along with others in OA No.437 of 1995 seeking retrospective regularization basing on the circular dated 26.04.1989 and this Tribunal in its order dated 13.07.2001 rejected such claim which was suppressed by the Applicant in this OA. They have also refuted the stand of the Applicant that he was a casual labour in open line from 29.4.1967 to 23.08.1971 by stating that the Applicant was first engaged w.e.f. 4.09.1972 as would be evident from the first page of the service book duly acknowledged by him. As per the order of the Committee under Annexure-A/6, the case of the Applicant was further examined by the competent authority i.e. Chief Administrative Officer (Con.) East Coast Railway, Bhubaneswar who having found no justifiable reason for ante-dating his date of regularization to 01.04.1973 rejected his claim and communicated the result thereof to him



under Annexure-R/2 dated 29.06.2005 which, according to the Respondents, needs to interference.

4. Learned Counsel appearing for either of the parties have reiterated respective stand taken in their pleadings; apart from interpreting various orders filed by them to suit their prayers. It is not necessary to record all those arguments as, according to us, it would only amount to reiteration of some of the facts which have already been taken note of while recording the submission of respective parties, as aforesaid. However, having heard them at great length we have looked into the materials placed on record.

5. Regarding the preliminary issue raised by the Respondents in regard to maintainability of this OA on the ground of limitation and *res judicata* it is noticed that after the decision of this Tribunal dated 13.07.2001, the competent authority issued letter dated 13.8.2001 directing consideration of regularization of service of Railway employees w.e.f. 1.4.1973 against PCR post by a Committee duly constituted in this regard. Hence, the said plea of the Respondents is over ruled.

6. It is not in dispute that the Applicant got temporary status w.e.f. 1.1.1981 and regularized w.e.f. 1.2.1991. Also it is not in dispute that the Applicant along with others have approached this Tribunal in OA No. 437 of 1995 seeking direction to regularize their services from the date/dates they completed three years of service in casual establishment based on the circular issued by the Railway in the year 1989 which was heard and rejected by this Tribunal on merit, in order dated 13<sup>th</sup> July, 2001. As it reveals from the record, subsequent to the aforesaid order of this Tribunal, the Chief Personnel Officer issued circular dated 13.07.2001 to all Divisional Railway Manager (Personnel) directing constitution of a committee and identification of cases

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(5)

for regularization of their services w.e.f. 1.4.1973 against PCR post. By the strength of the said circular of CPO, Applicant represented for ante-dating his date of regularization to 01.04.1973 and no reply having been received by the applicant; he approached this Tribunal in OA No. OA No. 289 of 2003 and as reported earlier, the said OA was disposed of by this Tribunal in its order dated 23.05.2003 with direction to the Respondents "to place the grievances of the applicant (as raised in this OA) before the Committee constituted in pursuance of circular/letter dated 13.08.2001 provided that the said Committee is a standing Committee and is considering the cases of this nature otherwise the Respondents will be well advised to constitute a Committee to consider the case of this nature, which shall consider the case of the applicant under the relevant rules and instructions on the subject at the earliest dispatch. It also reveals from the record that after the aforesaid order of this Tribunal, the case of the Applicant along with others were placed before the Committee. Ultimately the case of Applicant along others was placed before the Committee, whose recommendation is at Annexure-A/6.

Relevant portion of the said recommendation is quoted herein below:

"12. Against this backdrop, the Committee rejects the claim of the 24 Petitioners in the subject OAs except Shri Lingaraj and Gobardhar Mohanty for grant of PCR status w.e.f.01.04.1973 as being devoid of merit. The cases of S/Sri Lingaraj and Gobardhan Mohanty are required to be examined by the competent authority subject to any of their juniors of the same seniority unit having been extended the benefit of regularization against PCR posts w.e.f. 01.04.1973. The representations of the applicants are accordingly disposed of."

7. Though no further action taken by the Respondents after the recommendation of the committee has been alleged by the Applicant by placing on record copy of the letter under Annexure-R/2 dated 29.06.2005, the Respondents have pointed out that pursuant to the recommendation of

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the committee, the case of the applicant was duly considered by them but the same was rejected. Relevant portion of the letter under Annexure-R/2 is quoted herein below:

"As regards his claim of working under PWI RBA from 24.4.67 to 23.8.71 it is clarified that there is no such entry in the 1<sup>st</sup> page of SR which is the proper place of recording of date of initial appointment. Sri Lingaraj has retired from service when the entire service is reviewed as a precondition of payment of settlement dues and Lingaraj has been paid all settlement dues accordingly taking his initial date of appointment on 4.9.72.

The genuineness of the claims of service from 24.4.67 to 23.8.71 is doubtful and cannot be verified at this distant date. This should have been claimed at the time of opening of service sheet. In 1986 when all past service was getting recorded in the service sheet. The claim is not acceptable at this distant date.

Rightly his initial date of apptt. In Constrn.Orgn. has been taken as 4.9.72 as per service sheet entry and he has been granted regularization w.e.f. 1.2.91 as per his turn under DEN/Con/CTC's O.O.No.CTC/C/E/4/297 dt.13.2.91.

The alleged junior Sri P.K.Achary is not junior to Sri Lingaraj as Sri P.K.Achary has been initially appointed as Chowkidar on 24.1.1968 under PWI/Doub./KUR and he had been given regularized as per his turn.

With the above findings, I am of the view that the case of Sri Lingaraj is devoid of any merit for antedating his PCR status in a Group D post to 1.4.73. Thus, the prayer of Sri Lingaraj is rejected."

8. From the above, it is clear that the author of the order under Annexure-R/2 has gone beyond the report of Committee to reject the claim of the Applicant. When the duty of deciding an issue is imposed, those whose duty it is to decide it must deal with the question referred to them without bias, and they must give to each of the parties the opportunities of adequately presenting the case made. The decision must come in the spirit and with the sense of responsibility. The Committee after being satisfied that the Applicant is entitled regularization against PCR posts w.e.f. 01.04.1973 left the matter to the authority to decide if any of his junior has been regularized w.e.f. 1.4.73.

According to the Respondents Sri P.K.Achary has initially been appointed as Chowkidar on 24.1.1968 which is much after the date of entry of applicant as shown under Annexure-A/1 (at page 13) certifying that the date of initial appoint of applicant mason is from 24.4.67 to 23.8.1971 which document has not been controverted by the Respondents either in the order under Annexure-R/2 or in the counter. However, it is seen that before taking decision under Annexure-R/2 no opportunity was given to Applicant to substantiate his claim though minimum requirement of natural justice demands that before passing any order adversely affecting a party, he/she be given an opportunity of hearing. However, it is seen that the letter under Annexure-R/2 has not been challenged by the Applicant by incorporating the same through amendment to the OA.

9. In view of the above, the only remedy is to keep the letter under Annexure-R/2 dated 29.06.2005 in abeyance and to remit the matter back to the Respondent No.2 to re-examine the grievance of Applicant pursuant to the observations made under Annexure-A/6 and pass appropriate order thereon within a period of 60 (sixty) days from the date of receipt of copy of this order. Ordered accordingly. With the observations and directions made above, this OA stands allowed. There shall be no order as to costs.

K. Thankappan  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

C.R. Mohapatra  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)