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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.627 of 2005
Cuttack, this the 20th day of March, 2009

Bhima @ Bhima Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. 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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O.A.No.627 of 2005

Cuttack, this the ~~20th~~ day of March, 2009

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)

Bhima @ Bhima Behera, aged about 61 years, son of Agadhu, Retd. PWM (Con), E.C.Railway, Cuttack permanent resident of Village-Sahalsingh, PO Harikunda, Biridi, PS Banapur, Dist. Cuttack.

.....Applicant

By Advocate : M/s.N.R.Routray, S.Mishra,

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Engineer, D-II, Construction, East Cost Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Deputy CPO (Con.) and Convener-Cum-Member of the Committee, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. CAO (Con.), E.C.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Banamber Jena, S/o.Hari Prasad, Senior Trackman, O/O. XEN (Con.) Raghunathpur, East Coast Railway, At/Po.Raghunathpur, Dist. Jagatsinghpur.
6. Sudarshan, S/o.Kangali, Senior Trackman, O/o.XEN (Con.)/E.C.Railway/Cuttack, At/Po. Station Bazar, Dist. Cuttack.
7. Deputy Chief Engineer (Con.), E.C.Railway, Waltier, At/Po/Dist.Waltier, Andhra Pradesh.

....Respondents

By Advocate :Mr.P.C.Panda

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ORDER

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

Applicant is a retired employee of the Railway. He retired from service of the construction wing of the East Coast Railway. Vide order under Annexure-A/3 dated 26.04.1989, the Railway Administration as a matter of policy decided to consider ante-dating the date(s) of regularization of casual labourers who fulfil the following conditions:

- “1. The concerned casual labourers should be on roll of the construction organization on 1.4.1973;
2. They rendered 3 years or more aggregate casual service on 1.4.1973;
3. They were on turn for regularization with effect from 1.4.1973.

2. Seeking the benefit of the above instructions, one Shri Budhi Swain approached this Tribunal in OA No. 494/1994. In order dated 31st July, 2000, this Tribunal disposed of the aforesaid direction by directing the Respondents to examine the case of Budhi Swain in the light of the decision taken by the Railway for antedating the date of his regularization. According to the Applicant Shri Swain was junior to him and in compliance of the order of this Tribunal the date of regularization of Shri Swain was ante-dated to a date prior to his earlier date of regularization and accordingly, he was granted all other consequential benefits. By making representation, the Applicant sought extension of the

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benefits of the circular dated 26.04.1989 as was granted to Budhi Swain.

3. Alleging non-consideration of his representation and seeking extension of the benefit granted to Budhi Swain, Applicant approached this Tribunal in OA No.1318 of 2003. The said OA was disposed of on 31.12.2003 with the following direction:

"In the aforesaid premises, this Original Application is disposed of at the admission stage with direction to the Respondents to examine the grievance of the Applicant and if he is really senior to Budhi Swain (the beneficiaries of the judgment rendered in OA No. 494 of 1994) then his regularization should be ante-dated to 1.4.1973 and, as a consequence, all service benefits should be extended to the applicant. The entire exercise should be completed by the Respondents within a period of 120 days from the date of receipt of a copy of this order."

4. It appears, in compliance of the order of this Tribunal, the Respondents considered the case of the Applicant through the committee duly formed for examining the cases of casual laboruers for ante dating their regularization. On the recommendation of the committee, the claim of the applicant was rejected and communicated to him under Annexure-A/8 dated 17.5.2005. The reasons attributed in the order of rejection of the claim of the Applicant are that (i) each unit is having its own seniority list of casual labourers. The persons applicant claimed

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to be his juniors belong to re-gridering unit of having separate seniority unit; (ii) PCR posts have been sanctioned separately to each of the units; (iii) Shri Budhi Swain belongs to different seniority unit and as such cannot be treated as junior to him; and (iv) None of the juniors of the seniority unit of applicant regularized w.e.f. 1.4.1973 and regularization of casual employees in the Applicant's unit was done strictly in accordance with the seniority position subject to availability of vacancy. Accordingly, the Respondents rejected the claim of the Applicant. Being aggrieved by the said order of rejection, the applicant approached this Tribunal with prayer to quash the order of rejection, direct the Respondents to ante-date his date of regularization to 1.4.1973 and grant him all consequential benefits allowed to Mr. Swain.

5. Respondents by filing counter have tried to justify their stand of not-extending the benefit of the circular and the grounds taken in the order of rejection.

6. Heard the parties and perused the materials placed on record.

7. The scheme of ante-dating the regularization to 1.4.1973 is applicable to those casual labourers who fulfil the conditions stipulated therein such as the concerned casual

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labourers should be on roll of the construction organization on 1.4.1973; secondly they should have rendered 3 years or more aggregate casual service on 1.4.1973 and the third one is that they were in turn for regularization with effect from 1.4.1973. It is seen that the committee constituted examined the case of the applicant vis-à-vis the others and found that the case of the applicant did not come within the purview of the conditions stipulated therein. Hence rejected the claim of the Applicant. Law is well settled that Court cannot encroach upon the powers of the committee by substituting its own views and opinion in the absence of oblique motive attributed to the selection Committee. No material has been produced by the Applicant to come to the conclusion that the consideration made by the committee was no consideration or is actuated with mala fide.

8. Besides the above, the Applicant has offered no explanation as to why he slept over his right for such a long time when the scheme came into existence w.e.f. 1989. As per the decision of the Hon'ble Apex Court disposal of representation pursuant to the order of the Court/Tribunal will not extend the law of limitation. Therefore, besides on merit, this OA is bound to be dismissed on the ground of law of limitation.

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9. For the reasons discussed above, viewing the matter from any angle, this OA is bound to fail being devoid of any merit.

Accordingly, this OA stands dismissed. No costs.

K a p p a n
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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

KnM,PS