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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.85 of 2006
Cuttack, this the 14th day of May, 2009

Manguli @ Manguli Deogan 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?

BB
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.85 of 2006
Cuttack, this the 14/11 day of May, 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)

.....
Manguli @ Manguli Deogan, aged about 57 years, Son of Samo, permanent resident of Village Maniapatna, PO. Duburi, PS. Sukinda, Dist. Jajpur t present working as a Store Watchman under Junior Engineer/Path Way/Con/E.C.Railway/CTC.

.....Applicant

Advocate for Applicant: M/s.N.R.Routray, S.Mishra
-Vs-

1. Union of India represented by the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer (Con.), E.C.Railway, Rail Vihar, Chandrasekharpur, Town-Bhubaneswar, Dist. Khurda.
3. Dy.Chief Personnel Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. FA & CAO (Con.), E.C.Railway, Rail Vihar, Chandrasekharpur, Town-Bhubaneswar, Dist. Khurda.
5. Dy. Chief Personnel Officer (Gazetted), South Eastern Railway, Garden Reach, Kolkata-43, West Bengal.

Advocate for Respondents: Mr.P.C.Panda

O R D E R

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

Applicant who is working as Store Watchman under the Junior Engineer, Path Way (Con.) of East Coast Railway, Cuttack, earlier approached this Tribunal in OA No. 539 of 2001 seeking direction to the Respondents to ante-date his date of regularization to 01.04.1973. By relying on the instruction of the Railway dated 26.04.1989 this Bench of the Tribunal, in order dated 27.03.2003 disposed of the aforesaid Original Application directing the Respondents to place the grievance of applicant before the committee

12/✓ constituted for the purpose and the said committee should consider the case of applicant under the relevant rules and instructions on the subject at the earliest dispatch. Accordingly, the Respondents placed the case of the Applicant before the Committee for consideration. On examining the records, the Committee came to the conclusion that there is no reason to ante-date the date of regularization of the Applicant to 01.04.1973. The order of the Committee was communicated to the Applicant vide letter under Annexure-A/8 dated 08.10.2004. Being aggrieved by the said order of rejection, the Applicant approached this Tribunal in this second round of litigation seeking the following reliefs:-

- (i) To quash the impugned order of rejection dated 23.09.2004 communicated on 08.10.2004 under Annexure-A/8;
- (ii) And direct the Respondents to regularize service of applicant w.e.f. 1.4.1984 instead of 1.2.1991;
- (iii) And pay the consequential service and financial benefits."

2. The main ground of his challenge of the order of rejection under Annexure-A/8 is that he joined in the service of the Railways as casual Khalasi on 13.12.1971, got temporary status w.e.f. 01.01.1981 and regularized w.e.f. 01.02.1991 whereas another person namely 'Bhima' although started his service as casual khalasi in the Railways on 29.06.1979, got temporary status w.e.f. 1.1.1983, was regularized w.e.f. 1.04.1984 which is highly illegal, arbitrary and is in violation of Article 14 and 16 of the constitution. His contention is that though 337 Class IV PCR posts were sanctioned for the unit to which the Applicant belongs the Respondents regularized the casual labourers with temporary status employees working under DEN/C/HQ/SE Railway, Cuttack to which unit Bhima belongs. Further contention of the Applicant is that the Hon'ble High Court of Orissa in order dated

28.11.1978 in OJC No.601-610 of 1977 had specifically directed to prepare a single seniority list of screened casual labourers Division wise for their regular absorption in class IV vacancies and that, the Respondents brought to the notice of this Tribunal in TA no.164/86 that in accordance with the direction of the Hon'ble High Court, divisional single seniority list has already been prepared for regularization. According to the Applicant preparation of the divisional common seniority has also been reiterated by the Hon'ble Apex Court in the case of Indrapal Yadav and others v Union of India and others; even then physically there has been no divisional common seniority list of casual laboruer with temporary status being maintained by the Respondents; thereby causing supersession in the matter of regularization of the casual labourers with temporary status working in the Railways. The next contention of the Applicant is that in similar matter a batch of multipurpose Khalasis approached this Tribunal in OA Nos. 676/2002 and 1141/2002 seeking direction to the Respondents to ante date their date of regularization to 08.12.1988. During the course of hearing it was brought to the notice of this Tribunal that 103 PCR post of Rejas were created from 01.04.1984 and that another 37 PCR posts were due from 01.04.1988 but all the posts were kept in abeyance on the advice of the Financial Advisor in 1989 and that taking into consideration the materials placed on record, this Tribunal directed the Respondents to ante date the regularization of 103 senior most female rejas to 01.04.1984 and 37 next senior most to 01.04.1988 and accordingly, the Respondents vide order dated 13.01.2005 ante dated the regularization of 103 Rejas to 01.04.1984 and 37 Rejas to 01.04.1988 from 31.05.1994. It has been stated that since the present case squarely comes within the facts and

circumstances of the cases disposed of by this Tribunal, necessary direction may be issued to the Respondents to ante date the date of regularization of the applicant to the date of regularization of his junior 'Bhima'/01.04.1984.

3. Respondents' stand (both in counter as well as during hearing) is that while the applicant was a casual khalasi in the construction unit of the then DEN/Con/Cuttack, 'Bhima' was a casual employee of the construction unit of the then DEN/Con/HO/quarter/Cuttack. Both of them were working under separate independent construction units. For both the units screening tests were conducted separately and placement of casual labourers was made in accordance with their length of service rendered by individual on casual basis. Their contention is that the applicant is claiming parity with the regularization of Bhima without making him a party in this OA. Further according to the Respondents, the Applicant challenges the seniority after 18 years and as such, by applying the ratio of the decision of the Apex Court in the case of **S.S.Rathore v State of MP**, AIR 1990 SC 10 this OA is liable to be dismissed.

4. We have given our thoughtful consideration to various points raised by the parties and perused the materials placed on record. It is seen that neither the applicant was one of the Applicants in earlier OA relied upon by him nor has he ever taken any step raising the dispute of non-preparation of common seniority list pursuant to the direction of the Hon'ble Apex Court, High Court or even of this Tribunal. Even if it was disclosed by the Respondents that common seniority list was prepared but in fact there was no such common seniority list prepared by the Respondents, it was well open

to the Applicant to avail the remedial measure available under rules/Law. Having not done so, he is debarred from questioning the seniority list at this distance of time; because rulings of the Hon'ble Apex Court are that law helps only vigilant not indolent and applicant, in the instant case being an indolent, he cannot claim to unsettle a settled thing at this distant place of time repercussion of which will be far reaching to many such employees who might have retired meanwhile. Besides the above, except bald allegation no concrete evidence has been placed by the applicant to show that 'Bhima' was in fact junior to him. It is also not understood when according to applicant there was no common seniority list prepared by respondents how can it be said that Bhima was junior to the applicant and was regularized earlier to applicant; when according to the Respondents both of them were working in two different separate and independent construction units of the Railways. The so called 'Bhima' has also not been made as a party in this OA. In view of the above, we find that the decisions relied on by the Applicant are hardly of any help to the case of the Applicant.

5. Law is well settled that this Tribunal being not the appellate authority cannot sit over the decision reached by the competent authority in accordance with the records available with them. It is well propounded law that such interference is possible where there has been flaw in the decision making process of the matter. In fact after going through the records vis-à-vis the contentions advanced by the parties, we find no irregularity not to speak of any illegality in the order of rejection under Annexure-A/8. In the circumstances, we have no option except to hold that this Original

Application sans any merit and is liable to be dismissed.

Accordingly, this OA stands dismissed. No costs.

Thankappan

(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

Chapati

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

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