

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 152 OF 2006
CUTTACK, THIS THE 4th DAY OF December, 2008

Bharati Hota Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(K. THANKAPPAN)
MEMBER (JUDL.)


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

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ORIGINAL APPLICATION NO. 152 OF 2006
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CORAM :

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....
Smt. Bharati Hota, Aged about 40 years, W/o late K.N.Hota, Village-
Ganthiapalli, P.O.-Papanga, Dist-Bargarh, Orissa.

.....Applicants

Advocate(s) for the Applicant- M/s.Ramakant Nayak, S.K.Parida,
A.K.Swain, S.K.Parida,
A.K.Sahoo.

VERSUS

1. Union of India represented through the Secretary to the Government, Ministray of Water Resources, Government of India, Shrama Shakti Bhawan, New Delhi-110001.
2. Chairman, Central Water Commission, Sewa Bhawan, R.K.Puram, New Delhi-110066.
3. Superintending Engineer, Hydrological Observation Circle, Central water Commission, Plot No.-13 & 14, Bhoiagar, Bhubanewar.
4. Executive Engineer, Mahanadi Division, Central Water Commission, Burla, Sambalpur.

..... Respondents

Advocates for the Respondents – Mr. S.K.Patra.

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ORDER

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

The applicant is the widow of Late Shri K.N.Hota, who was working as a Seasonal work-charged Khalasi with the Central Water Commission office, Burla, Orissa w.e.f. 01.06.1987 and died on 22.03.2002.

2. By filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs:

“8(a). The temporary Status be conferred upon the applicant's husband just after completion of 120 days continuous service i.e. with effect from 01.06.1987 i.e. from the date of initial appointment and consequential benefits may be allowed to the applicant.

(b) The service of the applicant's husband be regularized after completion of three years of continuous service following the conferment of temporary status i.e. with effect from 01.06.1988.

(c) The Full Annual increment be calculated and paid to the applicant as per the rule with retrospective effect from 01.06.1988.

(d) The Night Duty weightage be calculated and paid to the applicant as the days the husband of the applicants performed highest duty from the year 1987 to 2001.

(e) Department leave with 25% of leave salary for the break-up period be calculated and paid to the applicant w.e.f. 1987 to 2001.

(f) Death-cum-Retirement Gratuity be paid to the applicant as per Gratuity Act 1972 with 24% interest for the period commencing from 01.04.2002 till the actual date of payment.

- (g) The family pension be sanctioned and paid to the applicant as per 54(1) pf CCS Pension Rule with 24% interest for the period commencing from 01.04.2002 till the date of actual payment.
- (h) Reasonable compensation be allowed for the mental agonies and torture inflicted upon her due to carelessness and negligence of the department.
- (i) At the cost of the litigation be allowed in favour of the applicant.”

3. To substantiate her claim, the applicant has contended that a casual labour is entitled to temporary status immediately on completion of 120 days of continuous service and her husband had put in the requisite period of service by virtue of which he should have been conferred with temporary status w.e.f. 01.06.1987 whereas he has been accorded temporary status from 01.06.1997. i.e. the date when a special scheme, promulgated by the Ministry of Water Resources, came into force. She further contends that the scheme of 1997 was violative of the principles laid down by the Apex Court as well as different Benches of this Tribunal in the cases cited by her in the O.A. Her further contention is that the service benefits such as family pension and gratuity has been denied to her whereas other work-charge Seasonal Khalasis in Hydrological Observation Circle, C.W.C., Bhubaneswar have received such benefits. She had made various representations to the different authorities but her claim has been rejected mainly on the ground

that the same is not covered under the Scheme introduced in 1997 by the Ministry of Water Resources. In paragraph 4.21 of the O.A., the applicant has stated that "the policy decision of the Government has not immunity from judicial review, if the Policy decision is malafide, arbitrary, discriminating, violative of Article 14/16 of the Constitution of India and it is contrary to the public interest and the same can be interfered with"

4. The Respondents have filed a detailed counter and prayed for the dismissal of this Original Application being devoid of any merit.

Respondents have stated in their counter as under:

8(a) The scheme to Grant Temporary Status to the Seasonal Khalasis, who are deployed under the department has come into force w.e.f. 1.6.97 and not w.e.f. 1.6.87. The Temporary status has been granted to the eligible seasonal khalasis including the applicant's husband with effect from 1.6.97:

(b) The scheme has come into force w.e.f. 1.6.97 and there is no provision for regularization of services of seasonal khalasis who works for nearly 4 months during a year under the scheme.

(c) As per the provision under the scheme increment on pro-rata basis is being granted.

(d) There is no provision for payments of Night Duty weightage under the scheme.

(e) Leave on a prorata basis at the rate of one day for every 10 days of work is granted but there is no provision of departmental leave with 25% of leave salary for the break of period under the scheme-97.

(f) Death of Retirement Gratuity has been sanctioned to the applicant as per the provision made in the Gratuity Act-1972 with 10% interest (Annexure-R/16).

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(g) Seasonal khalasis with temporary status are governed by the Scheme-97, which comes into force with effect from 1.6.97 and there is no provision under the Scheme-97 to grant the family pension.

(h) All the benefits as enumerated in the scheme have been extended to late Shri K.N.Hota husband of the applicant. Death cum Retirement Gratuity has also been sanctioned to the applicant (Annexure-R/16)

5. Heard Mr. R.K.Nayak, Ld. Counsel for the applicant and Mr. S.K.Patra, Ld. Additional Standing Counsel for the Respondents and perused the documents available in the records.

6. It is a fact that the Central Water Commission had employed Khalasis since 1973 during the monsoon season to carry out certain specific tasks. To address the problems of this category of Seasonal Khalasis, in pursuance of various directions issued by this Tribunal in some other cases, Govt. of India, Ministry of Water Resources, formulated a Scheme with the specific condition that

“2. Scheme will come into force with effect from 1.6.1997.

3. This scheme is applicable to the seasonal khalasis in employment on the workcharged establishment of the Central Water Commission on the date of commencement of the scheme and who continue to be so employed and have rendered a minimum of 120 days continuous service or such persons who were engaged any time during the preceding one year and have rendered a minimum of 120 days continuous service in that year.”

7. The benefits of the scheme are dependent on the conditions laid down in the scheme, which have been cited by the applicant herself vide Annexure-A/2. It is seen that though the scheme was formulated in 1997, this was not challenged by the applicant at the relevant point of time and even now in the prayer of the applicant the same is not challenged by way of seeking relief from this Tribunal at para 8 of the O.A. Since the scheme has come into effect from 1.6.1997, the prayer of the applicant to confer temporary status from 1.6.87 cannot be accepted. The case of the applicant has to be considered and decided only as per the scheme and, as is evident from the counter, the applicant has already been granted with Death cum Retirement Gratuity as per the Gratuity Act-1972 with 10% interest and the bill for payment of the same was stated to be under process by the Respondents vide Annexure-R/16 for grant of Rs. 22,947/- The Respondents have also averred in their counter that all benefits as per the scheme of 1997 have been extended to Late K.N.Hota, husband of the applicant.

8. In the above view of the matter, the various reliefs claimed by the applicant being not covered under the Scheme of 1997 are not sustainable. Further no malafide or arbitrariness has been brought to our notice by the applicant either during the hearing or in the O.A. warranting any interference in the policy

decision of the Government, which was promulgated way back in 1997.

9. Accordingly, the O.A., being devoid of any merit, is dismissed. The parties to bear their own costs.

Kappan
(K.THANKAPPAN)
MEMBER (JUDL.)

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

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