

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No.429 of 2006
Cuttack, this the 19th day of December, 2008

Gobardhan Mohanty @ Mishra 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.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 429 of 2006
Cuttack, this the 19th day of 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)

Gobardhan Mohanty @ Mishra, aged about 53 years, Son of Late Narayan Mohanty, At/Po. Jakhapura, Dist. Jajpur at present working as JE Gr.II (Con), P.Way, SPB under Deputy Chief Engineer (Construction), Sambalpur, At/Po/Dist.Sambalpur.

.....Applicant
By Advocate M/s. C. Ananda Rao, S.K.Bhera,
A.K.Rath.
- Versus -

1. Union of India represented by the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.
3. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Chief Administrative Officer (Con.), E.C.Rly, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Deputy Chief Personnel Officer (Con.) E.C.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents
By Advocate :Mr. S.K.Ojha.

O R D E R

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

This OA has been filed challenging Annexure-10 where under the Applicant's claim for ante-dating his regular service from 1.4.1973 has been rejected. It is seen from record that CE (Con)/GRC's Circular issued in letter No. PD/E/579/002946 DATED 26.04.1989 directed for consideration of the cases of such of the employees for regularization of the services of casual labourers against permanent construction reserve posts w.e.f.

01.04.1973. The conditions stipulated in the aforesaid circular speaks as under:

"Sub: Regularization of service of casual labourers against construction reserve (Group D) posts.

PCR Posts were created w.e.f. 1.4.73 on the basis of average strength of Group D posts as on 31.3.1971, 31.3.72 and 31.3.73 but services of casual labourers were regularized against the posts from various dates subsequent to 1.4.1973.

It has now been decided that the date of regularization of the casual labourers who fulfill the following conditions should be put back to 1.4.73.

- i) The concerned casual labour should be roll of the construction organization as on 1.4.1973;
- ii) They should have rendered three years or more aggregate casual service as on 1.4.1973;
- iii) They were in turn for regularization w.e.f. 1.4.1973.

Day of those whose date of regularization would thus be put back to 1.4.73 should be fixed on the appropriate regular scale of pay w.e.f. 1.4.73 and difference of pay and allowances due drawn, if any, be paid.

Absence and/or breaks in casual service on or after 1.4.73 of those who fulfilled the above conditions, if any, may be regularized by grant of leave/extraordinary leave which they would be entitled to no regularization of casual service."

2. As per the policy decision of the Railway and pursuant to the orders of this Tribunal in various cases filed by the Applicant (OA No.596 of 1996) and other similarly situated employees of the Railway, a Committee was constituted by the competent authority. The cases of Applicant and other similarly situated employees were examined by the Committee in regard to their grievance for ante-dating their date of regularization to 1.4.1973 as against their regularization on later dates. The Committee after examining records vis-à-vis the grievance raised by the employees including the Applicant opined as under:

"12. Against the backdrop the Committee rejects the claim of 24 Petitioners in the subject OAs except Sri Lingaraj and Gobardhan Mohanty from grant of PCR status w.e.f. 1.4.1973 as being devoid of merit. The cases of S/Shri 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. 1.4.1973. The representation of the applicants is accordingly disposed of."

3. On receipt of the report of the Committee, the CAO/Con/BBS vide order dated 26.6.2005 (communicated in letter under Annexure-A/10 dated 29.6.2005) rejected the grievance for ante-dating his date of regularization to 1.4.1973 for the aforesaid reason:

"OA No.596/1996 in the matter of Sri Gobardhan Mohanty.

- (a) On an examination of this case I have found the Garden Reach's committee has erred in treating Sri Mohanty as a PCR staff I recommending the case to the competent authority for a final decision for regularization against PCR post w.e.f. 1.4.1973.
- (b) As per service record, Sri Gobardhan Mohanty holds lien in a Group D post of Gangman/Trackman in the Engineering Department of Khurda Road Division and thus he is a lien holder.
- (c) The circular dated 26.4.1989 issued by the CE/Con/SE Railway/Garden Reach is not applicable for grant of PCR status to the Lien holders. Extant rule, does not permit regularization of lien holders against any PCR post. Relevant position of ruling as communicated by CPO/GRC's order letter No.P/R/17/TR-CR/IV dt. 17.3.1989 Clause B Sub-Para(IV) is reproduced below:

"The personnel having lien in Open line will not at all be eligible for confirmation against Construction Reserve posts, since the posts are meant for confirming the locally recruited personnel in Construction Organization who have no lien or Permanent status or those who are confirmed against Construction Reserve Posts in lower grade."

4. Being aggrieved by the aforesaid order of rejection dated 26/6/2005/29.6.2006; the Applicant filed this Original Application U/s.19 of the A.T. Act, 1985 praying as under:

- (i) The order passed vide Annexure-10 in rejecting the claim of regularization against PCR post w.e.f. 1.4.1973 on flimsy ground be quashed;
- (ii) The respondents be directed to act on the recommendation of the Committee constituted vide

- 4 -

Annexure-7 and to regularize the service of applicant against PCR post w.e.f. 1.4.1973 as per recommendation vide Annexure-9 as because on the consent and proposal of the Railway authority this Hon'ble Tribunal in OA No. 596 of 1996 without going to merit had directed vide Annexure-8 for sending the records to the Committee for consideration of the claim of the applicant;

(iii) The respondents be directed to give all such service and financial benefits to the applicant on his regularization w.e.f. 1.4.1973."

5. By filing a reply, the Respondents opposed the stand of the Applicant both on merit as well as limitation. No rejoinder has been filed.

6. Heard the rival submissions of the parties and perused the materials placed on record.

7. Learned counsel for the applicant submitted that it is not correct to say that the applicant is not entitled to the benefits of the instructions issued by the Railway directing ante-dating the date of regularization of the casual labourers; especially when similarly situated employees have already been conferred with the benefits what the applicant has now sought in this OA. Further contention of the learned counsel for the applicant that the grounds based on which the applicant has been denied the benefits are not sustainable after the report of the Committee duly constituted by the authorities. As such, he prayed to quash the impugned order with direction to ante-date the date of regularization of the applicant to 1.4.1973.

8. Learned counsel appearing for the Respondents submitted that there was no injustice meted out to the applicant in the decision making process of rejecting the claim of the applicant; because the Applicant was selected for the Class IV post in Open Line by the duty constituted selection committee. He was transferred to open line of KUR Division on his own interest as well as on the basis of the declaration dated 2.4.1984 to the offer

-5-

of appointment in the post of Gangman in the scale of Rs.200-250/- The Applicant had joined in the Open Line of KUR Division under PWI/OL/GRKN on 30.07.1984 to 30.09.1984. His service sheet was opened in KUR Division and pay fixation had also been done in KUR Division as Gangman in the scale of Rs.200-250/. The qualifying service of applicant has also been vetted by Sr.DFM/KUR on 30.03.2007 keeping in mind that he is a Lien holder of KUR Division w.e.f. 30.07.1984. He was released and joined in the office of the DEN/C/JD/CTC w.e.f. 30.09.1984. The instruction of Railway dated 26.4.1989 is only applicable to the casual labourer regularized from a date subsequent to 1.4.1973. The Applicant was absorbed against PCR cadre in the construction organization on 28.4.1994 retaining his lien in Open Line of KUR Division. Therefore, the applicant is not entitled to the relief claimed in this OA.

9. We are not impressed by the contention of the Respondents that this OA is liable to be dismissed on the ground of limitation because it is noticed that after the decision of this Tribunal, 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. Finally the case of the Applicant was rejected vide order dated 26.6.2005 and communicated to the applicant under Annexure-A/10 dated 29.06.2005. Challenging the said order the applicant preferred this OA on 13th September, 2005 within a period of one year as provided under section 21 of the A.T. Act, 1985. Hence, the plea of limitation raised by the Respondents does not hold any water.

10. Equally, we do not find any substance in the order of rejection of the claim of the applicant; because in similar matter in OA no. 187 of 2005 disposed of on 4th December, 2008 (Lingaraj v UOI and others) this Bench of the Tribunal allowed the prayer of the said applicant. The relevant portion of the observations made in the case of Lingaraj (supra) is reproduced below:

"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 13th July, 2001. As it reveals from the record, subsequent to the aforesaid order of this Tribunal, the Chief Personnel Officer issued circular dated 13.078.2001 to all Divisional Railway Manager (Personnel) directing constitution of a committee and identification of cases 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:

"6. 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

14
7
extended the benefit of regularization against PCR posts w.e.f. 01.04.1973. The representations of the applicants are accordingly disposed of."

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."

11. In view of the discussions made in the case of Lingaraj (supra) quoted above, we find substantial force in the submission of the Applicant and accordingly quash the impugned order under Annexure-A/10 so far as Applicant is concerned and remit the matter back to the Respondents for reconsidering the case of applicant for conferring the benefits of the

13

- 8 -

instructions dated 26.04.1989 on the Applicant within a period of sixty days from the date of receipt of copy of this order.

12. In the result, this OA stands allowed to the extent stated above.

No costs.

Kappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chakraborty

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

Knm, ps