

9


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No.561 of 2006  
Cuttack, this the 06<sup>th</sup> day of April, 2009

Prafulla Kumar Kanungo .... 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.)

10  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.561 of 2006  
Cuttack, this the 06<sup>th</sup> day of April, 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)

Prafulla Kumar Kanungo, aged about 60 years, Son of  
Late Prabhu Charan Kanungo, At-Agar, Po. Kortal,  
Ps/Dist.Jagatsinghpur.

.....Applicant

By Advocate : M/s.Abhaya Kumar Sharma, Satyajit  
Behera

- Versus -

1. Union of India represented through the General Manager  
East Coast Railway, Rail Vihar, Chandrasekharpur,  
Bhubaneswar 23, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda  
Road, At/Po/Ps/District-Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway,  
Khurda Road, At/Po/Ps.Jatni, Dist. Khurda.
4. Asst. Divisional Engineer, Cuttack, East Coast Railway,  
At/Po/Dist.Cuttack.
5. FA & CAO (Pension), East Coast Railway,  
Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents

By Advocate - Mr.P.C.Panda.

O R D E R

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

Claiming grant of pension and pensionary benefits  
by counting the entire period of service starting from his

L

casual work w.e.f. 29.9.1966 till 26.07.1982, after retirement w.e.f. 30.06.2005, the Applicant has approached this Tribunal in OA No. 72 of 2006. In order dated 24.01.2006 this Tribunal disposed of the aforesaid OA by directing the Respondents to take a decision on his pending representation. In compliance of the said direction, the Respondents disposed of the representation of Applicant and communicated the result thereof in letter under Annexure-A/10 dated 23.03.2006. Being aggrieved by the said order, the Applicant approached this Tribunal in the present Original Application filed u/s.19 of the A.T. Act, 1985 seeking the following reliefs:

“To quash the order dated 23.3.06 passed by the Respondent No.3 under Annexure-A/10.

To direct the Respondents to count the past service of the applicant w.e.f. 29.9.66 to 26.7.82 for the purpose of pensionary benefits;

To direct the Respondent No.3 to regularize the services of the applicant from the initial date of appointment i.e. w.e.f. 29.9.66;

To direct the Respondents to give all consequential service benefits.”

2. According to the Respondents there being no injustice caused in the decision making process of granting the pension and pensionary dues to the Applicant <sup>while</sup> ~~which~~ passing the order under Annexure-A/10 dated 23.03.2006; this OA deserves to be dismissed.

12 ✓  
3. Heard Learned Counsel for both sides and perused the materials placed on record.

4. According to the Applicant on 29.4.1966 he was appointed as Casual Khalasi under the Inspector of Works, SER, Cuttack and conferred with temporary status w.e.f. 29.9.1966. The service of the applicant was regularized w.e.f. 26.7.1982. He was promoted to the post of Khalasi helper w.e.f. 23.7.1986 and retired from service w.e.f. 30.06.2005. His contention is that since his casual appointment was followed by grant of temporary status and regularization, he should have been granted the pension and pensionary benefits by taking into consideration the entire period of service instead the Respondents granted him the pension and pensionary benefits only giving weightage of 50% of his total period of service from conferment of temporary status till regularization and 100% from the date of regularization till retirement thereby totally ignoring the entire period of his past casual period of service which is not sustainable in the touch stone of judicial scrutiny. His further contention is that there was no rhyme or reason to regularize his services earlier than 26.7.1982. He is being not responsible for such delay in regularization, should not be made to suffer at the fag end of his

2



life. His next contention is that his case is fully covered by the decision of this Tribunal rendered in the case of Kandan v Union of India and others in OA No.605 of 1992 disposed of on 29.3.1993. As such he is entitled to the relief claimed in this OA.

On the other hand, Respondents' counsel vehemently contended that the Applicant is not entitled to the relief claimed by him on the ground of delay and laches so also on merit. According to him while grant of temporary status on a casual employee after completion of requisite days of service is irrespective of availability of vacancy, the regularization is done only after availability of vacancy. His next contention is that he was granted the pension and pensionary benefits by taking into consideration 50% of his temporary status period of service and 100% of service from the date of regularization till retirement as per Estt.Srl.No.239/80. As regards the decision cited by the Applicant it has been contended that the said decision is not applicable to the case of the Applicant being different and distinct.

5. Be that as it may, we find that the present case is fully covered by the decision of the Hon'ble Supreme Court in the case of **General Manager, North West Railway and others v**

✓  
**Chanda Devi**, (2008) 1 SCC (L&S) 399 holding that there could be no wrong in calculating pension and pensionary benefits by taking into consideration 50% of temporary period of service and 100% of service from the date of regularization till retirement as it was in accordance with the provisions embodied in Estt.Srl.No.239/80. In view of the above, the decision of this Tribunal relied on by the Applicant is of no avail to him.

6. Besides on merit, it is also found that this Original Application is bound to be dismissed for delay and laches. No explanation is given as to why the Applicant kept quiet for such a long time i.e. from the date of his regularization till filing of the earlier OA. The rejection of his representation in compliance of the order of this Tribunal in OA No. 72 of 2006 cannot give life to a cause of action which is not sustainable even when the first application was filed (vide **C.JACOB v DIRECTOR OF GEOLOGY AND MINING AND ANR**, AIR 2009 SC 264).

7. Hence, it is held that this Original Application sans any merit and is accordingly dismissed. No costs.

Thankappan  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

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