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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOs. 676 of 2003 & 1141 of 02
Cuttack, this the day of Jan 2005
Bhu

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

IN O.A.NO.676 to 689 of 2003

1. Pana, D/o.Guruva, aged about 52 years, village Jaipur, P.O.Kalma, via:Baisincha, Dist.Mayurbhanj.
2. Baijayanti, D/o. Manai, aged about 51 years, village Bagal'ari, P.O.Pankapal, P.S.Sukinda, Dist.Jajpur.
3. Malati, D/o.Karu, aged about 54 years, Multipurpose Khalasi.
4. Lassa, D/o.Mangal, aged about 59 years, village Suklakhai, P.O.Nargana, Dist.Mayurbhanj, retired Multi purpose Khalasi of S.E.Railway under P.W.I(con)/BESR.
5. Basanti, D/o.Happanna, aged about 54 years, vill/P.O. Deosole, P.S.Muruda, Dist.Mayurbhanj.
6. Karmi, D/o.Chaitan, aged about 59 years, village Matikharja, P.O.Pathingnatwapur, P.S.Badasahi, Dist.Mayurbhanj working as G.P.W. MPKH under P.W.I., Gorakhnath.
7. Fulmani, D/o.Chandra, aged about 54 years, village Tulsipur, P.O.Hairipitha, Dist.Mayurbhanj.
8. Deula, D/o.Bhadu, aged about 61years, village Medrapur, P.S.Raisingha, Dist.Mayurbhanj, Ex-MPKW under P.W.I/ Con/BESR.
9. Basi, D/o.Pradhan, aged about 59 years, Vill/P.O. Chandanpur, P.S./Tahasil:Badasahi, Dist.Mayurbhanj.
10. Arsa, D/o.Ganesh, aged about 53 years, village Okasala, P.O.Nadagarja, P.S.Muruda, Dist.Mayurbhanj.
11. Malha, D/o.Balai, aged about 53 years, multi purpose Khalasi.
12. Kapura, D/o.Anupa, aged about 57 years, multi purpose Khalasi.
13. Dully, D/o.Sundara, aged about 51 years, multi purpose Khalasi under Dy.C.E.(E) (Con), E.C.Railway, Chandra-Shekhpur.

14. Jamuna, D/o. Megharaj, aged 53 years, multi purpose Khalasi under F.A. & C.A.O. (Con)/E.C.Rly. Chandrasekharpur.

The applicants No. 1, 2, 5, 9, 10 & Applicants No. 3, 7, 11, 12 at present working under PWI/Con/E.C.Rly/BESR & Cuttack

..... Applicants

Advocates for the applicants M/s. N.R.Routray & S.Misra

Versus-

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Deputy Chief Personnel Officer (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. C.E.-II, (Con)/East Coast Railway, Rail vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda,
4. C.A.O. (C), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. The Chief Project Manager (Con), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

..... Respondents

Advocates for the Respondents M/s. S.K.Ojha & H.M.Das
(for R.1 to 4)

IN O.A.NO.1141 of 2002 and O.A.Nos. 42 to 81 of 2003

1. Jamuna, D/o. Maghrai, aged about 50 years.
2. Basanti, D/o. Duburu, Aged about 52 years.
3. Sati, D/o. Mania, aged about 51 years.
4. Basanti, D/o. Sundra, aged about 49 years.
5. Sambari, D/o. Shyam, aged about 48 years.
6. Buduni, D/o. Damani, aged about 50 years.
7. Pini, D/o. Sidhia, aged about 57 years.
8. Salgey, D/o. Gansu, aged about 53 years.
9. Girtha, D/o. Singa, aged about 49 years.
10. Lukhia, D/o. Pulrai, aged about 54 years.
11. Sambari, D/o. Dimbu, aged about 50 years.
12. Jawana, D/o. Kanda, aged about 55 years.
13. Pala, D/o. Pasanga, aged about 59 years.
14. Santi Dei, D/o. Keshabi, aged about 50 years.

15. Salma, D/o. Kuwar, aged about 57 years.
16. Chita, D/o. Sarkar, aged about 49 years.
17. Mini Dei, D/o. Gora, aged about 56 years.
18. Raimani, D/o. Eagu, aged about 56 years.
19. Sumitra, D/o. Duburu, aged about 44 years.
20. Dully, D/o. Sundara, aged about 56 years.
21. Salma, D/o. Sanka, aged about 58 years.
22. Maina, D/o. Kailu, aged about 48 years.
23. Sara Tudu, D/o. Dasa Tudu, aged about 59 years.
24. Nandi, D/o. Matu Munda, aged about 51 years.
25. Jawana, D/o. Bukhia, aged about 56 years.
26. Dulari, D/o. Rupai, aged about 52 years.
27. Beti, D/o. Pitha, aged about 52 years.
28. Hissi, D/o. Lassa, aged about 55 years.
29. Chheta Sawara, D/o. Madha, aged about years.
30. Chita, D/o. Sadana, aged about years.
31. Bari, D/o. Jogan, aged about 42 years.
32. Fulla, D/o. Ruhia, aged about 47 years.
33. Shanti, D/o. Savena, aged about 50 years.
34. Deulla, D/o. Tanguru, aged about 49 years.
35. Salma, D/o. Pitha, aged about 51 years.
36. Bhudu, D/o. Wagon, aged about 58 years.
37. Balhi, D/o. Mora, aged about 52 years.
38. Panmani, D/o. Sanjay, aged about 55 years.
39. Gundi, D/o. Narayan, aged about 51 years.
40. Dully, D/o. Karu, aged about 48 years.
41. Sambari, D/o. Gora, aged about 51 years.

All are working under the Chief Project Manager, South Eastern Railway, Chandrasekharpur, Bhubaneswar.

.... Applicants

Advocates for the applicants

.... M/s. S. Samantray,
P.K. Pratap &
M. Banarjee.

Versus-

1. Union of India represented by the General Manager,
South Eastern Railway, Gardenreach, Kolkata - 43.
2. The Chief Project Manager, South Eastern Railway,

Chandrasekhpur, Bhubaneswar, Dist:Khurda.

3. The Permanent Way Inspector, Construction, S.E.Railway, Cuttack.
4. The Inspector of Ways (I.W), S.E. Railway, Chandrasekhpur, Bhubaneswar.
5. Inspector of Ways (I.W), S.E. Railway, Jajpur Road.
6. Divisional Electrical Engineer, Electrical Office, S.E.Railway, Chandrasekhpur, Bhubaneswar.
7. The Accounts Officer, S.E.Railway, Chandrasekhpur, Bhubaneswar.

..... Respondents

Advocates for the Respondents

..... Mr.R.C.Rath

.....

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN,

Since both the O.As. 676/03 and 1141/02 pertain to common question of facts and law, we dispose of both the O.As. through this common order. For the sake of convenience, we may as well refer to O.A.No.676 of 2003.

2. This O.A. has been filed by Pana and thirteen other Multipurpose Khalasis working under PWI(Con)/Bhubaneswar and Cuttack, challenging the impugned order dt.5.2.03 passed by the Res.No.2 rejecting the prayer to ante-date their regularisation as Multipurpose Khalasi from earlier dates. They have claimed ante-dating their regularisation w.e.f. 8.12.88, i.e., the date on which the applicants appeared for medical test for their regular absorption in the Respondent Department.

4. Shorn of details the case of the applicants is that they were initially engaged as casual Rejas during

the period between 1.12.71 and 29.12.79. They have worked in various spells during this period. The applicants while working as such were granted temporary status w.e.f. 1.1.85 which was subsequently ante-dated to, in respect of some, 1.1.81 and for others, 1.1.82 in terms of Estt.Srl. No.187/86. On various dates like 8.12.1988, 17.12.88, 2.3.89, 3.6.89, 12.8.89, 19.8.89 they were allowed to appear for the medical test for their regular absorption/appointment in the pensionable establishment. They all were found fit in C/2 category for appointment. They appeared before the Screening Committee in the year 1990 and it was only after a lapse of six years from the date of medical examination, they were regularised, vide the order issued by Res.No.2 dt. 17.10.94 (Annexure-3).

4. The grievance of the applicants is that although they have been working as casual workers, some of them from the year 1971, but all of them before 26.4.79, they were regularised only in 1994. On the other hand, casual employees like the applicants working in other projects were regularised on completion of three years of service from the date of their continuous casual employment. They had, therefore, filed an O.A.No.153/02 before this Tribunal for a direction to ante-date their regularisation from the year 1979 or 1981 as the case may be. The application was disposed of by the Tribunal by order dt.28.3.02 with a direction to the Respondents to treat the O.A. to be a joint representation by all the applicants and to examine the case closely with a view to ante-date the date of regularisation of the

applicants. However, Res.No.2 by his order dt.5.2.03 rejected the prayer for ante-dating on two grounds: first is that the multi-purpose Khalasi posts were created with effect from 31.5.94 for the first time and that no alleged juniors to the applicants had been granted P.C.R. status from an earlier date.

5. The applicants have levelled the allegation of discrimination against the Respondents citing the cases of temporary status casual labourers (Annexure-4) who were medically examined in 1991 and screened in 1992 were regularised retrospectively. But the same policy was not followed for their benefits.

6. The Respondents have opposed the application on all counts, although they have admitted that some of the applicants were initially engaged some time in 1970 as daily rated casual labourers. They have stated that they were engaged as female Rejas whose duties were quite different from those of the male Khalasis who were regularised from 1.4.73 against P.C.R. posts. On the other hand, there were no P.C.R. posts sanctioned for the female Rejas w.e.f. 1.4.73 and that is the reason why no ante-dating is possible in their cases. The P.C.R. posts were created to regularise these female Rejas (i.e. the applicants in this O.A.) only during 1994. They have also submitted that this was a policy matter which was formulated at the intervention of the Trade Unions after 1991-92. Though these applicants were screened during 1990/91, their P.C.R. regularisation could not be taken up

immediately, as the posts could not be created by that point of time. The posts were available only in 1994.

7. The Respondents have further submitted that as the posts were created some time in 1994 and the competent authority had sanctioned those posts only during that year for absorbing the applicants, the question of antedating their regularisation is bereft of merit. It has also been submitted that male Khalasis who were on roll from 1.4.73 were first considered for regularisation against P.C.R. posts sanctioned for them and after completing the regularisation of male Khalasis, the cases of the applicants were taken up separately and thus their regularisation could not be put at the same pedestal as those of the male Khalasis. In the circumstances, the demand of the applicants for treating them at par with others is not tenable.

8. The applicants have filed rejoinder where they have dwelt on the point of discrimination in the work place. The applicants have also filed an additional affidavit to state that they were originally engaged for construction of Railway line of Cuttack-Paradeep line in the year 1969 through private contractors along with other male "Mulia". While the contract work was going on, in the year 1970 Union Government passed an Act, called, Contract Labour (Regulation & Abolition) Act, 1970. The applicants after working three years continuously under the Railway were disengaged due to completion of Cuttack-Paradeep Project. Again in

the year 1979, the applicants were called for selection/re-engagement under PWI/JD/Con for construction of a Railway line from Jakhapura to Daitari. During the year of 1984 some of the workers were transferred to Mancheswar. They have also disclosed that from 1984 they have worked for construction of Talcher Thermal Railway Line, Paradeep Port Yard etc, and hence their claim for ante-dating their date of regularisation can not be ignored.

9. The Respondents by filing reply have rebutted the claim of the applicants in the additional affidavit. They have reiterated that the male Khalasis were initially engaged as casual Khalasis on daily rated wages while the applicants were initially engaged as casual Rejas for utilising them for light duty jobs other than permanent way works. They were subsequently allowed to continue against temporary labour requisitions obtained periodically for every 3 months. In the circumstances, their status could not be compared with that of the male Khalasis. They have also denied that the applicants were engaged in the Railways under the provisions of Contract Labour (Regulation & Abolition) Act, 1970. They have stated that records pertaining to the year 1971 are not available and hence nothing is admitted beyond what is available on record. They have also pointed out that the claims made by the applicants in the affidavit are barred by law of limitation. They have contested that the names of the applicants were maintained in Live Casual Register

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for giving them casual employment between the years 1972 and 79 because, as a matter of fact, it was only on the basis of the Apex Court direction in the matter of Inderpal Yadav and others, they started maintaining Live Casual Register.

10. We have heard both the parties and perused the records placed before us.

11. The issue raised in this O.A. by the applicants is that they are entitled to regularisation from the date they were medically examined for absorption. They have also raised allegation of discrimination between them and the male Khalasis in the matter of regularisation. They have also contended that they were entitled to temporary status earlier than 1.1.81. During the oral arguments, Id.Counsel for the applicant strenuously argued that the Respondents had infact created P.C.R. posts from the year 1938 but held back the process of regularisation till 1994 which created discrimination in the matter of extending regular employment benefit to the applicants. In this regard, they have drawn our attention to letter dt. 13.8.93 written by the Chief Project Manager, Cuttack to the F.R.A. & C.A.O (Con), South Eastern Railway, Garden Reach, wherein a request was made to communicate latter's financial concurrence for creation of the posts of female Rejas/Khalasi to regularise the temporary status Rejas against P.C.R. posts.

12. The Respondents plea is that the applicants have tried to mislead the Tribunal by mis representing the

facts. Firstly, that the concept of granting temporary status was not available before 1.1.81 as the concept came into being only after the judgement of the Apex Court in the Inderpal Yadav case. Secondly, that the concept of Live Casual Register was non-existent prior to 1.1.81. In fact, this register was drawn up at the direction of the Apex Court during the years 1985-86 and maintained since then. Thirdly, that no casual worker has been regularised immediately after three years of continuous engagement. The process of regularisation of the casual labour is followed uniformly in the following manner. In the first instance a worker must acquire temporary status, then his name should appear in the seniority list of temporary status holders. Thereafter, he is to be medically found fit and screened and then only, subject to availability of a post, he will be regularised in his own turn. This process has been laid down in Estt.Srl.No.187/86 dt.24.9.86 and no deviation from the said procedure is permissible and therefore the allegations brought by the applicants are without merit. As per the principle laid down in the said Establishment Serial, those of the applicants who had completed 5 years of service as on 1.1.81 had been granted temporary status from 1985. Lastly, that the female Rejas are a class apart, a separate group of workers who are given light duties of various shades. The category of male Khalasis, on the other hand, carry out hazardous and strenuous work, like laying down/maintenance of railway

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lines etc., 40% P.C.R. posts were created first w.e.f. 1.4.73 to regularise casual labours of this group and this percentage was later increased to 60% in 1988. Later on, when it was found that the number of casual labourers regularised w.e.f. 1.4.73 was less than the number of posts available for that purpose, a decision was taken by the Respondents to fill-up those vacant posts by ante-dating the date of regularisation of already regularised employees in their turn. This policy was implemented in the year 1989. On the other hand, the proposal for creation of P.C.R. posts for the female Rejas was initiated first in 1988 and it was only in 1994 that 242 posts under CPO/CTC were sanctioned to regularise the service of as many number of the female Rejas. In other words, all the P.C.R. posts were created in the year 1994 in one stroke to regularise all the female Rejas with temporary status. It has also been argued by the Respondents that medical examination of a candidate followed by screening test are two essential conditions for regularisation of a casual worker but the most important condition for regularisation is the existence of a post. Regularisation can only be effected when a post becomes available. Hence, as the posts for regularisation of female Rejas were available only w.e.f. 1994, the question of regularising them from an earlier year appears to be a far cry.

13. From the above discussion, it is clear that the Respondents Department had considered the female Rejas

as a separate class based on the nature of their duties and the workplace situation. Such a classification, as explained by the Respondents, appears to be reasonable and the applicants have not been able to contradict the same either. Once this classification is accepted as reasonable, the submission of the Respondents that the applicants could have been regularised only when regular posts were available appears to be unassailable. The applicants in their application, in fact, have demanded that some of the posts out of the P.C.R. posts created for the regularisation of male Khalasis could have been transferred for their purpose. This demand of the applicants and their allegation of discrimination would have made impact if they could have rebutted that they were not employed for the jobs which are distinguishable from the jobs done by the male Khalasis. In other words, by the condition of recruitment and job description they do not belong to the same category of workers as male Khalasis. As we have observed earlier, the applicants have not succeeded in proving this point and their affidavit dt. 18.8.04 was of little help in this regard. As they did not constitute the same class of workers as the male Khalasis, their claim for sharing P.C.R. posts created for regularisation of male Khalasis does not stand to reason. In the circumstances, their allegation that they were discriminated appears to be mis-conceived. The principle of equality in work place means that the female Rejas/Khalasis are entitled to

regularisation on the same terms and conditions as the other casual workers. It is now well settled position in service law that regularisation can only be done if there are sanctioned posts. The fact of the matter is that the applicants have been regularised only when the posts were sanctioned for this purpose. The controversy raised by the applicants is that they could have been regularised earlier had the posts been sanctioned earlier than 1994.

14. In view of the facts of the case as narrated above and the law position, we are of the view that the applicants do not possess vested right to claim regularisation from a particular date nor do they possess any right to claim regularisation from a particular date. Creation and abolition of posts being matters concerning state policy involving expenditure from public exchequer, it is not for the Courts to issue any directive in that regard. In N.Ramanatha Pillai vs. The State of Kerala and another, AIR 1973 SC 2641, the Hon'ble Supreme Court have held that the power to create, continue and abolish any civil post is inherent in every sovereign Government. It is a policy decision exercised by the executive and is dependent on exigencies of circumstances and administrative necessity. In Dr.N.C.Singhal vs. Union of India and others, AIR 1980 SC 1255, the Hon'ble Supreme Court have held that creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition

of posts are all decided by the Government in the interest of administration and general public. It is, however, not in dispute that courts can interfere if there is arbitrariness in exercise of power or in implementation of the declared policy.

15. It has been canvassed before us by the Ld.Counsel for the applicants that the Respondents could have created P.C.R. posts for female Rejas in instalments from the year 1984 and give them the benefit of regularisation, at least to some of them, from an earlier date, by drawing our notice to the letter from SR.APM/C/HQ/CTC of 30.9.92 to Dy.FA & CAO(C)/CTC that 103 P.C.R. posts of Rejas were created from 1.4.84 and that another 37 P.C.R. posts were due from 1.4.88. It appears from that letter ~~on~~ ^{that} the advice of the FA & CAO these ^{also} posts after being created were kept in abeyance. It reveals from the contents of that letter that the operation of 103 posts were kept in abeyance on the advice of the Financial Advisor in 1989. The same advice was revised in the year 1992 as a result of which 242 P.C.R. posts were created in 1994. The Ld.Counsel for the Respondents have clarified to us that the creation of 103 P.C.R. posts w.e.f. 1.4.84 was held in abeyance as it was felt at that time that piecemeal regularisation of the female Rejas would cause frustration among that group.

16. We are not impressed by these arguments for non-creation of some P.C.R. posts from 1984. In the case of male Khalasis also P.C.R. posts have been created from time to time in bits and pieces. Hence, there could have been no objection

in piecemeal creation of P.C.R. posts for the female Rejas also. While we do not negate the right of the policy makers, their prerogative of deciding when to create a post or when to abolish the same; but the question remains whether it was a sagacious decision. We clearly see the frustration in the hearts of some of the female workers, because of postponement of the decision to operate Reja posts by few years as that had resulted in denial of pensionable service to so many of them. Looking at the extent of human suffering in this case, we feel it necessary to bend the law to meet the ends of justice.

17. No convincing reason is available on record as to why after creation of the P.C.R. posts in 1984 those were not operated for years. We, therefore, direct the Respondents to consider the case of 103 seniormost female Rejas (they were all above 40 years of age at the time of their regularisation in 1994) for ante-dating their regular service from 1.4.84 and 37 next seniormost from 1.4.88 for the limited purpose of counting of service towards pension.

18. Accordingly the cases succeed to the extent directed above.

Faruq
13/01/05
(M.R. Mohanty)
Sd/- M.R. Mohanty
Member (Judge)

P
Sd/- B. N. S. OM
Vice Chairman

SAN/