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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NOS .304 & 305 OF 2007

Cuttack this the 20th day of September, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

IN O.A.NO.304/2007

Sri Priyabrata Bhujabala, S/o. Daitary Bhujabala, At-Singh Bramhapur, PO/PS-Delang, Dist-Puri

...Applicant

By the Advocates:M/s.Ashok Ku.Mohapatra & S.C.Rath

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, At/PO/PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. The Chief Personnel Officer, East Coast Railway, At/PO/PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Divisional Railway Manager, East Coast Railway, Khurda Road, PO/PS-Jatni, Dist-Khurda
4. Railway Recruitment Board through Secretary, At/PO-Chandrasekharpur, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocates:Mr.P.C.Panda (Res. 1, 2 & 4)

IN O.A.No.305/2007

Sri Manas Chandra Panda, S/o. Giridhari Panda, At-Gopinathpur, Atha Bazar, PO/PS-Jatni, Dist-Khurda

...Applicant

By the Advocates:M/s.Ashok Ku.Mohapatra & S.C.Rath

-VERSUS-

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...Respondents

By the Advocates:Mr.P.C.Panda (Res. 1, 2 & 4)

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A.K.PATNAIK, JUDICIAL MEMBER: Since the point to be decided arises out of

common question of law and facts, both the above mentioned Original Applications

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are being disposed of through this common order. For the sake of convenience, the facts as set out in O.A.No.305/2007 are being referred to.

2. In the Original Application No.305/2007, the applicant has prayed for direction to Respondent-Railways to include his name in the Live Casual Register and offer him engagement as and when available in terms of his position in the said Register and to grant any other appropriate relief as deemed fit and proper.

3. The facts in a nut shell, according to applicant, are that he along with others was appointed by the Chairman, Railway Recruitment Board (in short RRB), Bhubaneswar as Casual Labourer to clear up the pending work. According to him, he was engaged as such in Group D post from 4.1.1985 to 25.5.1986, when by virtue of order of the Chairman, RRB, under Annexure-A/1, he was retrenched from service due to non availability of sanctioned post. In the above background, vide letter dated 23.6.1986 (Annexure-A/2) the name of the applicant was forwarded by the Chairman, RRB to Respondent No.3 for future absorption in accordance with law. While the matter stood thus, some casual labourers filed two Original Applications bearing Nos.365 & 366 of 1987 before this Bench praying therein to direct the Railways to absorb them against regular posts. According to applicant, this Tribunal by judgment dated 20.3.1990 in Review Application Nos. 19 and 20 of 1989 arising out of the above said Original Applications directed the Railways to consider the applicants for appointment according to provisions of Establishment Serial No.240/80 dated 20.10.1988.

4. The Applicant has further claimed that on 6.1.1992, CPO, S.E.Railways, issued instructions for recruitment of casual labourers in open line at Khurda Railway Division, providing therein for engagement of existing and retrenched casual labourers of Railway Recruitment Board, Bhubaneswar in Khurda Division under

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Respondent No.3. The detailed instructions regarding the process of selection is at Annexure-A/3 dated 20.11.1991. Since no action was taken by Respondent No.3, some retrenched casual labourers under RRB, Bhubaneswar approached C.A.T., Calcutta Bench in O.A.No.966/99, which was dismissed vide order dated 22.11.2001, on the ground of limitation. Being aggrieved, the applicants therein moved the Hon'ble High Court of Calcutta in W.P.C.T.No.26/03, which was disposed of on 5.10.2004, with direction to Railways to consider the claim of the petitioners therein for inclusion of their names in the Live Casual Register in the manner as was done following the judgment of the Cuttack Bench of C.A.T.

5. According to applicant, some other retrenched casual labourers had approached this Tribunal in O.A.No.155/95. This Tribunal by order dated 20.7.1998 allowed the said O.A. directing the Railways to include the names of the applicants therein in the Live Casual Register and offer them engagement as and when available, in terms of their position in the Live Casual Register. In the meantime, S.E. Railways was recognized as East Coast Railway and the applicant having come to know from reliable source that the Respondents have included the names of all those retrenched casual labourers, who had approached this Tribunal as well as Hon'ble High Court of Calcutta and offered them engagement, filed representation along with others vide Annexure-A/8 and A/9 dated 18.1.2006 and 4.12.2006 respectively. Having received no response, the applicant has moved this Tribunal in the present O.A. seeking the relief as aforementioned.

6. In support of his case the applicant has placed reliance on the decision of the Hon'ble Supreme Court in Dakhin Railway Employees Union vs. General Manager, S.E.Railway & Ors. (AIR 1987 SC 1153) and Inder Pal Yadav vs. Union of India & Ors reported in (1985) 2 SCC 468, laying down the principles of law that the benefits

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given to some employees should also be extended to other similarly situated employees.

7. On being noticed Respondent Nos.1 to 3 and Respondent No.4 have filed their counters separately, inter alia opposing the prayer of the applicant as grossly barred by limitation.

8. In the counter filed by the Secretary, Railway Recruitment Board, Bhubaneswar (Respondent No.4), it has been submitted that two Registers maintained in RRB during the relevant period from 1.1.1985 to 9.1.1986 and 23.9.1985 to 29.8.1986 are Attendance Register of Casual Staff and Daily Rate Casual Clerk Attendance Register, respectively. According to Respondent No.4, on being checked thoroughly, applicant's name did not figure in both the registers. It has been submitted that Annexure-A/2 dated 25.5.1986 on which the applicant has placed reliance has not been issued by the RRB as the same does not contain the dispatch number. According to Respondent No.4, applicant was never engaged as casual labourer by the RRB and the orders/annexure based on which the applicant has claimed to have been engaged and retrenched by the RRB are all false. Besides the above, it has been submitted that the cause of action in this case having arisen in the year 1986, the present O.A. is grossly barred by limitation.

9. With the above, the Respondents have prayed that both the O.As being devoid of merit are liable to be dismissed.

10. We have heard Shri A.K.Mohapatra (I), learned counsel for the applicants and Shri P.C.Panda, learned Additional Standing Counsel appearing on behalf of the Respondent-Railways and perused the materials on record.

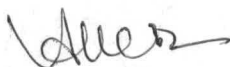
11. Upon perusal of the averments made in the Original Application, though the applicant appears to have been watchful and vigilant over very many litigations filed

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by similarly circumstanced persons commencing from O.A.Nos.365 & 366 of 1987 and R.A.Nos.19 & 20 of 1980 disposed of on 20.3.1990 and O.A.No.155/95 disposed of on 20.7.1998 by this Tribunal including O.A.No.966/99 before C.A.T., Calcutta Bench and W.P.C.T.No.26/2003 disposed of on 5.10.2004 by the Hon'ble High Court of Calcutta, yet, he has taken no effective step soon after the orders and directions were issued from time to time by the Tribunal and the Hon'ble High Court of Calcutta. Be that as it may, the applicant, in the Original Application has not specifically indicated as to when exactly he could gather the knowledge regarding the disposal of above mentioned cases by the Tribunal and Hon'ble High Court of Calcutta or regarding appointment of retrenched casual labourers who are claimed to have been similarly circumstanced with him, as the case may be. What implies from the prayer made by the applicant in the O.A. is that he wants the benefit of the order of this Tribunal in O.A.No.155/95 disposed of on 20.7.1998, being similarly circumstanced with the applicants therein. If it be so, the applicant has not made it clear in the O.A. as to what prevented him from representing the Respondent-Railways at that point of time to treat him at par with the applicants in O.A.No.155/95 and accordingly, extend the benefit thereof. The applicant has also not filed any petition seeking condonation delay explaining the circumstances which prevented him from approaching this Tribunal soon after he gathered the knowledge and information as indicated above.

12. Apart from the above, the Respondent No. 4 has taken a stand that at no point of time the applicant had been appointed as casual labourer under RRB, Bhubaneswar and accordingly, the genuineness and veracity of Annexure-A/2 dated 25.5.1986 issued without containing dispatch number has been called in question and as such, Res.No.4 has totally disowned Annexure-A/2. In addition to the above, it would be



worth mentioning that on being directed, the Respondent-Railways had produced the relevant registers in respect of casual labourers maintained by them at the relevant point of time for the perusal of the Tribunal. On examination, it has been observed that the names of both the applicants in the OAs do not find place and as such, the applicants having worked as casual labourers during the period in question is incredible.

13. Applicant neither has refuted the above contention of Respondent No.4 by filing rejoinder nor has he produced any such corroborative material in support of his contention that he had indeed been engaged on casual basis by the RRB, Bhubaneswar and as such Annexure-A/2, by virtue of which he had been retrenched, is a genuine and authenticated document.

14. Last but not the least, with regard to decision of the Hon'ble Supreme Court (supra) in the matter of extension of benefits to similarly situated persons, as relied on by the applicant, we would like to say that in BSNL v. Ghanshyam Dass reported in (2011) 4 SCC 374, a three judges Bench of the Hon'ble Supreme Court have laid down the following principles of law.

- (a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
- (b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
- (c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and
- (d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

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It as been further observed by the Hon'ble Supreme Court as under:

"On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others".

15. Having regard to the above, the inescapable conclusions that could be drawn are (i) the O.A. in its present form is barred by limitation, (ii) the documents based on which the applicant has laid his claim, the veracity and authenticity thereof as questioned by Respondent No. 4, having not been established by the applicant beyond all reasonable doubts by producing any substantive or corroborative materials and (iii) the name of the applicant having not found in the casual register as maintained by Respondent No.4 at the relevant time, we are not inclined to grant any relief to the applicant as sought for.

In the result, both the Original Applications are dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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