

5

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NOS.42,306 & 404 OF 2007

Cuttack this the 15th day of December 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

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

...

IN O.A.No.42/2007

Sri Pradip Mohanty, aged about 41 years, S/o. Sri G.C.Mohanty, At-
Gajapati Nagar, Jatani, PO/PS-Jatani, Dist-Khurda

...Applicant

By the Advocates: Ms/.M.R.Mohanty

M.Tripathy

B.K.Mohanty

H.S.Mohanty

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, At-Chandrasekharppur, Bhubaneswar, PO/PS-Chandrasekharppur, Dist-Khurda
2. The Chief Personal Officer, East Coast Railway, At-Chandrasekharppur, Bhubaneswar, PO/PS-Chandrasekharppur, Dist-Khurda
3. Divisional Railway Manager, East Coast Railway, Khurda Road, PO/PS-Jatani, Dist-Khurda

... Respondents

By the Advocates: Mr.R.N.Pal

...

IN O.A.No.306/2007

Sri S.Balkrishna, aged about 39 years, S/o.Appa Rao, At-Raja Bazar,
Jatani, PO/PS-Jatani, Dist-Khurda

...Applicant

By the Advocates: M/s.Ashok Kumar Mohapatra

S.C.Rath

-VERSUS-



- 6
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, Dist-Khurda
 3. Divisional Railway Manager, East Coast Railway, Khurda Road, PO/PS-Jatani, Dist-Khurda

... Respondents

By the Advocates: Mr.S.K.Ojha

IN O.A.No.404/07

1. Sri Rasananda Badajena, aged about 41 years, S/o.Nabakishora Badajena, PO-Badatata, PS-Jatni, Dist-Khurda
2. Sri B.Babu Rao, aged about 42 years, S/o.Raja Rao, At-Balichaksahi, PO/PS-Jatni, Dist-Khurda
3. Sri Santosh Kumar Behera, aged about 43 years, S/o.B.Behera, Loco Colony, Qr.No.A/22, PO/PS-Jatni, Dist-Khurda
4. Sri B.Prakash Rao, aged about 40 yrs., S/o.B.Raja Rao, Bali Chak Sahi, PO/PS-Jatni, Dist-Khurda
5. Sri Satyanarayan Behera, aged about 38 yrs., S/o.B.Behera, Loco Colony, Qr.No.A/22, PO/PS-Jatani, Dist-Khurda
6. Sri Durjadhan Parida, aged about 40 yrs., S/o.Bansidhar Parida, Vill-Chandradeipur, PO-Kamakantia, PO-Bolorge, Dist-Puri
7. Sri S.Uma Maheswar Rao, aged about 41 yrs., S/o.S.Someswar Rao, At Rly Colony, Qr.No.92/D, Dist-Puri
8. Sri S.V.Ranga Kumar, aged about 45 yrs., S/o.Sudershan Rao, at Loco Colony, Qr.No.A/87/B, PO/PS-Jatni, Dist-Khurda

... Applicants

By the Advocates: M/s.M.R.Mohanty-2

B.K.Mohanty

M.M.Tripathy

-VERSUS-

1. Union of India represented through the General Manager, East Coast Rlys., At-Chandrasekharpur, Bhubaneswar, PO/PS-Chandrasekharpur, Dist-Khurda
2. The Chief Personal Officer, East Coast Rlys., At-Chandrasekharpur, Bhubanswar, PO/PS-Chandrasekharpur, Dist-Khurda
3. Divisional Manager (P), East Coast Rlys, Khurda Road, Jatni

... Respondents

By the Advocates: Mr.O.N.Ghosh



X 3

ORDER

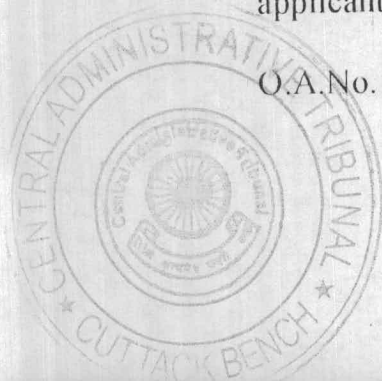
SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Since a common question has been raised for decision by the applicants, all the above three Original Applications were heard together and are being disposed of by this common order. There being some factual dissimilarity in O.A.No.404/07 with that of the other two, viz., O.A Nos.42 and 306 of 2007, the facts in brief with relief sought by the applicants in each of the Original Applications are mentioned below:

O.A.No.42/07

The applicant claims that he along with others had moved Central Administrative Tribunal, Calcutta Bench, in O.A.No.996/1999 in the capacity of retrenched casual labourers for their re-engagement. The said O.A. having been dismissed by the Calcutta Bench of the Tribunal on the ground of limitation, the applicant along with others moved the Hon'ble High Court of Calcutta in W.P.C.T.No.26/03. The Hon'ble High Court of Calcutta, as per order dated 5.10.2004 disposed of the said Writ Petition with direction to the Railway-Respondent therein to consider the claim of the petitioners for their inclusion in the list of Live Casual Register in the manner as was done following the judgment of the Cuttack Bench of the Central Administrative Tribunal in O.A.No.155/95. It is the case of the applicant that based on the order dated 20.7.1998 of this Bench in O.A.No.155/95, he is entitled to be included in the live Casual Register

60



8

for being engaged as and when vacancy is available in terms of his position in the said Register. In this background, the applicant preferred several representations, the last one being dated 4.12.2006, to the Respondent-Railways bringing to their notice the judgment of the Hon'ble High Court of Calcutta in W.P.C.T. No.26/03 as well as the order passed by this Tribunal in O.A.No.155/95 and praying therein for compliance of the same. His representations having not yielded any fruitful result, the applicant has approached this Tribunal by filing O.A.No.42/07 seeking the following relief:

- i) To direct the respondents to implement the order contained in Annexure-5.
- ii) To direct the respondents to include the applicant in the Live Casual Register maintained by them and offer engagement to him, as and when available, in terms of his position in the Live Casual Register as per the direction of the Hon'ble High Court at Calcutta contained in Annexure-5.

O.A.No.306/07

The applicant, in this O.A. has prayed for the following relief:

- i) To direct the respondents to implement the order contained in Annexure-5.
- ii) To direct the respondent to include the name of the applicant in the Live Casual Register and offer him engagement as and when available in terms of his position in the said Register.



8

9 5

It is the case of the applicant that he was the applicant in O.A.No.966 of 1999 before the Calcutta Bench of the Tribunal and the Calcutta Bench having dismissed the said O.A., he along with others moved the Hon'ble High Court of Calcutta in W.P.C.T.No.26/03. It is his further case that despite his several representations, the Respondent-Railways have not complied with the directions of the Hon'ble High Court of Calcutta based on O.A. 155/95 of this Tribunal and this is how, he has approached this tribunal for the relief as aforementioned.

O.A.No.404/07

Applicants, eight in number have filed this Original Application challenging Annexure-A/5 series dated 22.5.2007. The applicants are aggrieved that although the Chief Personnel Officer, E.Co. Railway, Bhubaneswar has approved to implement the judgment for inclusion of names of the applicants mentioned in the WPCT No.26/03 in the Live Casual Register of Khurda Road Division, it has been indicated that the same shall be done only after verifying the genuineness of the claim of working under the Railway Recruitment Board and identity of the applicants.

The applicants have sought for the following relief:

- a) To quash Annexure-5 series so far as it is concerned with the verification of 'genuineness of the claim of the working under Railway Recruitment Board' based on office order



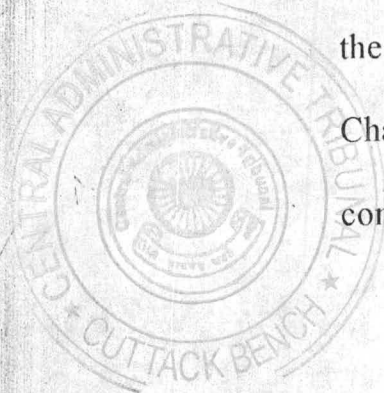
(3)

10 6
dated 1.4.86, 24.4.86 issued by the Railway Recruitment Board, Bhubaneswar (Annexure-1 series)

- b) To direct the respondents to implement the orderf contained in Annexure-3 within a stipulated time.
- c) To direct the respondents to include the applicant in the Live Casual Register maintained by them and offer engagement to him, as and when available, in terms of his position in the Live Casual Register as per the direction of the Hon'ble High Court at Calcutta contained in Annexure-3.

2. This Tribunal heard the learned counsels appearing for the applicants as well as the Respondents and perused the documents produced in the O.As.

3. The learned counsel appearing for the applicants in O.A.No.404/07 contended that since the order of this Tribunal in O.A.No.155/95 has been approved and upheld by the High Court of Calcutta in judgment dated 5.10.2004 in Writ Petition No.W.P.C.T. 26/03, the Respondents are bound to implement the same, and the orders now passed as per Annexure-A/5 series are not in line with the directives in the judgment of the Hon'ble High Court of Calcutta. That apart, the learned counsel for the applicants submitted that once the list is prepared and certified by the Chairman of the Railway Recruitment Board, Bhubaneswar, which contains the names of the applicants, it is not proper for the authorities to

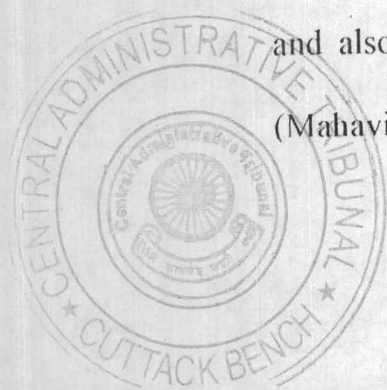


08

11 7

reject the claim of the applicants in the light of the findings ended by this Tribunal in O.A.No.155/95. The learned counsel for the applicants further contended that the CAT, Calcutta Bench, had dismissed O.A.No.966/99 on the ground of limitation. But as the matter has been set at rest by the Hon'ble High Court of Calcutta in W.P.C.T.No.26/03, the Respondents are bound to implement the judgment of the Hon'ble High Court of Calcutta by including the names of the applicants in the Live Casual Register for necessary follow up action, without insisting on any other verification. Hence, according to the learned counsel for the applicants, Annexure-A/5 series are liable to be quashed by this Tribunal with direction to the respondents to comply with the judgment of the Calcutta High Court in letter and spirit and in consonance with the order of this Tribunal in O.A.No.155/95.

4. Relying on the counter filed for and on behalf of the Respondents, the learned counsel appearing for the Respondents submitted that the applicants in O.A.No.404/07 and the other two O.As are not entitled for any similar treatment as that of the applicants in O.A.No.155/95. The learned counsel for the Respondents submitted that the claim now laid by the applicants being belated and time barred, on the principles laid down by the Apex Court in AIR 1990 SC 10 (State of M.P. vs. S.S.Rathore) and also the Full Bench Decision of C.A.T. reported in 2000 (3) ATJ (Mahavir vs. Union of India & Ors.) the applicants are not entitled for



32

12

any relief whatsoever. It is further submitted that even for engagement of casual labourer, approval of the Railway Recruitment Board is a must. Besides, it has been argued that the applicants have laid their claims based on the forged documents and therefore, the Respondents are justified in approving the names for inclusion in the Live Casual Register after verifying the genuineness of the claim of working under Railway Recruitment Board and identifying the persons concerned.

5. In the light of the contentions raised by the learned counsel on either sides and on perusing the documents, the common question to be decided in all the O.As is whether the Respondents are bound to follow the findings ended by this Tribunal in order dated 20.7.1998 in O.A.No.155/95 accepted and upheld in the judgment of the Hon'ble High Court of Calcutta in WPCT No.26/03 or not.

6. The Tribunal, admittedly, in Paragraph 5 of its order dated 20.7.1998 in O.A. No.155/95 categorically held as under:

“We, therefore, cannot assume that Annexure-A1 and Annexure-2 are forged and for the purpose of adjudication of this O.A., we treat the same to be genuine”.

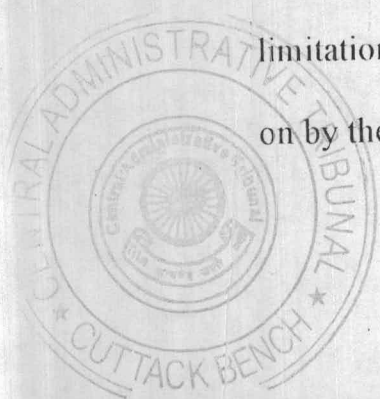
In this context, it is to be noted that Annexures A/1 and A/2 produced in O.A. No.155/95 are the same as those of Annexure-A/1 series produced in O.A.No.404/07. These Annexures-A¹series show that one Dr.Harihar Patnaik, Chairman, Railway Recruitment Board, Bhubaneswar had



13

selected the applicants in all these cases to work as Casual Khalasies on daily rate basis as admissible for Bhubaneswar to work at different examination centres and also to clear up the pending work for a period of one month or completion of work, whichever is earlier. Those annexures having been accepted to be genuine by this Tribunal, we are of the view that the judgment of the Hon'ble High Court of Calcutta in W.P.C.T. No.26/03 must be complied with by the Respondents without any hesitation or verifying anything else with regard to the engagement or disengagement of the applicants herein as well and if so, the contention of the counsel appearing for the Respondents that the cases of the applicants in O.A.No.155/95 are different from that of the applicants herein cannot be accepted. At the same time, the legal seal given by the Hon'ble High Court of Calcutta on the findings ended by this Tribunal in O.A.No.155/95 cannot be doubted.

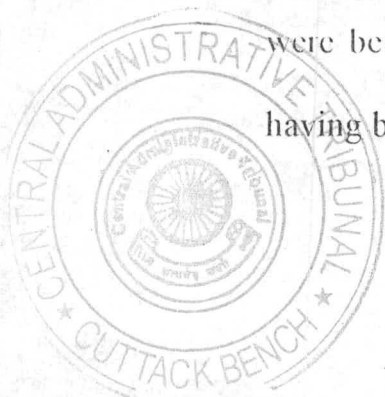
7. With regard to the delay, as contended by the learned counsel for the Respondents, we are of the view that the time limit for inclusion of the names of the applicants in the Live Casual Register is a continuing process and if such casual Live Casual Register is an ongoing one, the applicants are entitled for inclusion of their names therein and by no stretch of imagination, their claim can be rejected solely on the ground of limitation. The facts considered by the Apex Court in the judgment relied on by the counsel for the Respondents are entirely different from the facts



14 10
of the cases in hand. So we answer that the alleged delay has hardly any application to the instant case nor is a good reason to reject the claim of the applicants.

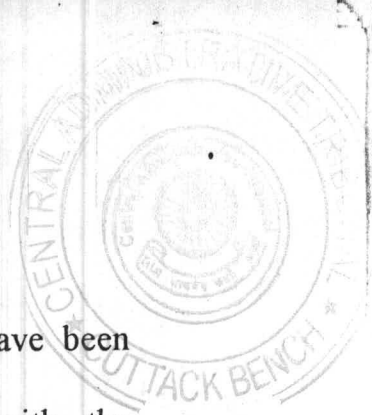
8. Having regard to what has been discussed above, the Respondents are under the obligation to implement the judgment of the Hon'ble High Court of Calcutta in its true letter and spirit. If so, the letters now issued by the authorities as per Annexure-A/5 series are liable to be quashed. Consequently, we quash Annexure-A/5 series with direction to Respondent Nos. 1 to 3 to consider the cases of the applicants afresh and pass appropriate orders within a reasonable time, at any rate within a period of 60 days of the date of receipt of this order. O.A.No.404/07 is allowed to the extent indicated above.

9. In so far as the claim of the applicants in O.A.Nos.42 and 306 of 2007 is concerned, the same reasoning which we have adopted can be equally applicable to the case of the applicants in these two O.As. However, the claims of the applicants have not been considered by the authorities hitherto. This being the situation, the prayer of the applicants to give a direction to the Respondents to implement the judgment of the Calcutta High Court in WPCT 26/03 has to be considered in the background of the facts. It is an admitted case of the applicants that they were before the Central Administrative Tribunal in O.A.No.996/99 and having been unsuccessful, they had approached the Hon'ble High Court



15

11



of Calcutta in WPCT No.26/03. As indicated above, they have been representing to the Respondent-Railways for complying with the directives of the Hon'ble High Court of Calcutta and the Respondents having not responded, the applicants have approached this Tribunal with the prayers as aforementioned. In the backdrop of the above facts, we are of the view that these O.As can be disposed of by giving a direction to the Respondents to consider the representations dated 4.12.2006 of the applicants and pass appropriate orders in the light of the conclusions arrived at by this Tribunal in O.A.No.404/07, within a reasonable time, at any rate, within 60 days of the receipt of this order.

Sd/-
Member (A)

Sd/-
Member (J)

TRUE COPY

BKS

Section Officer (J)
Central Administrative Tribunal
Cuttack Bench, Cuttack