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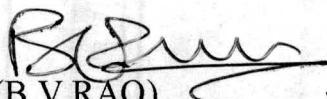
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A No.363 of 2008
Cuttack, this the ~~20~~ April, 2010

Gananath Mallick & Others Applicants
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?


(B.V.RAO)
MEMBER(JUDL.)


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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.363 of 2008
Cuttack, this the 22nd of April, 2010

C O R A M:
THE HON'BLE MR.B.V.RAO, MEMBR (JUDICIAL)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

1. Shri Gananath Mallick, aged about 57 years, son of Late Jaladhar Mallick, At-Uparpatna, PO-Chakajaganathpur, Via-Khantapara, Dist. Balasore, PIN-756 043.
2. Shri Rajendra Mahalik, aged about 56 years, Son of Govinda Mahalik, Sagampur, PO-Kansa, Via-Mitrapur, Dist.-Balasore.
3. Shri Gadadhar Das, aged about 60 years, son of Madhusudan Das, At-Bankipal, PO-Sayedpur, Via-Arei, Dist. Jajpur.
4. Shri Harinarayan Das, aged about 56 years, son of Late Narendra Nath Das of village Suradiha, Post-Ashabandha, Via-Hatigarh, Dist.-Balasore.

All of them are working as Khalasis under CWC under the Government of India, Ministry of Water Resources, Shramashakti Bhawan, Rafi Marg, New Delhi. Sl.Nos.1&2 are at present working under Executive Engineer, E.R. Division, Central Water Commission, Bhubaneswar and Sl.Nos.3&5 are working under Executive Engineer, Mahanadi Division, CWC, Burla.

.....Applicants
Legal practitioner :M/s.R.N.Mishra,D.K.Mohanty,Counsel.

- Versus -

1. Union of India represented through its Secretary to Government of India, Ministry of Water Resources, Shramashakti Bhawan, Rafi Marg, New Delhi-110 001.
2. The Central Water Commission represented through its Chairman, CWC, Sewa Bhawan, R.K.Puram, New Delhi, PIN-110 066.
3. The Chief Engineer (Mahanadi and Easter Rivers), CWC, Plot No.A-173, Sahid Nagar, Bhubaneswar, PIN-751 007.
4. The Executive Engineer, Central Water Commission, Eastern Rivers Division, Plot No.A-13 & 14, Bhoi Nagar, Bhubaneswar, PIN-751 022.
5. The Superintending Engineer, Hydrological Observation Circle, Mahanadi Bhavan, Plot No.A-13/14, Bhoi Nagar, Bhubaneswar, PIN-751 022 (Orissa).

6. The Executive Engineer, Mahanadi Division, Qr.No.SD-7/1, Burla, Sambalpur, Orissa, PIN-768 017.

....Respondents

Legal Practitioner :Mr.S.Barik, ASC.

O R D E R

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

There are Four (4) Applicants. All of them were working under the work charge establishment of the Respondents as Khalasi since 1973 -1975 by enjoying the status of Government employees working in the regular establishment of the Respondents. OA No. 359 of 1989 was filed by some of the counterpart employees challenging the pick and chose manner of regularization of such work charge employees who are juniors to the applicants in the aforesaid OA. The said OA was disposed of on 3rd May, 1990, directing regularization of the applicants in the aforesaid OA, in accordance with the instructions issued by the Respondents' organization. Another set of similarly situated retrenched employees filed OA No. 27 of 1991 claiming regularization which was disposed of by this Tribunal on 21.01.1993 directing the Respondents to regularize those Applicants whenever vacancy arises according to the seniority list and till then they should be employed as work charged Khalasis. Respondents filed Review Application No. 35 of 1993 seeking review of the order dated 21.01.1993 passed in OA No. 27 of 1991. Vide order dated 20.06.1997 Respondents' Department framed a scheme of conferment of temporary status and regularization. By orders dated 16.06.1997, 13.04.1998 and 30.10.1998, Respondents appointed the Applicants against regular sanctioned post in the pay scale of Rs. 750-940 with condition that such appointment would be subject to the out come of RA No. 35/1993. Ultimately, the RA No. 35/1993 was dismissed on 21.10.1998 by this Tribunal. The Respondents challenged the order in OA & RA before the Hon'ble High Court of Orissa in OJC No.6521 of 1999 which was

dismissed on by the Hon'ble High Court on 24.01.2000. Thereafter, Respondents preferred Appeal before the Hon'ble Apex Court which was numbered as SLP No. 11253/2000. Vide order dated 02.11.2001, the Hon'ble Apex Court remanded the matter to the Hon'ble High Court for fresh consideration. On 21.09.2006, OA No.900 of 2005 was filed by another batch of similarly situated employees namely Daitary Behera and others seeking direction for regularization. And this Hon'ble Tribunal, taking note of the decision of the Hon'ble Apex Court in the case of Secretary State of Karnataka and others v Umadevi (3) and others, 2006 SCC (L&S) 753 directed the Respondents to regularize the services of applicants therein within a period of three months. While the matter was pending before the Hon'ble High Court of Orissa, the Respondents by order under Annexure-A/9 dated regularized the services of the Applicants with effect from 18.11.2006. In order dated 21.02.2007, Hon'ble High Court of Orissa disposed of the Writ Petition which was restored on remand from Hon'ble Apex Court, holding that the absorption of employees should be done strictly in terms of their position in the seniority list maintained by the Department. Seniority list was published as on 15.10.2006 by the Respondents in which the names of Applicants appear at Sl. No.1,3,6 & 8 respectively. On 13.06.2007/25.05.2007 Applicants submitted representation seeking ante-dating their date of regularization and grant of all consequential benefits. Alleging no action, thereafter, the Applicants approached this Hon'ble Tribunal in OA No. 180 of 2008. In order dated 25.04.2008 this Tribunal disposed of the matter calling upon the Respondents to consider the pending representation of the applicants within a period of three months and communicate the result thereof to them. In compliance of the aforesaid order of this Tribunal, Respondents considered the representation of the applicants but rejected and communicated the reason of

rejection to the applicants in letter dated 21.08.2008. Being aggrieved by the said order of rejection dated 21.08.2008, Applicants approached in this second round of litigation seeking the following reliefs:

- “(i) To quash the order dated 21.08.2008 under Annexure-A/13;
- (ii) To direct the Respondents to ante date/regularize the Applicants with effect from their date of ad hoc appointment under Annexure-A/5 series with all consequential service and financial benefits;
- (iii) To direct the Respondents to grant the applicants all benefits as per the Rules/Regulations/Instructions available on the date of the initial engagement of the applicants/as on the date of issuance of orders under Annexure-A/5 series as per the law of the land in the cases of Y.V.Rangaiah and others v J.Sreenivasa Rao and others, AIR 1983 SC 852; P.Mahendran and others v State of Karnataka and others, AIR 1990 SC 405 and Gayadhar Sahoo v State of Orissa and others, in OJC No.811/1990 dated 26-04-1991;
- (iv) To pass any other order(s) as deemed fit and proper.”

2. Factual aspects of the matter narrated above have not been disputed by the Respondents in their counter filed in this case. But in paragraph -10 of the counter it has been stated by the Respondents that after the remand from the Hon'ble Apex Court, the matter is now subjudice before the Hon'ble High Court. Further stand of the Respondents is that after the vacancy available in the regular establishment of the Respondents the services of the Applicants were regularized. Accordingly, Respondents opposed the prayer of the applicants and have prayed for dismissal of this OA.

3. Reiteration of the contentions raised by the parties in their respective pleadings having been heard and perused the material placed on record. Since factual aspects in this case are not in dispute, the only question that needs consideration is whether the Respondents are justified in regularizing the services of the applicants prospectively even after the promises made in the order while appointing the applicants on adhoc basis that the appointment of the applicants is subject to the out come of the RA No.



35/93 filed by them seeking review of the order passed in OA No. 27/91

disposed of on 21.1.93 by this Tribunal.

4. In this connection, it is noted that the doctrine of legitimate expectation and promissory estoppel has come to stay as one of the well-recognized grounds of judicial review of administrative action. It is well settled that the doctrine of promissory estoppel applies equally to Government and public authorities. The essence of the doctrine is that a man should keep his words, all the more so when the promise is not a bare promise but is made with the intention that the other party should act upon. In other words, a promise is intended to be binding and is to be acted upon. The principle of promissory estoppel has been evolved by courts on the principle of equity to avoid injustice. The Applicants were made known of their position i.e. in other words a promise that their appointment is subject to the outcome of the RA. RA was dismissed by this Tribunal against which the Respondents preferred Writ Petition before the Hon'ble High Court which was also dismissed, thereafter the Respondents preferred SLP before the Hon'ble Apex Court in which the Hon'ble Apex Court remanded the matter to the Hon'ble High Court and now the stand of the Respondents that the matter is subjudice before the Hon'ble High Court but from their own the document filed as Annexure-R/XVII it is revealed that the Writ Petition has already been disposed of after being remanded from Hon'ble Supreme Court by the Hon'ble High Court in order dated 21.2.2007. It is also the positive case of the Applicants that in the OA No.160 of 2005 filed by Shri Dushasana Rana who was junior to the Applicants, has been ordered to be regularized much earlier to the applicants which has also not been disputed by the Respondents in the counter nor even in course of hearing. In view of the above, we have no hesitation to hold that non-regularization from the date of the respective date of Ad-hoc appointment

of the Applicants after the orders of various Courts amounts to violation of the law of promissory estoppel and promise made out by the Respondents themselves in the order itself giving appointment to the applicants on adhoc basis and is also in violation of the mandate enshrined under Article 14 and 16 of the Constitution of India. Hence we find enough justification to direct the Respondents to regularize the services of the Applicants from the respective dates of adhoc appointment of the applicants in Annexure-A/5 series. Further we direct that the Respondents should also examine if any of the juniors of the applicants have been regularized prior to the date of the adhoc appointment of the applicants and if so, then the Residents should consider antedating the date of regularization of the applicants prior to the date directed above. In view of the above, the order of rejection of representation of the applicants under Annexure-A/13 dated 21.08.2008 is hereby quashed.

5. The next prayer of the Applicants is to hold that the service conditions of the Applicants shall be governed by the Rules, Regulations and instructions available on the date of entry of the applicants to the service or on the date when they were given the adhoc appointment subject to the out come of the RA. In support of this prayer they have relied on the decision of the Hon'ble Apex Court in the cases of Y.V.Rangaiah and others v J.Sreenivasa Rao and others, AIR 1983 SC 852, P.Mahendran and others v State of Karnataka and others, AIR 1990 SC 405 and Gayadhar Sahoo v State of Orissa and others in OJC No.811 of 1990 disposed of on 26.04.1991 of the Hon'ble High Court of Orissa taking the view in support of the above stand. We have gone through the decisions and we find considerable force in the above submission of the Applicants. Accordingly, the Respondents are hereby directed that the Applicants shall be governed by the Rules, Regulations, Instructions as available in the field prior to the order under Annexure-A/5

series and to grant the applicants all the consequential service and financial benefits retrospectively pursuant to the observation and direction made above. The entire exercise shall be completed within a period of 90 (ninety) days from the date of receipt of this order. In case meanwhile any of the applicants have retired, payment of pension and pensionary benefits retrospectively shall also be expedited, calculated and paid to them within the period directed above. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(B.V.RAO)
MEMBER(JUDL.)


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