

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O. A. NO.865 OF 2010

Cuttack, this the 10th day of September, 2014

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓

2. Whether it be referred to PB for circulation? ✓

(R.C.MISRA)
MEMBER (A)

Alley
(A.K.PATNAIK)
MEMBER(S)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O. A. NO. 865 OF 2010

Cuttack, this the 11th day of September, 2014

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Srikant Dehury,
aged about 41 years,
S/o. Chintamani Dehury,
Vill-Nimidiha,
P.O.: Badalo,
Dist-Dhenkanal.

...Applicants

(Advocates: M/s. M.M. Basu)

VERSUS

Union of India Represented through

1. Secretary,
Department of Telecommunication,
New Delhi .
2. Director, Telecom,
Bharat Sanchar Nigam Limited,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.
3. Chief General Manager,
Orissa Telecom. Circle, BSNL, Bhubaneswar.
4. Telecom. District General Manager, BSNL,
At/Po/Ps-Dhenkanal, Dist-Dhenkanal.
5. S.D.O., Telecom. Dhenkanal,
At/Po/Dist-Dhenkanal.
6. Bana Bihari Horta, aged about 40 years,
Son of Sankarsan Hota,
Joranda Telephone Exchange, Dhenkanal.
7. Bhagirathi Rout,
Aged about 42 years, S/o-Dhusasan Rout,
At/Po-Banasingh, At-Banasingh Exchange,
(Respondent Nos. 6 to 7 are working under Telecom District General Manager, BSNL, Dhenkanal (Respondent No.4).

... Respondents

(Advocate: Mr. P.R. Barik, P. Choudhury)

Alley

ORDER

A.K.PATNAIK, MEMBER (J):

According to the Applicant on 16.5.1987 he was recruited as a Casual Mazdoor and was retrenched on 03.05.1985. Some of the casual mazdoors who were retrenched were given re engagement but his case was ignored. On 17.4.2002 the Assistant General Manager, BSNL, Bhubaneswar wrote a letter to Assistant Director General, BSNL Corporate Office, New Delhi for regularization of casual mazdoor engaged prior to 30.3.1985. The Assistant Director, BSNL, New Delhi vide letter dated 09.12.2002 sought details of the left out casual mazdoors waiting for regularization and accordingly, vide letter dated 28.3.2003 the Divisional Engineer, Dhenkanal requested the AGM (HRD), Odisha, Bhubaneswar for regularization of the services of casual mazdoors. The Assistant General Manager, Orissa, Bhubaneswar in letter dated 15.10.2003 requested the GMTD, Bhubaneswar to furnish details of the left out casual labourers working in the unit on or before 31.10.2003. He has submitted representation on 31.1.2004 to the Chief Managing Director, BSNL for regularization of his service. As no action was taken on his representation, he filed OA No. 894 of 2004 which was disposed of with direction to consider the case of the applicant. Thereafter he filed CP no. 52 of 2005 which was also disposed of by this Tribunal to consider the case of the applicant within a period of 120 days. In letter dated 6.7.2005 the Respondents informed the applicant that as he has not completed 240 days of service his case for regularization cannot be considered. He had filed WP (C) No. 977⁸ of 2005 which was, on transfer to this Tribunal, renumbered as TA No. 54 of 2009 and ultimately disposed of by this Tribunal with direction to consider the case of the applicant.

[Signature]

The Respondents in letter dated 13.09.2010 informed the applicant that his request for re engagement as casual mazdoor in BSNL cannot be acceded to as per the prevailing rules. Being aggrieved by the said order, the applicant has approached this Tribunal in the instant OA with prayer to quash the order of rejection dated 13.09.2010 and direct the Respondents to reinstate him in the post of casual mazdoor from the date his juniors and outsider were reinstated and thereafter to regularize his service with all consequential benefits.

2. Respondents filed their counter in which it has been stated that the applicant worked as a casual mazdoor under the Sub Divisional Officer (Telegraph), Dhenkanal for a period of 53 days in the year 1984 and was retrenched from such casual engagement w.e.f. 08.05.1985. As per the extant provision the case of a casual labour can be considered for regularization provided he/she has put in 240 days of continuous engagement in a calendar year. In the instant case, the applicant has not worked for 240 days in a calendar year. Therefore, the claim for reengagement and regularization is not sustainable either in rule or law. Hence, the Respondents have prayed for dismissal of this OA.

3. We have heard Mr.S.Mohanty, Learned Counsel for the Applicant and Mr.P.R.Barik, Learned panel counsel for BSNL/Respondents and perused the records.

4. Mr.Mohanty's contention is that when the cases of similarly situated retrenched casual mazdoors engaged/retrenched along with the applicant were reengaged and subsequently regularized even though they did not complete 240

[Signature]

days of casual service, segregating the case of the applicant amounts to discrimination which is in violation of the provisions enshrined under Articles 14 and 16 of the Constitution of India. Besides it has been contended that it is not correct to state that the applicant had not put in 240 days of service and he has emphatically submitted that the applicant had put in 240 days service as a casual labour and as such is entitled to the relief claimed in this OA. On the other hand, Mr. Barik besides the point of limitation has strongly denied the allegation of discrimination and the assertion of the applicant that he had put in 240 days of casual service so as to be entitled for the relief claimed in this OA. He has submitted that in pursuance of the order of this Tribunal the case of the applicant was re examined with reference to the records available in the Department and as it was found that his claim is not based on record and hence the same was rejected and intimated to him. Accordingly, he has prayed for dismissal of this OA.

5. The Applicant has described his age as 41 years on the date of filing of this OA and this OA was filed on 1st October, 2010. By now he must have been not less than 45 years. Even according to the Applicant he was selected for engagement as casual mazdoor on 16.5.1984 which was intimated to him on 22.01.1985 and issued mazdoor identity card on 20.5.1985 and was retrenched on 03.05.1985. He has submitted representation only on 31.01.2004. Thereafter, by the order of this Tribunal his case was considered but the same was rejected which in our considered view cannot give rise^t a fresh cause of action to the applicant to get the benefit as claimed in this OA. Delay and laches is a very significant factor



in granting relief. Court cannot grant relief to recalcitrant applicant. The above view of ours is well supported by the decisions of the Hon'ble Apex Court in the cases of **C. Jacob Vrs Director of Geology and Mining and Anr** reported in AIR 2009 SC 264 & **State of Tripura Vrs Arabinda Chakraborty** reported in (2014) 6 SCC 460. Relevant portion of the observation in the case of C. Jacob (supra) is quoted herein below:

“Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations cannot furnish a fresh cause of action or revive a stale or dead claim (paragraph 7);

When a direction is issued by a Court/Tribunal to consider or deal with the representation, unusually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgement of a jural relationship to give rise to a fresh cause of action (paragraph 8& 10).

If the representation made to Authority is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing consideration of such claims. (paragraph 10).

6. Similarly, relevant portion of the observation in the case of Arabinda Chakraborty (supra) is quoted herein below:

“The suit was hopelessly barred by law of limitation. Simply by making a representation when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. The period of limitation commence



from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent went on making representations which were all rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. The courts below erred in considering the date of rejection of the last representation as the date on which the cause of action had arisen (para 15 & 18)."

7. In view of the discussions made above, this OA stands dismissed by leaving the parties to bear their own costs.


(R.C.Misra)

Member (Admn.)


(A.K.Patnaik)

Member (Judicial)

K.B.