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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


OA No.249 of 2010


Cuttack, this the 22nd day of February, 2012

Alekh Chandra Swain Applicant
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 Tribunal or not?


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.249 of 2010

Cuttack, this the ~~22nd~~ ^{23rd} day of February, 2012

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....

**Alekh Chandra Swain aged about 62 years, S/o. Daitari Swain,
Village-Trutiyapada, Po-Retanga, Dist. Khurda.**

....Applicant

By legal Practitioner -M/s.S.C.Samantray,S.Swain, Counsel

-Versus-

1. Union of India represented by the General Manager, East Coast Railway, At/Po. Chandrasekharpur, Bhubaneswar-23, Dist. Khurda.
2. Chief Signal & Telecommunication Engineer, East Coast Railway, At/Po. Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Sr. Divisional Personnel Manager, East Coast Railway, Khurda Road Division, Dist. Khurda.
4. Chief Personnel Officer, East Coast Railway, 2nd Floor, E.Co.Rly, Sadan, Chandrasekharpur, Bhubaneswar.
5. Senior Personnel Officer, Construction, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar.

....Respondents

By Legal Practitioner - Ms.S.L.Patnaik, Counsel.

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O R D E R

A.K.PATNAIK, JUDICIAL MEMBER

The factual controversy lies within a very narrow compass. Even the Respondents have admitted that in compliance of the order dated 20.02.1998 passed in OA No. 157 of 1994 of this Tribunal; the

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Applicant was granted temporary status w.e.f. 25.2.1999 and consequentially as a temporary status holder he was regularized w.e.f. 25.2.2002 and ultimately he retired from service w.e.f. 31.10.2008 on reaching the age of superannuation. After the retirement, the Applicant was paid Leave Salary, PF, CGEGS, Transfer Grant, DCRG, Service Gratuity **except pension and other pensionary dues**, as according to the Respondents, in terms of para 302 (2) of General Rules under Chapter III of Manual of Railway Pension Rules, 1950, for getting pension one has to complete/acquire TEN years qualifying service but the applicant has only EIGHT years, TWO months and SIX days of regular service by taking 50% service from temporary status till regularization and 100% from the date of regularization till his retirement. Hence by filing the instant OA the Applicant seeks direction to the Respondents to grant him pension and pensionary dues by ante-dating his date of conferment of temporary status and regularization as has been given

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to other similarly situated employees who were applicants along with the present Applicant in OJC No. 2725 of 1981 subsequently transferred and numbered as TA No. 194 of 1986.

2. Respondents have filed their counter objecting to the prayer of the applicant on the ground that the Applicant has not given the names of similarly situated employees who have been granted temporary status/regularization earlier pursuant to the order of this Tribunal in TA No. 194 of 1986 and that in compliance of the order of this Tribunal dated 20.02.1998 in OA No. 157 of 1994, the applicant being found fit in the screening test was granted temporary status w.e.f. 25.2.1999 and subsequently was regularized. Hence, after his retirement he was paid all other dues except the pension due to non fulfillment of the conditions as required for sanction of the pension. Accordingly, by citing orders rendered in other cases by this Tribunal rejecting prayers for grant of pension due to non-

qualifying service, the Respondents have prayed for dismissal of the O.A being devoid of any merit.

3. Mr. S.C.Samantaray, Learned Counsel for the Applicant by drawing our attention to the contentions raised in paragraph 9 of the counter filed by the Respondents in which it has been stated that in compliance of the order of this Tribunal, Shri Babaji Dalai (who was applicant No.1 in OJC No. 2725 of 1981 which was subsequently transferred to this Tribunal and renumbered as TA No. 194 of 1986) was granted the temporary status w.e.f. 01.01.1981 & consequently regularized in Gr. 'D' PCR post w.e.f. 12.02.1993. He retired from service w.e.f. 31.5.2003 and as his total period of service was counted to be 18 ½ years and hence after retirement he was sanctioned pension and other pensionary dues and has contended that there was rhyme or reason/justification of showing dissimilar treatment to the Applicant. It has been further stated in the said counter that the Respondents considered the case of the Applicant along with the

case of Shri Dalai. However, it was contended by Mr. Samantaray that for non compliance of the order of this Tribunal in TA No. 194 of 1986 the applicant again approached this Tribunal by filing OA No. 157 of 1998 which was disposed of on 20.02.1998 directing the Respondents to conduct a screening test of the applicant within a period of 90 days and to take further action within a period of thirty days thereafter. At this juncture, Mr. Samantaray submitted that despite issuance of such a ~~the~~ specific direction by this Tribunal, the Respondents conducted the screening test and granted the temporary status w.e.f. 25.2.1999 & regularized w.e.f. 25.02.2002 only. His contention is that had the Respondents conducted screening test within the specified period granted by this Tribunal in OA No. 157 of 1998 the short fall of the period of qualifying service would not have occurred. Hence, it was contended by Mr. Samantray that for the fault of the Respondents, the applicant should not be made to suffer throughout his life as pension, after his

retirement, is the only solace means of his livelihood. This was strongly opposed by Ms.S.L.Patnaik, Learned Counsel appearing for the Respondents. Her contention is that it is too late in the day to make aspersion about non compliance of the earlier order of this Tribunal passed in TA No.194 of 1986. If the said order was not complied with in so far as Applicant is concerned, while the benefit in compliance of the said order was granted to other similarly situated persons, the Applicant should have agitated the same then and there and having kept silent for all these years, the Applicant is estopped to claim the benefit of the said order of this Tribunal at such a belated stage. Ms.Patnaik further contended that he cannot be permitted to suddenly rise from the slumber and challenge the action of the Respondents in not granting him the benefit as has been granted to others. In so far as Babaji Dalai's case is concerned it was contended by the Learned Counsel appearing for the Respondents that the Applicant's case was totally

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different than that of the case of Sri Babaji Dalai and hence, Ms. Patnaik, has prayed for dismissal of this OA.

4. We have considered the rival submissions of the parties with reference to the materials placed on record. From the copy of the OJC No. 2725 of 1981 filed by the applicant's counsel in court we find that the aforesaid matter was filed by Babaji Dalai and 60 others in which the name of the present applicant was at Sl.No.9 in which their prayer was for grant of temporary status and other consequential reliefs as all of them joined the Signal and Telecom Development Department of the Khurda Road Division of South Eastern Railway as casual Khalasis several years back. In view of the above, the stand of the Respondents that the case of Babaji Dalai stood on different footing is misnomer and cannot be accepted in the eyes of law. Be that as it may, alleging violation of the order of this Tribunal in TA No. 194 of 1986, the Applicant filed another OA No. 157 of 1994 which was disposed of by this Tribunal on 20.02.1998 directing the

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Respondents to conduct the screen test of the applicant within a period of 90 days and for taking further course of action within a period of thirty days thereafter. But we find no satisfactory explanation for conducting the screening test of the applicant belatedly. However, the applicant was screened in compliance of the order of this Tribunal but no reason was assigned as to why he was conferred the temporary status prospectively w.e.f. 25.2.1999 when as admitted by the Respondents Shri Babaji was granted the temporary status w.e.f. 1.1.1981.

5. As a matter of policy, the Respondents issued various instructions for grant of temporary status to a casual employee after putting certain number of days of course after finding fit on screening test. Therefore, irrespective the date of the screening tests, one is entitled to temporary status from the date as provided in the scheme. As such, in the instant case when the applicant was found fit in the screening test, his date of temporary status should have been


antedated at least to the date when Shri Babaji Dalai was granted the temporary status. Admittedly Shri Babaji Dalai was rightly granted the temporary status w.e.f. 1.1.1981 which he was law fully entitled to. Therefore, it cannot be said that the applicant was not law fully entitled to ante date the date of conferment of temporary status and regularization. Law is well settled in a plethora of judicial pronouncements that a claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. It must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. In the case of **Ramana Dayaram Shetty v. International Airport Authority of India (1979) 3 SCC 489** the Hon'ble Apex Court has held that a discriminatory action of the Government is liable to be struck down, unless it can

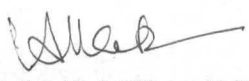
be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

6. In view of the discussions made above, we find that miscarriage of justice was caused in the decision making process while granting the temporary status and regularization thereby calculating the total period of service of the applicant so as to make him ineligible to receive his pension. Hence, the Respondents are hereby directed to ante date the date(s) of conferment of the temporary status and regularization to the Applicant at par with that of Shri Babaji Dalai and pass an order within a period of ninety days from the date of receipt of copy of this order. Thereafter grant of the pension and pensionary benefits to the applicant shall be made by recounting the period of service, as per Rules, within a period of 60 days there from.

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7. In the result this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)

