

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.260/0030 of 2015
Cuttack, this the ^{28th} day of July, 2017

CORAM:

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

Shri Nityananda Sahoo, aged about 41 years, S/o. Late Gatanath Sahoo, At/Po. Kapilaprasad, Bhubaneswar, Dist. Khurda at present working as Casual Worker awarded with 1/30th Status at Rai Temple, Archaeological Survey of India site (Horticulture Divison-IV), Ravi Talkies Square, Bhubaneswar, Dist. Khurda, Odisha.

.... Applicant

By legal practitioner : Mr.P.K.Mohapatra, Advocate

Versus

1. Union of India represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Chief Horticulturist, Archaeological Survey of India, Eastern Gate, Taj Mahal, Agra-282001, Utter Pradesh.
4. Dy. Superintending Horticulturist, Archaeological Survey of India, Division-IV, Satyanagar, Bhubaneswar-07, Dist. Khurda, Odisha.
5. Jambeswar Das, aged about 42 years, S/o. Shri Goiuranga Das, At-Narada, Po. Turintera, Ps. Balipatana, Dist. Khurda at present working as Monument attendant Udaygiri, Archaeological survey of India site, At/Po. Udaygiri, Ps. Balichandrapur, Dist. Jajpur, Odisha.

.... Respondents

By legal practitioner: Mr.S.K.Singh, Advocate

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ORDER

A.K.Patnaik, JM:

The prayer of the applicant in this Original Application filed U/s.19 of the A.T. Act, 1985 is to quash the impugned order of rejection dated 8.1.2013 and direct the Respondents to grant him temporary status and thereafter regularize him in Gr.D post as similarly placed employees like the applicant had already been regularized in Gr. D post after conferment of temporary status but the applicant has been discriminated.

2. Respondents filed their counter contesting the case of the Applicant and praying therein that this OA being devoid of any merit is liable to be dismissed.

3. The applicant has also filed rejoinder counter acting the stand taken by the respondents in their counter.

4. After the closure of the hearing, the applicant has also filed notes of arguments which has been taken note of.

5. Heard the arguments advanced by the respective parties and perused the records.

6. I do not see any justification to repeat and reiterate the arguments advanced by the respective parties in support of their case in this; as taking into consideration similar arguments advanced in OA No. 260/00988/2014 (Kishore Behera v Union of India & Ors), this Bench has already come to a conclusion in favour of the Applicant Shri Kishore Behera and it would suffice

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to quote the relevant portion of the order in Kishore Behera's case which runs as under:

"8. I have considered the rival contentions of the respective parties and gone through the records. I find sufficient force on the arguments advanced by the learned counsel for the applicant in so far as delay and laches is concerned. Obviously the applicant has got a cause of action when other similarly situated persons were granted with the temporary status and subsequently regularised in pursuance of the order of this Tribunal. While conferring temporary status in pursuance of the order of this Tribunal in OA Nos. 81/1998 and 82/1998, the Respondents ought to have considered the case of the applicant. Having not considered he has ventilated his grievance through representation. Since no action was taken he has approached this Tribunal along with an application for condonation of delay. The Tribunal took note of both and directed for consideration and disposal of his representation. The representation of the applicant was considered but rejected vide order dated 17.5.2013 which he has challenged in this OA filed on 8th December, 2014. In the order of rejection, the respondents have admitted that persons similarly placed had been conferred with temporary status and subsequently regularized in Gr. D post in compliance of the order of this Tribunal. If it is so, there was no impediment on the part of the Respondents to extend the said benefit to the applicant in order to remove the discrimination which is the antithesis to rule of law. In this connection the observation of Hon'ble Apex Court in paragraph 12 of the decision in the case of Tukaram Kana Joshi (supra) is relevant and is quoted herein below for ready reference:

"12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise

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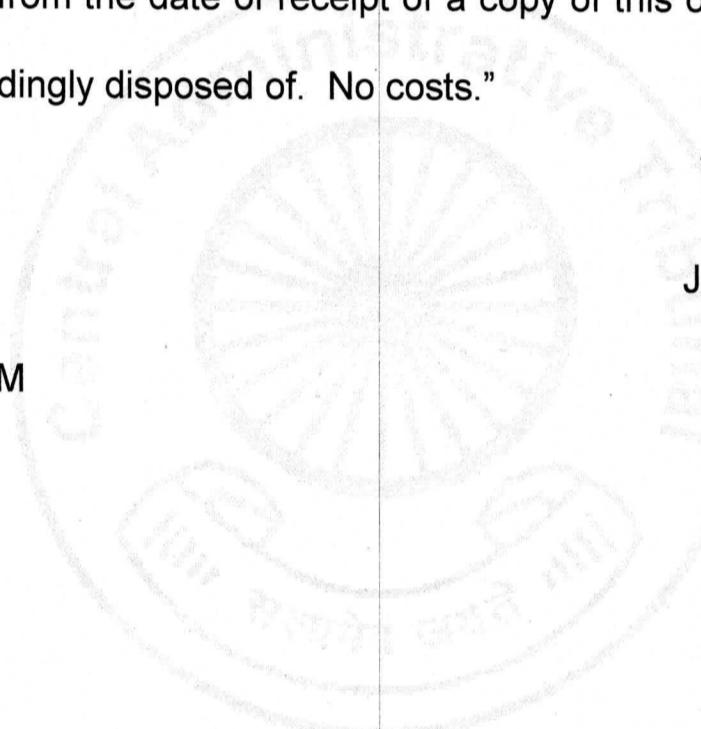
guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the Petitioners (vide Durga Prasad v Chief Controller of Imports and Experts & Ors, AIR 1970 SC 769, Collector, Land Acquisition, Anantnag & Anr v Mst. Katiji & Ors, AIR 1987 SC 1353, Dehri Rohtas Light Railway Company L td v District Board, Bhojpur & Ors, AIR 1993 SC 802, Dayal Singh & Ors v Union of India & Ors, AIR 2003 SC 1140 and Shankara Co op Housing Society Ltd v M.Prabhakar & Ors, AIR 2011 SC 2161)."

9. As discussed above, since similarly placed employees had already been conferred with temporary status and consequently they had been regularized in Gr. D posts, the Respondents are directed to consider grant of temporary status and consequent regularization of service of the applicant in the light of the benefit granted to Shri Purnachandra Sethi vide order dated 11.12.2009 and Shir Pratap Kumar Sahoo. The entire exercise shall be completed and appropriate order be issued within a period of 60 (sixty) days from the date of receipt of a copy of this order. The impugned order dated 17.5.2013 is accordingly quashed. This OA is accordingly disposed of. No costs. "



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7. In view of the above, the impugned order dated 8.1.2013 is hereby quashed. The Respondents are directed to consider grant of temporary status and consequently regularization in the light of the benefit granted to Shri Purnachandra Sethi vide order dated 11.12.2009 and Shri Pratap Kumar Sahoo. The entire exercise shall be completed and appropriate order be issued within a period of 60 (sixty) days from the date of receipt of a copy of this order. This OA is accordingly disposed of. No costs."




(A.K. Patnaik)
Judicial Member

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