

52

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.340 OF 2013

Cuttack, this the 29th Day of April, 2016

B. Barik & Others Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ☒
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ☒


(A.K. PATNAIK)
MEMBER (J)

53
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A NO. 340 /2013

29th Day of April 2016

1. Bidyadhar Barik, aged about 42 years
S/o. Sri Apariti Barik
Village: Uttarhana
Po: Basudevapur
Ps: Chandanpur
Dist :Puri
2. Kamala Kanta Mohapatra, aged about 40 years
S/o. Kshetra Mohan Mohapatra
Village:Siriapur
Po:Pattanaikia
Ps: Pipili
Dist: Puri
- 3.Naba Kishore Martha, aged about 40years
S/o.Late Sahadeb Martha
Village:Ankia,
Po:Bira Narasinghpur
Ps: Chandanpur, Dist: Puri
- 4.Jagannath Nayak, aged about 41years
S/o.Late Billa Kishore Nayak
Sarada Devi Road, Harijan Basti
Po: Bali Sahi, Ps: Sea Beach, Dist: Cuttack

All the Applicants are working as Casual Lab ours of Archaeological Survey
of India, Puri Sub-Circle , Puri

.....APPLICANTS

- V E R S U S -

1. Union of India represented by the Secretary,
Ministry of Culture, Government of India,
Shastri Bhawan, New Delhi-110001.
2. The Director General,
Archaeological Survey of India,
Janapath, New Delhi-110011.
3. The Superintending Archaeologist,
Archaeological Survey of India,
Toshali Plaza, Block – VI, 1st Floor
Satya Nagar, Bhubaneswar – 7

.....RESPONDENTS

Bidyadhar Barik

Receel copy
J. K. Barik
At 31/6/13

53

O R D E R

A.K.PATNAIK, MEMBER (J):

The Applicants, stating to have been continuing as the Casual workers in the Office of Archaeological Survey of India, Puri Sub Circle, Puri have filed this Original Application Under Section 19 of the Administrative Tribunals Act, 1985 making the grievance which is in violation of the provisions enshrined in Articles 14 and 16 of the Constitution of India due to non payment of 1/30th Pay, although they are fulfilling the conditions stipulated for getting the said benefit, while paying the same to their counterpart employees even junior to them. Their prayer, in this Original Application is as under:

- (i) "In view of the facts stated above in Para-4, the applicants pray that the Hon'ble Tribunal may graciously be pleased to quash the order dtd. 12.4.2013 (Annexure A/11) wherein the junior to the applicants are allowed 1/30th of the Pay Scale at the minimum of Group D post and to quash the order dtd. 20.5.2012 (Annexure A/12) wherein the case of the applicants have not been considered as they have prayed for.
- (ii) The Respondents may be directed to release the 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance against the group D post along with other service benefits retrospectively in favour of the applicants to which the juniors to the applicants are receiving since dtd. 15.4.2013.
- (iii) Any other relief/reliefs which are deemed fit and proper may be passed in favour of the applicants."

2. The Respondents have filed their counter in which it has been stated that the applicants have been working as casual labourers under the Conservation Assistant of Puri Sub Circle, Puri against estimated head and specific work for which they are being paid the wages as per

Alles

155

the rate fixed by the Labour Commissioner (Central) from time to time and that they are in receipt of the same throughout, without any demur. As per the circular issued by the DoP&T vide OM dated 7th June, 1988 and the circular issued by the office of the Director General Archaeological Survey of India, New Delhi dated 7th July, 1992, a casual labour is entitled to the benefit of 1/30th Pay plus D.A. provided he is engaged eight hours a day and the nature of work should be same as per the regular employee. In the instant case, the applicants were not entrusted to discharge the duty of Gr. D employee and, therefore, they are not entitled to the benefits as claimed in this O.A. In so far as the allegation of the applicants that the juniors were paid the said benefit but they were deprived of, the stand taken by the respondents in their counter at PARA -7 is very much relevant and the same is extracted hereunder:

“ 7. That the averments made in para 4.8. to the OA is not correct. It is humbly submitted that the casual labourers who are juniors to them have been getting the benefit of 1/30th of the pay at the minimum pay scale plus dearness allowances as per the OM issued by the DoPT dated 7th June, 1988 and the circular dated 7th July, 1992 issued by the Director General, ASI, New Delhi were as they have been discriminated. It is made clear that those casual labourers who were engaged prior to 2004-2005 and completed 240 days in a year (upto 2011-2012) have been allowed to get 1./30th pay at the minimum of the relevant pay scale plus dearness allowances after discharging the duty of Group D post.”




3. In so far as the claim of the applicants is entitled, the Respondents in PARAGRAPH 11 of the counter have made it clear as under:

“11. That in reply to para 4.14 to 4.16, it is submitted that in compliance to the directives of Hon’ble Tribunal in its order dated 31st Jan. 2013, the Respondent No. 3 has considered the representation of the applicant as filed Annexure A/7 to the O.A. favourably and disposed of the same on 20th May, 2013 communicating the result thereof stating that all the applicants in O.A. No. 1121/12 except Jagannath Nayak S/o Late Balakrushna Das are in the merit list and their cases for allowing to attend the duty of Group “D” and wages of 1/30th pay scale of the Group “D” will be issued in due course, therefore, the allegation made by the applicants in this O.A., rejecting their representation is totally false and baseless. It is needless to mention here that the casual labourers are engaged on need basis and also keeping in view of the funds position. It is further clarified that as per the merit list prepared by the respondent No. 3 dated 26th May, 2013, only those casual labourers who have been engaged on or before 2004-2005 and completed 240 days as on 2011-2012, they were allowed to attend the duty of Group “D”.

4. Heard Ms. R. Bahal, Ld. Counsel appearing for the applicant and Mr. S. Behera, Ld. SCGPC appearing for the Respondents. Both of them have reiterated the stand taken in their respective pleadings and having heard them at a considerable length, perused the averments and documents appended thereto.

5. The learned counsel appearing for the Respondents placing reliance on the impugned order at Annexure-A/12 vis-a-vis the stand taken in paragraph 11 of the counter has submitted that when in compliance of the order of this Tribunal passed in earlier OA, the Respondents have intimated the applicants that they are entitled to the



54

-5-

benefits and orders to the above will be issued in due course, it is not known as to why this O.A. was filed by them. But consequential order in pursuance of the order under Annexure-A/12 has been issued by the Respondents has not brought into the record.

6. It is apt to extract the order under Annexure-A/12 dated 20.5.2013 which is quoted hereunder for ready reference:

“Sub : Direction of Hon’ble Central Administrative Tribunal, Cuttack Bench Cuttack in OA No. 1121/12 it is order dated 31st Jan-2013 filed by Sri/Eidyardhar Barik, Kamala Mohapatra, Naba Kishore Marth and Jagannath Nayak vrs. UoI & Others.... Reg.

In view of the direction of the Hon’ble Central Administrative Tribunal, Cuttack Bench, Cuttack in its order dated 31st Jan-2013 in OA No. 1121/12, the Joint representation dated 9th April,-2007, 7th June-2009 and dated 2nd July-2012 as Annexure A/7 of the OA of Sri Bidyardhar Barik, Kamala Mohapatra, Naba Kishore Martha and Jagannath Nayak alongwith the copy of the Original Application No. 1121/12 is being thoroughly considered and disposed of on the following ground.

a. Sri Bidyardhar Barik, S/o Sri Aparti Barik

The joint representation of the applicant / Bidyardhar Barik together with other applicants dated 9th April-2007, 7th June-2009 and dated 2nd July-2012 in Annexure-A/7 of the OA No. 1121/12 has been examined and found that the applicant / Sri Barik is now working under the O/O Conservation Asst. of Puri Sub Circle, Puri as a casual labourer against estimated head and specific work. The Wages are being paid to the applicant as per the rate fixed by the Labour Commissioner (C) from time to time and received his wages all throughout without raising any objection. As per the extant procedure, casual labourers are being engaged subject to availing of funds and works.

Further, the Respondent No. 3 i.e., Superintending Archaeologist, ASI, Bhubaneswar Circle, Bhubaneswar has prepared a list of the casual labourers (indicating the engagement and completed 240 days as on 2011-12) which has already been

58

-6-

O.A. No.340 of 2013
B. Barik & Ors. -Vrs- UOI

circulated vide letter No. 3/108/12-Judl-9283 dated 26th March-2013 and found that the name of the applicant / Sri Barik is in the merit list of Sl. No. 3 (Engaged on or before 2007-2008 and completed 240 days as on 2011-2012), therefore, his case for allowing to attend the duty of Group "D" and wages of 1/30th Pay of the Group "D" and order(s) to this effect will be issued in due-course.

b. Sri Kamala Kanta Mohapatra, S/o-Keshetra Mohan Mohapatra

The joint representation of the applicant / Kamala Kanta Mohapatra together with other applicants dated 9th April-2007, 7th June-2009 and dated 2nd July-2012 in Annexure-A/7 of the OA No. 1121/12 has been examined and found that the applicant/Sri Barik is now working under the O/O Conservation Asst. of Puri Sub Circle, Puri as a casual labourer against estimated head and specific work. The Wages are being paid to the applicant as per the rate fixed by the Labour Commissioner (C) from time to time and received his wages all throughout without raising any objection. As per the extant procedure, casual labourers are being engaged subject to availability of funds and works.

Further, the Respondent No. 3 i.e., Superintending Archaeologist, ASI, Bhubaneswar Circle, Bhubaneswar has prepared a list of the casual labourers (indicating the engagement and completed 240 days as on 2011-12) which has already been circulated vide letter No. 3/108/12-Judl-9283 dated 26th March-2013 and found that the name of the applicant / Sri Barik is in the merit list of Sl. No. 8 (Engaged on or before 2008-2009 and completed 240 days as on 2011-2012), therefore, his case for allowing to attend the duty of Group "D" and wages of 1/30th Pay of the Group "D" and order(s) to this effect will be issued in due-course.

c. Sri Naba Kishore Martha S/o-Late Sahadeb Martha

The joint representation of the applicant / Nabakishore Martha together with other applicants dated 9th April-2007, 7th June-2009 and dated 2nd July-2012 in Annexure-A/7 of the OA No. 1121/12 has been examined and found that the applicant/Sri Martha is now working under the O/O Conservation Asst. of Puri Sub Circle, Puri as a casual labourer against estimated head and specific work. The Wages are being paid to the applicant as per



the rate fixed by the Labour Commissioner (C) from time to time and received his wages all throughout without raising any objection. As per the extant procedure, casual labourers are being engaged subject to availability of funds and works.

Further, the Respondent No. 3 i.e., Superintending Archaeologist, ASI, Bhubaneswar Circle, Bhubaneswar has prepared a list of the casual labourers (indicating the engagement and completed 240 days as on 2011-12) which has already been circulated vide letter No. 3/108/12-Judl-9283 dated 26th March-2013 and found that the name of the applicant / Sri Barik is in the merit list of Sl. No.10 (Engaged on or before 2008-2009 and completed 240 days as on 2011-2012), therefore, his case for allowing to attend the duty of Group "D" and wages of 1/30th Pay of the Group "D" may be taken into consideration and order(s) to this effect will be issued in due-course.

d. Sri Jagannath Nayak, S/o - Late Balakrushna Das

The joint representation of the applicant / Jagannath Nayak together with other applicants dated 9th April-2007, 7th June-2009 and dated 2nd July-2012 in Annexure-A/7 of the OA No. 1121/12 has been examined and found that the applicant/Sri Nayak at present working under the O/O Conservation Asst. of Puri Sub Circle, Puri as a casual labourer against estimated head and specific work. The Wages are being paid to the applicant as per the rate fixed by the Labour Commissioner (C) from time to time and received his wages all throughout without raising any objection. As per the extant procedure, casual labourers are being engaged subject to availability of funds and works.

Further, the Respondent No. 3 i.e., Superintending Archaeologist, ASI, Bhubaneswar Circle, Bhubaneswar has prepared a list of the casual labourers (indicating the engagement and completed 240 days as on 2011-12) which has already been circulated vide letter No. 3/108/12-Judl-9283 dated 26th March-2013 and found that the name of the applicant has never completed 240 days in a year nor engaged since 2010 till 2012, therefore, his case for allowing to attend the duty of Group "D" and wages of 1/30th Pay of the Group "D" cannot be considered and rejected."



60

7. Mere running the eye over the order under Annexure-A/12 and the stand taken in counter at paragraph 11, quoted above, it is crystal clear that the Respondents are fair to the applicants as on consideration of their representation in the aforesaid order it was held that all the applicants except the applicant No.4 are entitled to the benefit of 1/30th pay and order to the above extent will be issued in due course. In view of the above, it is not necessary to go into the controversy much and this O.A. is disposed of with the following order:

- (i) **The Respondents are directed to pay all the applicants 1/30th of pay at the minimum of the relevant pay scale of a Group D plus DA, as has been paid to the counterpart employees of the Applicants, with effect from the date the same was paid to the juniors of the applicants, if not already paid in the meantime, within a period of NINTY days from the date of receipt of a copy of this order;**
- (ii) **Failing to pay the benefits, as directed above, within the stipulated period, the applicants shall be entitled to interest at the rate of 6% per annum from the date it became due till the entire amount is actually paid to the applicants.**

There shall be no order as to costs.


(A.K. Patnaik)
Judicial Member