

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/00285/2014

Date of Reserve:12.03.2019

Date of Order: 10.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Surendra Kumar Patra, aged about 47 years, S/o. Budhanath Patra, At-Kasiassasan, Po-Kumbharpada, Dist-Puri (Odisha) – at present working as Mali in the office of Director, Institute of Minerals & Materials Technology, Acharyavihar, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.A.Mishra
M.S.Swarup
Rajnikant

-VERSUS-

Union of India represented through:

1. The Secretary of State for Science & Technology and Earth Science & Vice-President, CSIR, (Council of Scientific & Industrial Research), At-Anusandhan Bhavan-2, Rafi Marg, New Delhi-110 001.
2. Director General, CSIR (Council of Scientific & Industrial Research), At-Anusandhan Bhavan-2, Rafi Marg, New Delhi-01.
3. Director, Institute of Minerals & Materials Technology, Bhubaneswar-751 013.

...Respondents

By the Advocate(s)-Mr.S.B.Jena
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, presently working as Mali in the O/o. the Director, Institute of Minerals, Metals Technology (in short IMMT), Bhubaneswar (Res.No.3). His grievance is directed against non-consideration of his request for grant of temporary status and consequent regularization. He has, therefore, approached this Tribunal in this Original Application under Section 19 of the A.T.Act, 1985, praying for direction to be issued to the respondents to regularize his service in the post of Mali and give him all consequential and financial benefits or in the alternative, to direct the respondents to consider

his case for conferment of temporary status on the basis of CSIR-Casual Workers' Absorption Scheme with Temporary Status from the year 1994 and to give him all consequential benefits thereof.

2. It is the case of the applicant that initially he had been engaged as casual/contract worker as Mali in the erstwhile Regional Research Laboratory (RRL) now IMMT in the year 1990 and worked under the contractor till 1991 and from 1991, order was issued in his favour extending his service from time to time. On the introduction of CSIR-Casual Workers' Absorption Scheme with Temporary Status, 1994 (in short Scheme, 1994), the applicant was called upon to submit the required documents for consideration of grant of temporary status and regularization and in response to this, he submitted a representation dated 24.11.2008 to Respondent No.2 along with the related documents. However, after since his case was not considered, he submitted another representation dated 9.5.2009(A/3) to the D.G., CSIR praying for conferment of temporary status and consequent regularization under CSIR 1994 Scheme. Since his grievance was not redressed, he along with others submitted a further representation to Respondent No.2 dated 22.1.2014(A/4). According to applicant, in the meantime, even though more than 24 years have elapsed, but, the respondents are not taking any steps to confer temporary status on him and/or regularize his service. According to applicant, in view of various judicial pronouncements on casual workers, his grievance regarding regularization of his services should be considered if the works are available whereas the respondents have slept over the matter, which per se is illegal and arbitrary.

3. On the other hand, by filing a detailed counter, the respondents have opposed the prayer of the applicant. According to respondents, applicant

along with 139 aggrieved persons had approached the Central Government Industrial Tribunal (CGIT) through their erstwhile Union claiming similar reliefs. The CGIT Vide its Award dated 30.07.2001 in I.D. Case no.248/2001 held that the 2nd Party Union has failed to establish that the Workmen have worked for more than 240 days and therefore, the workmen are not entitled to any relief. They have pointed out that the applicant by suppressing this material fact has approached this Tribunal in the present O.A., Further, the respondents have submitted that the applicant along with others have filed a joint representation dated 6.3.2014 before the Assistant Labour Commissioner(Central), Bhubaneswar praying for similar relief as in the present O.A., who has issued notice vide letter dated 10.03.2014(A/2). The Management has already filed written replies before the ALC on 10.04.2014 and the matter is now sub judice. This fact the applicant has also suppressed in the O.A.

4. Respondents have pointed out that they have outsourced the garden maintenance and other related work through the contractor, M/s. Adarsh Society and the applicant is hired and engaged by the said contractor. Since the applicant is engaged through the contractor, there is no employer and employee relations. According to them, there is no provision for regularization of service of an worker engaged through the contractor. They have, therefore, prayed that the O.A. being devoid of merit should be dismissed.

5. We have heard the learned counsels for both the sides and perused the materials on record. We have also gone through the Award dated 30.7.2001 of the CGIT-cum-Labour Court, Bhubaneswar in Tr.I.D. Case no.248/2001. Amongst other issues, the said Tribunal had formulated the issue Nos. 2 and 4 and answered as under:

2. Whether the employees involved in the disputes are employed by the RRL (FF) ?
4. Whether the workmen involved in the dispute are working continuously for 5 to 17 years ?

"After hearing both the parties and perusal of the documents available this Tribunal, I am of the opinion that the 2nd Party Union has failed to place the evidence and materials to prove that they were the employees employed in the 1st Party Management and they have worked continuously for 5 to 17 years. On the other hand, the case of the 1st Party Management that they were working under the contractor M/s. Expert Services appears to be probable. Hence, these two issues are answered in favour of the 1st Party Management".

6. The above statements made in the counter-reply have not been refuted by the applicant by filing any rejoinder. Since there has been a decision already taken by the GIT-cum-Labour Court with the findings as aforementioned, this Tribunal cannot sit over the said Award as an appellate authority. Secondly, the applicant has not been able to produce any credible documents in support of his case that he had been initially engaged by the Respondents on casual basis. Besides, the above, it is also a matter of fact that a joint representation dated 6.3.2014 filed by the applicant along with 8 others before the ALC(Central), Bhubaneswar in which reply has been filed by the respondents in pursuance of notice dated 10.03.2013(R/2) is the subject matter of consideration. Viewed from this angle, the applicant is estopped from exercising his remedy in the concurrent proceedings before the two different judicial fora.

7. For the reasons discussed above, the O.A. is held to be misconceived one and accordingly, the same is dismissed, with no order as to costs.

(SWARUP KUMAR MSHRA)
MEMBER(J)
BKS

(GOKUL CHANDRA PATI)
MEMBER(A)

