

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

1. O.A.No.260/91/2014
2. O.A.No.260/95/2014
3. O.A.No.260/96/2014
4. O.A.No.260/97/2014
5. O.A.No.260/98/2014
6. O.A.No.260/99/2014

Date of Reserve:30.01.2019

Date of Order: 01.03.2019

CORAM:

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

1. In O.A.No.260/91/2014:
Sudhakar Behera, aged about 50 years, S/o. Nityananda Behera, at present working as JFA(Misc.) Aviation Research Centre (in short ARC), At/PO-Charbatia, Dist-Cuttack, resident of Quarter No.2R/60, ARC, Charbatia, PS-Choudwar, Dist-Cuttack, Odisha.
2. In O.A.No.260/95/2014:
Bharat Chandra Nayak, aged about 46 years, S/o. late Mahanta nayak, at present working as JFA(Waiter) Aviation Research Centre (in short ARC), At/PO-Charbatia, Dist-Cuttack, resident of Vill./Po-Agrahat, PS-Choudwar, Dist-Cuttack, Odisha.
3. In O.A.No.260/96/2014:
Benudhar Ojha, aged about 51 years, S/o. Late Krushna Chandra Ojha, at present working as JFA(Misc.), Aviation Research Centre (in short ARC), At/PO-Charbatia, Dist-Cuttack, resident of Gaja Amaba, PO-Dhurushia, PS-Khuntuni, Dist-Cuttack, Odisha.
4. In O.A.No.260/97/2014:
Amarendra Pattnaik, aged about 43 years, S/o. Late Rankanidhi Pattnaik, at present working as JFA(Cook), Aviation Research Centre (in short ARC), At/PO/Charbatia, Dist-Cuttack resident of Quarter No.2R/143, ARC, Charbatia, PS-Choudwar, Dist-Cuttack, Odisha.
5. In O.A.No.260/98/2014:
Kailash Chandra Samal, aged about 48 years, S/o. Jagannath Samal, at present working as Peon, Aviation Research Centre (in short ARC), At/PO-Charbatia, dist-Cuttack – residence of Quarter No.M/34, Housing Board, ARC Charbatia, PS-Choudwar, Dist-Cuttack, Odisha.
6. In O.A.No.260/99/2014:
Akshaya Kumar Ratha, aged about 45 years, S/o. Late Chandra Sekhar Ratha, at present working as JFA (WTR), Aviation Research Centre (In short ARC), At/PO-Charbatia, Dist-Cuttack – residence of ARC Quarters No.2R-165, At/PO-Charbatia, PS-Choudwar, Dist-Cuttack, Odisha.

...Applicants

By the Advocate(s)- M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. Special Secretary, Aviation Research Centre, O/O. Director General of Security, Cabinet Secretariat, Block-V (East), R.K.Puram, New Delhi-110 066.
2. Special Secretary, Aviation Research Centre, East Block-5, Level-V, R.K.Puram, New Delhi-110 066.
3. Director(A), Aviation Research Centre, At/PO-Charbatia, Dist-Cuttack.
4. Joint Director-A, Aviation Research Centre (ARC), PO-Charbatia-754 028, Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.D.K.Mallick
Mr.B.Swain
Mr.C.M.Singh

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Since the point to be decided in all the above mentioned Original Applications arises out of identical facts and law, this common order is being passed. For the sake of reference, the facts in O.A.No.91 of 2014 are being referred to.

2. The sum and substance of facts runs thus: The applicant had initially been engaged as a casual labour under the respondents in the year 1988. Having worked for a considerable length of time, he along with other similarly situated persons had approached this Tribunal in O.A.No.30/92 for regularization of their services. This Tribunal vide order dated 15.11.1993 disposed of the said O.A. with direction to respondents to prepare a seniority list and to consider the case for regularization by giving due weightage to the

experience gained by the applicants as casual labourers. While the matter stood thus, the applicant along with others was disengaged from service in the year 1994. Aggrieved by this applicant along with others had approached this Tribunal in O.A.No.349/1995. This Tribunal having dismissed the said O.A., applicants approached the Hon'ble High Court of Orissa by filing O.J.C.No.1495/1999. The Hon'ble High Court vide order dated 21.11.2000 directed the respondents/opposite parties to consider the application of the petitioners if they are otherwise found suitable with due weightage to their experience while making selection against the posts and absorb them and other casual labourers in the organization. Since the respondents did not comply with the aforesaid direction, the applicant along with others approached the Hon'ble High Court by filing OCRMC No.173/2002 and the Hon'ble High Court vide order dated 23.02.2004 disposed of the said OCRMC in the following terms:

"In such view of the matter, without entering into the question as to the opposite parties have committed any contempt in not complying with the orders passed by this court, in the peculiar facts and circumstances of the case, we dispose of this application by directing the opposite parties to consider the cases of the petitioners for appointment and appoint the petitioners in any Group-D posts as available now and for future vacancies, keeping in view the observation of this court and the fact that these petitioners have rendered service to them for quite a considerable period, have become overage and now in a precarious financial distress with their family in accordance with their suitability to the respective posts within a period of three months from the date of communication of this order".

3. In compliance with the aforesaid direction of the Hon'ble High Court, the applicant and others were appointed in Group-D posts with effect from 18.08.2004.

4. Grievance of the applicant is that his regular appointment with effect from 18.08.2004 should be ante-dated to 1988 when he was initially engaged

as casual labour and thereby, he will be eligible to pension and pensionary benefits. It reveals from the record that venting his grievance, the applicant had submitted a representation dated 13.09.2012 (A/5) to the Respondent No.2. However, Respondent No.2. vide Memorandum dated 05.02.2013(A/6) rejected the claim of the applicant and others which is impugned and called in question in the all the OAs. For the purpose of clarity, the contents of the impugned Memorandum is reproduced hereunder:

“Sub: Regularization of service in respect of Casual Labourers engaged in erstwhile Car Project.

The following officials may refer their application dated Sept. 2012 addressed to Special Secretary, ARC on the subject cited above.

- i) Sh.Amarendra Pattnaik, JFA (Cook)
- ii) Sh.Akshaya Kumar Ratha, JFA(Wtr.)
- iii) Sh.Bharat Chandra Nayak, JFA (Wtr.)
- iv) Sh.Sudhakar Behra, JFA(Misc)
- v) Sh.Benudhar Ojha, JFA(Misc.)
- vi) S.K.C.Samal, Peon.

It is intimated that their request for regularization of service retrospectively is not tenable under G.O.I. Rules. Rule-13 of CCS(Pension) Rules stipulates that for purpose of pension, the qualifying service of Govt. Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity provided that officiating or temporary service is followed by substantive appointments in the same or another service or post without any interruption. Moreover, as per provision contained in govt. Of India decision No.2 under Rule-14 of CCS(Pension) Rules, half of the service paid from contingencies can be counted subject to one of the conditions that the service paid from the contingencies should have been continuous and followed by absorption in a regular appointment without break. The above individuals were initially engaged as casual labourers and the days were subsequently reduced to 17 days for a month and finally they were disengaged w.e.f. 13.05.1994 and thereafter appointed in the year 2004 after a gap of more than 10 years of their disengagement.

2.This issues with the approval of Special Secretary, ARC”.

5. Aggrieved with the above, the applicant along with others have approached this Tribunal in the OAs praying for the following reliefs:

- i) To quash the order of rejection dtd. 05.02.2013 under Annexure-a/6.
- ii) And to direct the Respondents to antedate the date of regularization/appointment from 16.08.2004 to any date prior to 31.12.2003 and place the applicant under the old pension rule;
- iii) And to direct the respondents to give weightage the casual period of service for the purpose of pension and other service benefits.

6. In support of his case, applicant has urged that the respondents having delayed in implementing the order dated 21.11.2000 of the Hon'ble High Court of Orissa in OJC No.1495/1999 regarding preparation of seniority list of casual employees and consequent absorption as a regular measure, the applicant should not be made to suffer. In other words, it is the contention of the applicant that had the judgment of the Hon'ble High Court been implemented by the respondents within the time frame, then the applicant and others could have been brought over to regular establishment well before the order dated 16.08.2004 by which applicant and others were regularly appointed.

7. The rejection order dated 05.02.2013 is against the order of this Tribunal and the Hon'ble High Court. According to applicant, the new pension scheme dated 22.12.2013 nowhere states that the same is applicable from the date of joining in the post. Rather the scheme clearly states that the system would be mandatory for all new recruits to the Central Govt. Service with effect from 01.01.2004.

8. Respondents by filing a detailed counter opposing the prayer of the applicant. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

9. We have heard the learned counsel appearing for the applicants and the respective learned counsel appearing on behalf of the respondents in all the Original Applications. We have also perused the rejoinder filed by the applicants.

10. From the pleadings of the parties, it is quite clear that the applicants in all the OAs had been appointed against a project work in the year 1988 which having been closed in the year 1994, they were disengaged from service. Aggrieved thereby, the applicants approached this Tribunal in O.A..349/1995 and this Tribunal having dismissed the said O.A., the order of this Tribunal was challenged in the Hon'ble High Court of Orissa by the applicants in O.J.C.No.1495/1999. Since order dated 21.11.2000 of the Hon'ble High Court in the said OJC was not carried out, OCRMC No.173/2002 was filed by the applicants. However, by virtue of the order dated 23.03.2004 of the Hon'ble High Court of Orissa in OCRMC No.173/2002, the respondents appointed the applicants on regular basis vide order dated 16.08.2004 consequent upon which the applicants joined service on 18.08.2004. From the above, it is evident that from 13.05.1994 to 17.08.2004 the applicants being disengaged were no longer in service. Therefore, it is a case unless the interregnum period is not regularized, the applicant's date of regular appointment by no stretch of imagination could be ante-dated. In the O.A. the applicants have accepted their said regular appointment from 18.08.2004 without any demur. Rather in the O.A., as already mentioned above, the applicant has prayed for direction to respondents to antedate his date of regularization/appointment from

16.08.2004 to any date prior to 31.12.2003 in order to place him under the Old Pension Rules, having regard to his past casual period of service. The Tribunal cannot decide a lis on the basis of hypothesis so as to fix an artificial date prior to 21.12.2003 as prayed by the applicant to make him available of pension and pensionary benefits. Applicant has not even been able to establish his claim as to which date his regularization should be antedated and therefore, the claim of the applicant appears to be farfetched.

11. For the discussions held above, all the O.As are held to be without any merit and the same are dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS