

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 861 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Shri Bansidhar Mohanty, aged about 41 years, S/O-Late Narottam Mohanty, At/PO/PS-Bolagarh, Dist-Khurda, At present working as a Casual Worker awarded with 1/30th Status at Khandagiri Site, Archaeological Survey of India, Dist-Khurda, Odisha.

.....Applicant

-Versus-

1. Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janapath, New Delhi-110011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Bhubandeswar-7, Dist-Khurda, Odisha.
4. Ajaya Kumar Khuntia, aged about 43 years, at present working as Monument Attendant, Office, of the Superintending Archaeologist, At/PO-Satyanagar, Toshali Apartment, Block-IV, Bhubaneswar, Dist-Khurda, Odisha.
5. Bhagirathi Behera, Aged about 46 years, Son of Late Bholanath Behera, at present working as Monument Attendant, Haripur Garh, AT/ PO/PS/Dist-Jajpur.
6. Gangadhar Nayak, aged about 40 years, at present working as Monument Attendant, Office of the Superintending Archaeologist, At/PO-Satyanagar, Toshali Apartment, Block-IV, Bhubaneswar, Dist-Khurda, Odisha.

.....Respondents

For the Applicant : Mr. B. Rout

For the Respondents: Mr. S. Behera, Sr. Panel Counsel

Heard & reserved on: 26.04.2019

Order on: 10.05.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The applicant is aggrieved since by the order dated 07.08.2014(Annexure-A/6), the respondents have rejected his claim for grant of temporary status. The applicant claims that he was engaged as a Casual Labourer in the year 1997 and has served more than 240 days in four years together satisfactorily. He has been allowed 1/30th status vide order dated 11.02.2010(Annexure-A/1) and with reference to the DOPT's Scheme for granting temporary status and regularization of Casual Labouers w.e.f. 01.09.1993 vide OM dated 10.09.1993 (Annexure-A/2) and as per the order of this Tribunal in OA No. 376/2011, the respondents no. 4 and 5 were allowed temporary status vide order dated 03.08.2011(Annexure-A/3) although they were initially engaged after the DOPT's OM dated 10.09.1993 came into force. It is also stated that a seniority list dated 21.10.2011 (Annexure-A/4) of casual labourers was published by official respondents.

2. The applicant had filed OA No. 932/2013 since his representation for grant of temporary status was not considered by the authorities. The OA No. 932/2013 was disposed of by order dated 03.01.2014(Annexure-A/5) of the Tribunal,

directing the respondent No.3 to consider the applicant's representation and accordingly, the respondents No. 3 has passed the order dated 07.08.2014(Annexure-A/6) which is impugned in this OA. By way of this OA, the applicant seeks the following reliefs:-

"i) To pass appropriate orders directing the departmental respondents to consider the case of the applicant to grant temporary status to him from the retrospective effect and regularization and to extend all the service and consequential benefits to which he is entitled to with effect from the date of enjoyment of such benefit like Respondents No. 4 to 6, by quashing Annexure-A/6.

ii) To pass such other order(s) directions(s) calling for the relevant records from the Department as deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost."

3. The main grounds advanced in the OA are following:-

(i) Although in similar cases, temporary status was allowed but in case of the applicant it was rejected for this ground which was not invoked in case of the others like the respondent no.4 and 5. This violates the Article 14 and 16 of the Constitution of India(Vide Para-4.5 of the OA).

ii) Applicant has worked for more than 17 years as Casual Labour. Vide circular dated 11.12.2006 of the DOPT (Annexure-A/17) casual Labourers working for more than 10 years were to be regularized.

iii) The applicant is entitled for the benefit similar to the respondents no. 4 to 6 who are similarly placed as the applicant.

4. Preliminary counter has been filed by the official respondents answering the averments made in the OA and opposing the OA mainly on the following grounds:-

"i) This OA is barred by limitation as the benefit of the OM dated 10.09.1992 of DOPT has been sought. Hence, cause of action for the applicant was arisen from September, 1993. As per the judgment of Hon'ble Apex Court in the case of D.C. Negi Vs. UOI and Others in SLP(C) No. 7956/2011 has observed that the Tribunal is to first consider whether the application is filed within the prescribed period. Order dated 22.07.2011 of Tribunal in No. 2155/2011 (Annexure-R/8) has also been cited.

ii) Applicant is to furnish proof of his contention that he has been engaged for more than 240 days. He was granted 1/30th status after completing 240 days of the work.

iii) The circular dated 10.09.1993 is wrongly interpreted by the applicant. It is also clarified in OM dated 12.07.1994 that if the casual labourers are not engaged by the employment exchange, they cannot be bestowed with temporary status.

iv) It is heard by Hon'ble Apex Court in Civil Appeal No. 3168/2002(Annexure-R/2) that the scheme of 1993 is not an ongoing scheme and temporary status can be conferred only on fulfilling the conditions in the said scheme.

V) Some of the applicants were given temporary status in pursuance to Tribunal's order which was upheld by Hon'ble High Court. Then they

were regularized as per the DOPT OM dated 10.09.1993. Applicant's case is not covered by their order".

5. It is seen that although Rejoinder has been filed by the applicant for this OA (No. 861/2014), but the name of the applicant and issues involved as stated in the rejoinder do not relate to this OA.

6. Learned Counsel for the applicant was heard. In addition to the contention made in the OA, order dated 25.05.2018 of this Tribunal in OA No. 652/2013 in the case of Rabindra Kumar Mallick Vs. The Secretary Ministry of Culture, Government of India and others. This cited case was claimed to be similar to the applicant's case. Learned Counsel for the applicant argued that this facts of this OA being similar to the facts of the OA No. 652/2013, the order dated 25.05.2018 squarely covers that applicant who is entitled for similar reliefs.

7. Learned counsel for the respondents was heard. He reiterated the grounds taken in the counter and also stated that the facts of the OA No. 652/2013 being different, the order dated 25.05.2018 will have no application for deciding this OA. He also stressed on the point of limitation.

8. Before considering merit of the case, the issue of the limitation raised by the official respondents needs to be decided first. It has been stated in the counter that the cause of action for the applicant arose in September, 1993 since the applicant has claimed the benefit of the said scheme of the DOPT as per the OM dated 10.09.1993(Annexure-A/2). The applicant was initially engaged as a Casual Labourer in 1997 as stated in the OA. Hence, for the applicant the cause of action can arise only after 1997, not on September, 1993. However, the respondents No. 4 to 6 were given temporary status in October, 2011 as stated in Para 4.3 of the OA. Since the applicant claims parity with the respondents no. 4 to 6, the cause of action will be deemed to have arisen in October, 2011. The representation filed by the applicant was not considered, for which the applicant filed the OA No. 932 of 2013 for consideration of the applicant's representation dated 29.04.2013 and the said representation was rejected vide the order dated 07.08.2014 (Annexure-A/6) which is impugned in this OA. Further, the applicant's counsel has also claimed parity with the OA No. 652/2013, which was disposed of vide order dated 25.05.2018. Hence, the OA filed by the applicant is considered to have been filed within the limitation period and the objections of the official respondents on the ground of limitation are not tenable.

9. Regarding the question of merit of the OA, the applicant claims similar treatment as the respondent no. 4 to 6, without showing how cases of respondent no. 4 to 6 are similar to that of the applicant. From order dated 21.10.2011(Annexure-A/4), it is noticed that the respondents no. 4, 5 and 6 are at S1 No. 53, 52 and 54 respectively in the seniority list and their date of initial engagement as noted in the seniority list are 30.05.1994, 01.05.1994 and

01.06.1994 respectively. The applicant in para 4.1 of the OA claims that he was engaged as a casual labourer since 1997. From the date of initial engagement of the respondents no. 4 to 6 as mentioned in the seniority list dated 21.10.2011(Annexure-A/4), clearly they are senior to the applicant based on the date of initial engagement. No document is produced by the applicant to show if any of the private respondents is junior to the applicant. Hence, there is no justification for claiming parity of treatment between the applicant and private respondent no. 4 to 6.

10. Learned counsel for the applicant, at the time of hearing, has relied upon the order dated 25.05.2018 in OA No. 652/2013. Perusal of the order dated 25.05.2018 shows that the applicant in OA No. 652/2018 was first appointed as a casual labourer on 03.12.1990 and he claimed to have completed 240 days in the year 1993. In para-2 of the order dated 25.05.2018, it is stated as under:-

“2. The applicant has based his prayer mainly on the ground that his juniors who have acquired temporary status have already been regularized in service and the applicant has been discriminated against in an illegal and arbitrary manner.....”

After discussing the details of the case, the Tribunal in order dated 25.05.2018 in OA No. 652/2013 finally held as under:-

“12..... The applicant is entitled to grant of temporary status from the date his juniors who had initially joined as casual workers were granted temporary status....”

11. It is clear from the preceding paragraphs that the applicant in OA No. 652/2013 was allowed the relief at par his juniors, who were granted temporary status. In the present OA (No. 861/2014), the private respondents are not the juniors to the applicant and the applicant has not been able to produce any evidence to show that any of his junior casual labour has been given temporary status or regularized in service. Hence, the cited order dated 25.05.2018 of the tribunal in OA No. 652/2018 will not be applicable to the present OA.

12. In the facts and circumstance as discussed above, the grounds mentioned by the applicant in the OA are not adequate enough to justify any interference in the matter. The OA, being devoid of any merit, is liable to be dismissed and hence, it is dismissed. Under the circumstances, there will be no order as to costs.

(Gokul Chandra Pati)
Member(Admn.)