

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/0075/2015

Date of Reserve:29.01.2019

Date of Order: 22.02.2019

CORAM:

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

Shri Bhimasena Behera, aged about 41 years, S/o.Dwijabara Behera, At-Pubasasana, PO-Kausalyaganga, PS-Pipili, Dist-Puri, at present working as a Casual Worker awarded with 1/30th Status at Drakhyat Prajapati Temple, Archaeological Survey of India, At/PO/PS-Banapur, Dist-Khurda, Odisha.

...Applicant

By the Advocate(s)-M/s.P.B.Mohapatra
Sai Ganesh
B.Rout

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Culture, Govt. Of India, Shastri Bhawan, New Delhi-110 001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110 011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Bhubaneswar-7, Dist-Khurda, Odisha.
4. Gangadhar Nayak, aged about 40 years, at present working as Monument Attendant, Office of the Superintending Archaeologist, At/PO-Satyanagar, Toshali Apartment, Block-VI, Bhubaneswar, Dist-Khurda, Odisha.

...Respondents

By the Advocate(s)-Ms.S.B.Das

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant has prayed for the following reliefs:

- i) To pass appropriate orders directing the departmental respondents 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 Respondent No.4, by quashing Annexure-A/5.
- ii) To pass such other order(s)/direction(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.

2. It reveals from the record that the applicant had earlier approached this Tribunal in O.A.No.260/00185/2014 praying for direction to respondents for conferment of temporary status and consequent regularization of his services. This Tribunal vide order dated 2.4.2014 disposed of the said O.A. with direction to Respondent No.2 to consider the representation dated 4.1.2014 and pass a reasoned and speaking order to be communicated to the applicant. In pursuance of the aforesaid order, the respondents passed a speaking order dated 3.6.2014 (A/5) in which his request for conferment of temporary status and consequent regularization of service has been rejected. Aggrieved with this, the applicant has filed the present O.A. praying for the reliefs as aforementioned.

3. Opposing the prayer of the applicant the respondents have filed a detailed counter, inter alia praying that the O.A. being devoid of merit is liable to be dismissed.

4. Heard the learned counsels for both the sides and perused the materials on record.

5. Grievance of the applicant is that the respondents have passed the impugned order dated 3.6.2015(A/5) without considering ins and outs of his representation. According to applicant, he was engaged as casual labourer in the year 1993 and was awarded 1/30th status in the year 2010. The Scheme, called Casual Labourer (Grant of Temporary Status & Regularization) (for short Scheme) was formulated by the Department which came into force with effect from 1.11. 1993. According to this scheme, temporary status has to be conferred on all casual labourers who are in employment on the date of commencement of the Scheme and who have rendered a continuous service of

at least one year which means, that they must have been engaged for at least a period of 240 days (206 days in the case of offices observing five days work). The applicant has pointed out that in pursuance of the direction of this Tribunal in O.A.No.376 of 2011, Respondent No. 4 to 6, who had been engaged prior to coming into force the Scheme were awarded temporary status vide office order dated 3.8.2011. It is the case of the applicant that he claims similar treatment at par with Respondent Nos.4 to 6 whereas the official respondents, without considering the same, have rejected his claim.

6. The main thrust of the rejection of the claims of the applicant reads as follows:

The Scheme of 1993 lays down that the same will be applicable only on fulfilling the conditions to the effect that the casual labour concerned should have been in employment as casual labour as on the date of commencement of the scheme as on commencement of the Scheme, i.e., 1.11.1993 and should have rendered a continuous service of at least 240 days in a year or 206 days (in case of offices having 5 days week). Secondly, it is mandatory to engage casual employees through the employment exchange. According to respondents, since the applicant does not fulfil the aforesaid conditions nor any of his junior has been conferred with temporary status, his claim was rightly turned down.

7. We have considered the rival submissions and perused the materials on record. During the course of hearing, learned counsel for the applicant brought to our notice a common order dated 11.12.2018 passed by this Tribunal in O.A.Nos.690, 691,694 and 695 of 2016. In those OAs applicants had approached this Tribunal for direction to respondents to confer temporary status retrospectively so also regularization of their services. Applicants therein were casual labours with 1/30th status and had been engaged for more than 24 days in a year. Considering the matter on merit and relying on the decision in another O.A.No.985 of 2014 dated 31.7.2018, this

Tribunal directed the respondents to consider the case of the applicants for grant of temporary status and other consequential benefits under the Scheme of 1993 of DOP&T similarly as the applicants in O.A.No.985/2014. It was further directed that in case the applicants are found to be entitled for grant of temporary status as per the instructions of Government and if their juniors who are similarly situated as the applicants, have already been given temporary status, then the applicants will also be considered to be entitled for grant of temporary status with consequential benefits from the date their juniors have been given such benefits.

8. In the instant case, the applicant herein Paragraph-4.3 of the O.A. has made the following averments :

"That in pursuance of the direction of this Hon'ble Tribunal in OA No.376/2011 the Respondent No. 4 to 6 had got the temporary status from the prospective effect vide office order No.33 dated 03.08.2011, who were engaged as casual labourer much after the circular came into force. Accordingly, a seniority list of the temporary status casual workers was published by the office of the Respondent No.4 on 21.10.2011. Subsequently, all the T/S workers have been regularized by the office of the Respondent No.3. True copy of the office order No.33 dated 03.08.2011 and seniority list dated 21.10.2011 are filed herewith and marked as Annexures-A/2 , A/3, respectively".

9. In reply to this, the respondents in Paragraph-13 & 14 of the counter-reply have submitted as under:

"13.That in reply to para 4.3 to 4.7 it is humbly stated that the applicant never represented his case before any of the respondents. However, in pursuance to the direction of this Hon'ble Tribunal in O.A.No.185/2014 vide order dated 02.04.2014, the representation (which was annexed to the O.A.) of the applicant was considered and rejected though the applicant did not fulfil the criteria of the circular dated 10.09.1993. So the impugned order has been passed by the respondent no.3 having due regards to the provisions of the said scheme and judicial pronouncement. As such the same cannot be said to suffer from illegality or be considered as discriminatory.

14.That it is humbly submitted that as per the direction of this Hon'ble Tribunal in its order dated 12th May, 2000 in

O.A.No.81/1998 and 82/1988 and subsequently direction of the Hon'ble High Court of Orissa by way of passing common order dated 20th February, 2009, the temporary status have been awarded to other applicants together with other similarly situated persons those who are covered by the order (s) of Hon'ble Tribunal, in view of the advice of the Director General, ASI, New Delhi vide letter dated 13-4/2009-Admn.II dated 29th July, 2011. Subsequently, service of temporary status casual workers have been regularized against the post of Group-D as per the existing instruction/guidelines of the DOP&T dated 120th September, 993. Since the case of the applicant was not covered the orders of the Hon'ble Tribunal, therefore his case could not be considered for granting of temporary status. The copy of the order dated 13th may, 2000 is annexed as Annexure-R/3".

10. Perusal of the above makes it clear that the respondents have not effectively countered the averments made by the applicant in Paragraph-4.3 of the O.A. However, we have gone through the office order no.33 dated 3.8.2011(A/2) by virtue of which temporary status has been granted to a number of casual labourers. It reveals therefrom that S/Shri Ajaya Kumar Khuntia, C.S.Panda and Gangadhar Nayak whose names are found place at Sl.Nos. 4,19 and 23 had been engaged as casual labourers with effect from 30.05.1994,17.04.1994 and 01.06.1994, respectively, i.e., after coming into force the Scheme of 1993. At this juncture, we would also like to note that those three casual labourers even though had been engaged after the commencement of Scheme, 1993, were conferred with temporary status in pursuance of letter No.13-4/2009-Admn.II(Pt.) dated 29th July, 2011 in pursuance of orders of this Tribunal in O.A.Nos.852/96, 266/97, 81 & 82/98 dated 23.1.2000, 13.04.2002 and 13.5.2000 respectively and the common Judgment dated 20.2.2009 of the Hon'ble High Court of Orissa as well as the orders of the Hon'ble Apex Court in SLP No.17155/09, SLIP No.17758/09 and SLP No.18119/09. Be that as it may, we are of the view that applicant in the instant case being senior to S/Shri Ajaya Kumar Khuntia, C.S.Panda and

Gangadhar Nayak relating to engagement as casual labour, his case for conferment of temporary status ought not to have been ignored by the respondents and to this extent, a discriminatory treatment has ostensibly been meted out to the applicant.

11. Having regard to the discussion held above, we quash the impugned order dated 03.06.2014(A/5) and remit the matter back to the respondents to reconsider conferment of temporary status at par with S/Shri Ajaya Kumar Khuntia, C.S.Panda and Gangadhar Nayak and further grant him the consequential benefits as have been granted in their favour. This exercise shall be completed within a period of 120 days from the date of receipt of this order.

12. In the result, the O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

