

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/279/2014

Date of Reserve: 15.07.2019

Date of Order:26.08.2019

CORAM:

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

Duryodhan Penthei, aged about 45 years, S/o. Haribandhu Panthei, At-Badapokharia Patna, PO-Kalpada Ghat, PS-Tangi, Dist-Khordha, At the relevant point of time working as casual labourer at INS Chilka, PO-Chilka, Dist-Khordha.

...Applicant

By the Advocate(s)-M/s.N.Jujharsingh
M.K.Satpathy

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110 011.
2. Joint Director CP(NG), Integrated Headquarters, Ministry of Defence (Navy), Directorate of Civilian Personnel, D-II Wing Sena Bhawan, New Delhi-110 001.
3. The Commanding Officer, INS Chilka, PO-Chilka, Dist-Khordha.

...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

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

“To admit this Original Application, call for the records, issue notices to the respondents to show cause and after hearing the parties pass the following reliefs”:

- i) The order dated 19.09.2011 under Annexure-A/8 passed by the Joint Director CP(NG) Integrated Head Quarters, Ministry of Defence (Navy), Directorate of Civilian Personnel, D-II Wing Sena Bhawan, New Delhi-110 001 may be set aside and the direction made for consideration of the aforementioned representations of the applicant in his favour.
- ii) The respondents especially the respondent No.3 be directed to allow the applicant to render his service

regularly as a worker under the authority of INS Chilka till his superannuation.

- iii) Pass any other relief(s) to which the applicant is entitled to as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. The sum and substance of the facts are that the applicant claiming to have been rendering service under the respondents as a casual worker since 02.02.2004 had represented before the concerned authorities for regularization of his service and to allow him to render service regularly as a casual worker in INS, Chilka. The Respondents have not considered his representation. Hence, this Application with the aforesaid reliefs.

3. It is the case of the applicant that he was engaged as a casual worker in Boat Swain Store of INS Chilka on 02.02.2004 under the Respondent No.3. In this connection, the concerned authority, i.e., Lt.Commandar, INS Chilka has issued a certificate of experience on 6.3.2008 in favour of the applicant. The applicant submitted a representation to the President of India and the authorities concerned in the Government of India, Ministry of Defence on 25.7.2008 for regularization of his service. In pursuance of this, the President's Secretariat vide letter dated 17.10.2008 intimated the Secretary to Government of India, Ministry of Defence to take action on his representation. Thereafter, the applicant went on approaching the authorities in Government of India, Ministry of Defence as well as the Commanding Officer, INS Chilka for regularization of his service. On 25.4.2011, the applicant submitted another representation before the President of India with a prayer to allow him to render service as a labourer regularly in the unit of INS, Chilka. Vide letter dated 10.05.2011, the President's Secretariat intimated the Secretary to the Government of India, Ministry of Defence to take action on the said representation. The

President's Secretariat vide letter dated 17.10.2008 further directed the Office of the Commanding Officer to take necessary action for regularization of services and to communicate the same to the applicant under intimation to the President's Secretariat. According to applicant, no action was taken till date and in the meantime, his services were terminated by the Commanding Officer, INS, Chilka.

4. The grounds on which the applicant has based his claim are that he having rendered service on casual basis for a period of 240 days in a calendar year, he should be regularized in service.

5. The applicant has filed M.A.No.318/2014 praying for condonation of delay in approaching this Tribunal. It has been submitted that the applicant was suffering from ailments since September, 2011 till 19.04.2014 and was under treatment by a Medicine Specialist. In this connection, the applicant has enclosed a certificate issued by the Doctor, Shri P.K.Sahoo, Medicine Specialist, B.M.Swasthya Nivas, Chandpur, Nayagarh dated 21.4.2014 in which it has been certified that the applicant was treated in the OPD of BMSN, Chandpur since September, 2011 to March, 2014 for Chr.Low Back Pain & Chest Pain. He was advised rest with limitation to heavy work.

6. Opposing the prayer of the applicant, respondents have filed a detailed counter. According to respondents, the applicant had earlier approached the Hon'ble High Court of Orissa in Writ Petition No.WP(C) 19452/10 and this Writ Petition was allowed to be withdrawn vide order dated 13.4.2011. Respondents have submitted that a large number of daily wage workers come near the main gate of the Establishment with a hope to get some work. The applicant is one of them. It has been submitted that the applicant's service was sought as and when required and not on regular basis by the Unit. The applicant although had worked as daily wage labour

for a total period of 241 days for the year 2004 to 2005 and 2007 to 2008 in a discrete manner, but he has never worked for 241 days in a single year. Respondents have pointed out that in examination of his request, suitable replies were sent to the applicant clearly stating the position vide Commanding Officer INS, Chilka letter 266/16 dated 22.8.2007 and dated 09.10.2007 (R/4 & R/5). They have therefore, submitted that the claim laid by the applicant in this O.A. is unfounded and baseless and therefore, the O.A. is liable to be dismissed.

7. Applicant has filed rejoinder to the counter-reply which is more or less reiteration of facts as averred in the O.A.

8. We have heard the learned counsels for both the sides and perused the records. It reveals from the record that vide communication dated 22.8.2007 (R/4), the respondents intimated the applicant as follows:

- “1. Refer to your applications dated Nil and 24 Jul. 07.
2. This is to inform you that this establishment employs casual labourers on daily wage basis and they are paid only the minimum wages notified by the government of Orissa.
3. The Hon’ble Supreme Court in its judgment dated 10 Apr 06 has issued guidelines on the subject that casual labourers, employed for carrying out the job of regular/irregular nature, will have no claim for appointment against regular vacancies on the basis of their casual service.
4. In view of the above, your representation for regularization in the post of labourer cannot be considered”.

9. In this connection, the applicant in Paragraph-9 of the rejoinder has mentioned as follows:

- “9. That as regards the averments made in Para 4(C) of the counter of the respondents, it is humbly submitted that the applicant has represented before the concerned competent authorities to allow him to

render his services as a worker regularly taking his length of rendering of his services to the establishment of INS, Chilka into account. The respondents stated to have issued letter dtd. 22.08.2007, 09.10.2007 to the applicant wherein it reveals that the said letters are very much cryptic, unwarranted and uncalled for and the judgment stated to have referred is not clear enough in regard to the rule position for absorption of the casual workers who have rendered their services for considerable period. The letter bearing CP(NG)/0505/VIP/XXXIV dtd. 19.09.2011 issued by the Integrated Head Quarters, Ministry of Defence (Navy) is just repetition of the said letters dated 22.08.2007 and 09.10.2007 of the respondents which is also cryptic, unwarranted and uncalled for”.

10. From the above, it is clear that even if the applicant had received the above communication rejecting his request for regularization as per R/4, he has not challenged the legality and validity of the same in the instant O.A. and on the other hand, impugning the communication dated 19.09.2011(A/8), he has approached this Tribunal in this O.A. Since there already exists an impugned order dated 22.8.2007 (R/4), the legality of which has not been challenged by the applicant, this Tribunal is of the opinion that communication dated 19.09.2011(A/8) cannot give rise to a fresh cause of action and unless and until communication dated 22.8.2007(R/4) exists, the applicant is bound to abide by the same.

11. In view of the above, the O.A. is held to be without any merit and the same is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

