

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.NO.260/280/2013

Date of Reserve:16.04.2019

Date of Order:28.06.2019

CORAM:

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

Sri Byasadev Deep, aged about 43 years, S/o. Late Khetri Deep, At-Badapada (W.No.13)PO-Bhawanipatna, Dist-Kalahandi – presently working as Motor Driver in AIR, Bhawanipatna, Dist-Kalahandi, Odisha.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant  
N.M.Rout  
C.Mohanta

-VERSUS-

Union of India represented through :

1. The Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.
2. Station Director, All India Radio, Bhawanipatna, At/PO-Bhawanipatna, Dist-Kalahandi

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Motor Driver under the administrative control of Station Director, All India Radio, Bhawanipatna (Res.No.2). He has approached this Tribunal in this O.A. seeking for the following reliefs:

- i) The Original Application may be allowed.
- ii) The respondents may be directed to regularize the services of the applicant w.e.f. 16.05.1995 or at the most from 23.03.1996 and to pay him the arrear differential salary within a time to be stipulated by this Hon'ble Tribunal and to pay revised salary month following month.
- iii) The respondents may be directed to accord necessary seniority to the applicant in the gradation list.

- iv) Such other order(s)/Direction(s) may be issued in giving complete relief to the applicant.

2. Shorn of unnecessary details, it would suffice to note that consequent upon a requisition made by Respondent No.2 for the purpose of preparing a casual panel for the post of Motor Drivers in All India Radio Bhawanipatna, applicant's name had been sponsored by the Employment Exchange. In the test/interview, applicant's name was recommended by the Selection Committee on 06.05.1995 for appointment to the post of Motor Driver. In this connection, the Superintending Engineer wrote a letter dated 16.05.1995 to the Respondent No.1 for engaging the applicant along with others on regular basis for driving the vehicles till the posts are created. Later on, with reference to Directorate's letter dated 02.09.1998, it was clarified by the Assistant Station Director that All India Radio Bhawanipatna had started functioning with effect from 31.12.1993. At that time, though three vehicles were sanctioned, but no post of driver was available. Anticipating creation of posts and with the intention that the vehicles would be maintained properly, a panel of five candidates was prepared by a duly constituted Selection Committee. In March, 1996, two posts of Motor Driver were sanctioned and accordingly, two candidates in order of seniority were appointed as such on 22.03.1996 and 23.03.1996 respectively. With all these facts, the Assistant Station Director requested Respondent No.1 to create three more posts to accommodate the left over three Drivers including the present applicant. However, after a protracted correspondences and on the representations made by the applicant, since it did not yield any fruitful result, the applicant approached this Tribunal in O.A.No.657 of 2003 with a prayer for regularization of his services including financial benefits with retrospective effect. This Tribunal

vide common order dated 07.07.2004 disposed of the said OA along with similar other two OAs by observing that the respondents have taken positive steps to find out ways and means to regularize the applicant. But in absence of sanctioned posts, the services of the applicant have not yet been regularized. This Tribunal further observed that there was no adverse remarks against the applicant with regard to his performance as a Driver and accordingly, the respondents were directed to consider the case of the applicant for regularization as against the posts available at Cuttack, Bhawanipatna and Jeypore/Koraput by transferring the applicant to one of those places or by transferring those posts to Bhawanipatna or by creating three more posts at Bhawanipatna, All India Radio Centre and till his regularization, respondents were directed to allow the applicant to continue as a Driver. Since the orders of this Tribunal were not complied with, C.P.No.15 of 2006 was filed and in order to avoid contempt of court, the applicant was given a conditional fresh appointment vide order dated 13.07.2006 (A/14) instead of regularizing his services, as a result of which, the applicant has lost his seniority so also the differential arrear salary in terms of Article 39 (d) of the Constitution of India. However, based on the submissions of the respondents, this Tribunal dropped the CP by observing that the order passed by this Tribunal has already been complied with by the respondents by their order dated 22/23.08.2006 which ought to be 13.07.2006.

3. Grievance of the applicant is that despite statement made by the respondents before this Tribunal that regularization of the applicant was under consideration but in the absence of clear vacancy, the same was not being considered, it was unreasonable and improper on their part to give him fresh and conditional appointment. The applicant having been selected

through a process of selection, his entry into service cannot be called in question and therefore, in terms of the direction of this Tribunal in O.A.No.657/2003, vacant post of Motor Driver was transferred to Bhawanipatna. Therefore, the applicant's services ought to have been regularized and the manner in which the respondents have given him fresh appointment on certain terms and conditions, in effect adversely affects his conditions of service which he has been rendering since 1995.

4. Per contra, respondents have filed a detailed counter. The main thrust of the counter is that one post of Motor Driver was transferred from AIR, Jeypore to AIR, Bhawanipatna in the month of July, 2006 against which, the applicant was appointed and has been continuing as such. According to respondents, as per order of this Tribunal dated 07.07.2004 the applicant was allowed to continue as Casual Motor Driver till creation/sanction of post. As soon as a post was made available, he was appointed as regular Motor Driver with effect from 14.07.2006 and his seniority is being reckoned from that date. They have pointed out that in view of judgment of the Hon'ble Apex Court in State of Uttaranchal vs. Dinesh Kumar Sharma [2006(3) SCALE 246] an employee can only get promotion and seniority from the date he has been substantively appointed. In view of this, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

5. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by both the sides. In Paragraph-1 of the written notes of submission the applicant has submitted as under:

- "1. That the applicant prays for direction to the respondents to regularize the services of the applicant w.e.f. 16.06.1995 (wrongly mentioned in para-8B) w.e.f. 16.05.1995 instead

of fresh appointment vide order dated 13.07.2006 (Annexure-A/14 at page 36) which is against the spirit of the order dated 07.07.2004 (Annexure-A/12)".

6. In order to address the grievance of the applicant, we have gone through the common order dated 07.07.2004 of this Tribunal passed in O.A.No.657/2003, the relevant part of which reads as follows:

"7. After considering the various submissions made by the learned counsel for the applicants and on perusal of the materials placed on record, it is seen that the respondents have taken positive steps to find out ways and means to regularize the applicants; but in absence of the sanctioned posts at Bhawanipatna AIR Centre, the services of the applicants have not yet been able to be regularized. There is also no adverse remarks against the applicants with regard to their performances as Driver. No doubt, law as stands today, requires that if a regularly selected casual labourer is continued for a fairly long spell (say for two or three years), presumption may arise that there is regular need for his services and, in such a situation, it becomes obligatory for the concerned authority to examine the feasibility of regularization. It appears from various Inter Departmental Communications that for the rest O.P. coverage, Transmitter trips for taking shift staff and other office work, all the three vehicles were required and for all the three vehicles, as per SIU norms, five drivers are required. From the record, it is also seen that while replying to a query made by the Hon'ble Minister of Information and Broadcasting dated 5.4.01, the Superintending Engineer of All India Radio in his letter under Annexure-11 dated 20/19.08.2002 (addressed to Director General, All India Radio, New Delhi) informed that at that time there were three vacancies at different places (Cuttack, Bhubaneswar and Jeypore/Koraput) and accordingly, he sought permission to finalize the matter of regularization of the applicants against these posts. But it seems that since no communication was received, the matter of regularization of the applicants could not be finalized. It is also seen that the applicants are not over-aged. They have also been continuing on such casual basis. At one point of time, there was also recommendation for giving them the regular scale of pay but as per the averments of the applicants, they are not only getting Rs.151/- per day.

8. In the above view of the matter, since the applicants have been continuing on casual basis since March, 1995 (almost 10 years by now) on being selected through a regular process of selection and since the Respondents are willing

to regularize the services of all the three applicants (on availability of posts/after receipt of permission from the Director General, New Delhi), the Respondents are hereby, directed to consider the cases of the Applicants for regularization as against the three vacant posts at Cuttack, Bhawanipatna and Jeypore/Koraput (as mentioned in letter under Annexure-12) by transferring the applicants to these places or by transferring those posts to Bhawanipatna (Kalahandi) or by creating three more posts (of Driver) at Bhawanipatna, AIR, Centre in Kalahandi District of Orissa. It is also pertinent to mention here that by now there might be many more vacancies; which the learned ASC is unable to disclose on the query of the Bench. Therefore, if there are no vacancies for the present to regularize the applicants, they should be allowed to continue, as it is, still they are regularized/adjusted against regular posts of Drivers under the Respondents.

9. In the result, therefore, these three Original Applications are allowed. No costs”.

7. Perusal of the above order makes it amply clear that on the basis of statement made by the respondents that the services of the applicants would be regularized on availability of posts and/or after receipt of permission from the Director General, New Delhi, this Tribunal directed to consider the cases of the Applicants for regularization as against the three vacant posts at Cuttack, Bhawanipatna and Jeypore/Koraput (as mentioned in letter under Annexure-12) by transferring them to these places or by transferring those posts to Bhawanipatna (Kalahandi) or by creating three more posts (of Driver) at Bhawanipatna, AIR, Centre in Kalahandi District of Orissa. Alternatively, this Tribunal directed that if there are no vacancies for the present to regularize the applicants, they should be allowed to continue, as it is, still they are regularized/adjusted against regular posts of Drivers under the Respondents.

8. Admittedly, vide letter dated 20/19.08.2002(A/11) the Superintending Engineer, All India Radio, Bhawanipatna in pursuance of letter dated 09.10.10.2001 of the Station Director, AIR, Cuttack by which vacancies of

Motor Drivers at AIR, Jeypore (Koraput), AIR, Cuttack and CCW(Elect) and AIR, Bhubaneswar (work charge) had been identified, had sought permission of the Director General, AIR, New Delhi in the matter of regularization of the applicant as Motor Drivers. This Tribunal having regard to this, also directed to either transfer the applicant against the vacant post of Motor Driver or transfer the vacant post to Bhawanipatna for the purpose of regularization of the applicant. In the counter filed by the respondents in this O.A., they have candidly submitted that one post of Motor Driver was transferred from AIR, Jeypore to Bhawanipatna in the month of July, 2006 against which the applicant was appointed. There is no justifiable reason assigned by the respondents as to why they slept over the matter for about more than four years to effect transfer of a vacant post of Motor Driver from Jeypore(Koraput) to Bhawanipatna although the applicant deserved to be regularized as soon as the post was so transferred. Conversely, they did not comply with the orders of this Tribunal dated 07.07.2004 in O.A.No.657/2003 even by transferring the applicant to Bhawanipatna for his absorption against the regular vacant post despite giving commitment to this Tribunal that they are considering the applicant's regularization. It is a case where for the reasons best known even though regular vacancy was in existence, applicant's service was not regularized albeit he had been selected for the post of Motor Driver by adopting due procedure of rules. It is also an admitted position that the work of Motor Driver of regular nature was available all through in AIR, Bhawanipata and the applicant notwithstanding the fact of he having discharged duties as that of a regular Motor Driver was paid wages on contract basis while at the same time regular vacancy in the posts of Motor Driver was there in other station. Thus, it goes without saying

that the places at which vacancies of Motor Drivers had been identified vide letter dated 09/10.2001 of the Station Director, AIR, Cuttack, there were no requirement of the posts of Motor Drivers and as such, those were posts were sought to be transferred to AIR, Bhawanipatna as there was a need of Motor Drivers against which applicant was working on contractual basis and in the end, one of the said identified vacancies was transferred to AIR, Bhawanipatna in the year 2006 whereafter the applicant was given appointment, which according to him, is a fresh and conditional appointment. Therefore, the action of the respondents cannot be said to be just and reasonable and because of their callous attitude the applicant has been made to suffer.

9. However, as noted above, this Tribunal in the earlier round of litigation in O.A.No.657 of 2003 had decided the matter vide common order dated 07.07.2004 and in our considered view, the respondents, complied with the said orders by issuing fresh appointment order dated 13.07.2006 (A/14) in order to wriggle out of the rigor of contempt proceedings. Therefore, there was every reason for the applicant to test the legality of the said order under A/14 by filing a fresh O.A. before this Tribunal. But, as a matter of fact this Tribunal cannot go beyond what has been decided by this Tribunal in O.A.No.657 of 2003. In this regard, this Tribunal is of the opinion that since the respondents without any justifiable reason sat tight over the matter and thereby took about more than four years to transfer the vacant post of Motor Driver to Bhawanipatna, in the interest of justice, equity and fair-play, the date of transfer of the post of Motor Driver from Jeypore(Koraput) to Bhawanipatna should be the deemed date of transfer with effect from 07.07.2004, the date on which this Tribunal disposed of O.A.No.657 of 2003



and accordingly, the services of the applicant are to be regularized. Ordered accordingly.

10. In view of the above discussions, respondents are directed to issue the revised order regularizing the service of the applicant with effect from 07.07.2004 in the post of Motor Driver and in such eventuality, he shall be granted all consequential financial and service benefits as per law. This direction shall be carried out within a period of 120 days from the date of receipt of this order.

11. In the result, the O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

BKS

