

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.260/278 & 279 of 2013

Date of Reserve:16.04.2019
Date of Order: 05.07.2019

CORAM:

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

IN O.A.No.260/278/2013

Sri Mahadev Jagaria, aged about 48 years, S/o. Late Sadhu Charan, At/PO-Katampur, 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

IN O.A.No.260/279/2013

Sri Anil Kumar Topno, aged about 45 years, S/o. Late Surath Masi Topno, At-Head Quarter Hospital, Qr.No.15, At/PO-Bhawanipatna, Dist-Kalahandi – presently working as Motor Driver in AIR, Bhawanipatna, Dist-Kalahandi, Odisha.

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...Respondents

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

ORDERPER SWARUP KUMAR MISHRA, MEMBER(J):

Since the point to be decided in both the OAs involved identical questions of law and facts, this common order is being passed.

2. The relevant facts germane to the issue are thus: One Byasadev Deep and the two applicants herein had earlier approached this Tribunal in O.A.Nos.656, 657 & 658 of 2003 praying for direction to be issued to Respondents to regularize them as Drivers, retrospectively, with all consequential service benefits. This Tribunal vide common order dated 07.07.2004 allowed the said O.As.

3. Grievance of the applicants is that despite statement made by the respondents before this Tribunal in the earlier round of litigation that regularization of the applicants was under consideration but in the absence of clear vacancies, the same was not being considered, it was unreasonable and improper on their part to give them fresh and conditional appointments. The applicants having been selected through a process of selection, their entry into service cannot be called in question and therefore, in terms of the direction of this Tribunal vide common order dated 07.07.2004, vacant posts of Motor Driver were transferred to Bhawanipatna. Therefore, it has been contended that the services of the applicants ought to have been regularized and the manner in which the respondents have given them fresh appointments on certain terms and conditions, in effect, adversely affects their conditions of service which they have been rendering since 1995. Hence, the common reliefs sought by the applicants in both the OAs are as follows:

- 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.

4. Contesting the claims of the applicants, respondents have filed their counter separately in both the OAs. They have prayed that the OAs being devoid of merit should be dismissed.

5. We have heard the learned counsels for the parties and perused the materials on record. It is needless to mention that Shri Byasadev Deep who was one of the applicants under common order dated 07.07.2004 in the earlier round of litigation had also filed O.A.No.260/280/2013 claiming similar relief similar to the applicants in the present OAs. This Tribunal, after taking into consideration the rival submissions, decided the said O.A. vide order dated 28.06.2019 in favour of Shri Byasadev Deep, the relevant paragraphs of which are reproduced hereunder:

"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, Bhawanipata 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".

6. The applicants being similarly situated persons as that of the applicant in O.A.No.260/280/2013, we are of the considered opinion that the ratio decided therein is squarely applicable herein. Therefore, following the ratio decided in O.A.No.260/280/2013, we would direct the respondents to issue the revised orders regularizing the service of the applicants with effect from 07.07.2004 in the posts of Motor Driver and in such eventuality, they 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.

7. In the result, both the OAs are allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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