

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/1051/2014 & O.A.No.260/1053/ 2014

Date of Reserve:27.08.2019
Date of Order:12.09.2019

CORAM:

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

IN O.A.No.260/1051/2014:

Sri Sarat Kumar Patra, aged about 62 years, S/o. Late Udyaanarayan Patra, At-Bimburia, PO-Dhobasila, PS-Remuna, Dist-Balasore, SWA (Retired) CWC under the Govt. Of India, Ministry of Water Resources, Shramasakti Bhawan, Rafi Marg, New Delhi.

IN O.A.No.260/1053/2014:

Prahald Kumar Ghosh, aged about 61 years, S/o. Late Bholanath Ghosh, At-RaghunathGanj, PO-Gangaraj, PS-Kuliana, Dist-Mayurbhanj, SWA(retired) CWC, under the Govt. Of India, Ministry of Water Resources, Shramasakti Bhawan, Rafi Marg, New Delhi

...Applicants
By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Water Resources, Shramashakti Bhawan, Rafi Marg, New Delhi-110 001.
2. The Central Water Commission represented through its Chairman, CWC, Sewa Bhawan, R.K.Puram, New Delhi-110 066.
3. The Chief Engineer, Government of India, Central Water Commission, Mahanadi and Eastern Reviers Organization, Plot No.A-13/14, Mohanadi Bhawan, BhoiNagar, Bhubaneswar-751 022.
4. The Executive Engineer, central Water Commission, Eastern Rivers Division, Plot No.A-13 & 14, BhoiNagar, Bhubaneswar, PIN-751 022.
5. The Superintending Engineer, Government of India, Central Water Commission, Office of the Chief Engineer, Mahanadi & Eastern Rivers Organisation, Mahanadi Bhawan, Plot No.A-13 and 14, Bhoi Nagar, Bhubaneswar-751 022.

6. The Executive Engineer, Central Water Commission, Office of the Mahanadi Division, S.D.-7/1,Burla, Sambalpur, Odisha-768 017.

...Respondents (in Both the OAs)

By the Advocate(s)-Mr.D.K.Mallick (in OA No.1051/14)
Mr.S.Behera (in OA No.1053/2014)

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Since the point of to be decided in both the OAs arises out of identical facts and circumstances and the legality of similar impugned order being challenged in both the above mentioned Original Applications, this common order is being passed.

2. Both the applicants had earlier approached this Tribunal in O.A.Nos. 133 of 2014 and 212 of 2014 praying for the same relief. On the direction issued by this Tribunal to consider and dispose of the representations, the respondents have passed a speaking order dated 05.06.2014 (A/12) which is common in both the O.As denying the claim of the applicants. In the fitness of things, the relevant part of order dated 05.06.2014 reads as follows:

"Subject: To ante-date regularization w.e.f. completion of 120 days of service as per scheme for grant of temporary Status and regularization of Seasonal Khalasi of Central Water Commission dated 20.06.1997 and accordingly to sanction and disburse the pension and pensionary benefits as extended to similarly placed persons in O.A.No.363/2008 disposed of on 22.04.2010- regarding:

Please refer to your representation dated 15.4.2014 (received in this office on 21.4.2014. You have mentioned that:

- i) You were appointed as Seasonal Khalasi on 14.07.1979.
- ii) You were granted Temporary Status w.e.f. 1.6.1997 vide Order dated 11.12.1997 in line with the

"Scheme for Grant of temporary Status and Regularization – 1997" of Seasonal Khalasi in Central Water Commission dated 20.06.1997, against regular post in the pay scale of 750-940.

- iii) Your service was regularized from 06.12.2006.
- iv) You have retired from service (SWA) on reaching the age of superannuation on 31.07.2013.
- v) You are similarly placed person as in O.A.No.363/08 and same benefit may be extended to you.

2. Further, you have requested to extend similar benefits which have been extended to similarly placed persons in O.A.No.363/08 that is to ante-date the regularization and grant of pension and pensionary benefits to you.

3. Points (i), (ii), (iii) & (iv) are the matter of fact except that you were granted temporary status not against any regular post as mentioned by you at point (ii) above. All Seasonal Khalasis of CWS were granted temporary status in accordance to Para 5 of the "Scheme for Grant of temporary Status and Regularization – 1997".

4. Regarding point (v) that you are similarly placed to persons who were applicant in OA No.363/08, it is mentioned that:

- (a) Applicants in O.A.No.363/08 were appointed in the grade of W/c Khalasis on ad-hoc basis during 1997 to 1998 as per direction dated 07.05.1997 of CAT, Cuttack Bench in MA on RA/35/1993.
- (b) You were not appointed ad-hoc Khalasi before 01.01.2004 when New Pension Scheme was implemented by the Govt. Of India.

5. In view of the Para 4 above, your contention that you are similarly placed as the applicants in O.A.No.363/08 is totally misplaced and the direction of the CAT in O.A.No.363/08 is not applicable in your case.

6. Accordingly, your request to ante-date the date of regularization in line with applicants of O.A.No.363/08 cannot be agreed to you".

3. Aggrieved with the above, the applicants have approached this Tribunal in both the OAs in which they have sought for the following reliefs:

- i) To quash the order dated 5.6.2014 under Annexure-A/12.
- ii) To direct the Respondents to antedate/regularize the Applicant with effect from his date of temporary status appointment under Annexure-A/4 with all consequential service and financial benefits as extended in O.A.No.368/2008.
- iii) To direct the Respondents to grant the applicant all benefits as per the Rules/regulations/instructions available on the date of the initial engagement of the applicant as on the date of issuance of orders under Annexure-A/4 as per law of the land in the cases of Y.V.Rangaiah and others v. J.Sreenivasa Rao and others (AIR 1983 SC 852), P.C.Mahendran and others vs. State of Karnataka and others (AIR 1990 SC 405), Gayadhar Sahoo vs. State of Orissa & Others in OJC No.811/1990 dated 26.04.2991.
- iv) To pass any other order(s) as deemed fit and proper.

4. Since there is no dispute regarding the factual aspects of the matter, it is not necessary to reduce it to writing the contentions raised by both the sides in their pleadings. However, we have gone through the order dated 22.04.2010 passed by this Tribunal in 363 of 2008 based on which the applicant has sought for reliefs. It reveals that vide order dated 21.02.2007, the Hon'ble High Court of Orissa had disposed of the Writ Application (OJC. No.6521 of 1999), holding that the absorption of the employees should be done strictly in terms of their position in the seniority list maintained by the Department. Consequently, a seniority list was published by the Respondents as on 15.10.2006 in which the names of the applicants in O.A.No.363 of 2008 had appeared at Sl.Nos.1, 3, 6 &

8 respectively. In the instant Applications, both the applicants have not mentioned anywhere regarding their positions in the said Seniority List. Therefore, The decision of this Tribunal in O.A.No.363 of 2008 cannot be made applicable to the case of the applicants herein. Apart from the above, the applicants were granted Temporary Status with effect from 1.6.1997 and consequently, their services were regularized with effect from 06.12.2006. They accepted the above position without any objection. Therefore, they cannot be permitted to sleep over the matter and sue like a phoenix claiming antedated regularization with effect from the date (s) of conferment of temporary status appointment under Annexure-A/4, with all consequential service and financial benefits as extended in O.A.No.368/2008. However, during the course of hearing, learned counsel for the Respondents, drew our attention to Office Memorandum dated 10.06.2016 issued by the Government of India, Central Water Commission, the relevant part of which reads as follows:

"Subject: Seasonal Khalasis (now Skilled Work Assistant (SWA) with Temporary status – clarification regarding contribution of GPF and Pension under old Pension Scheme:

The undersigned is directed to refer to this Commission's letter No.A-11019-4/95-Estt. 12 dtd. 30.6.97 vide which a Scheme for grant of temporary status to the Seasonal Khalasis in the work charged establishment of Central Water Commission was framed. As per the scheme, after rendering three years continuous service after conferment of temporary status, the seasonal Khalasi were to be treated to be at par with temporary Group D employees for the purpose of contribution to the General Provident Fund. Further, after their regularisation, 50% of the service rendered under

temporary status would be counted for the purpose of retirement benefits.

2.Vide letter No.A-11019/2/2006 Est.12 dtd. 31.10.2010, the above Scheme was reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central Government service on or after 1.1.2004 as under:

- i) As the new pension scheme is based on defined contribution, the length of qualifying service for the purpose of retirement benefits has lost relevance, no credit of seasonal service as specified in para 6(iv) shall be available to Seasonal Khalasis on their regularization on or after 1.1.2004.
- ii) GPF rules are not applicable to employees who are appointed on or after 1.1.2004 and who are covered by New Pension Scheme and if the Khalasis etc. in CWC have been inducted in New Pension Scheme the GPF contribution may be stopped forthwith and their GPF accumulation in GPF Account may be paid back to them with interest at the present rates in terms of Para 1(ii) of DOPT's OM No.49014/1/04-Estt.(C) dtd. 26.4.2004.

3.The position has been reviewed in the light of the Court judgments in the matter of consultation with DOPT/MoWR. It has now been decided that the Seasonal Khalasi who had been granted temporary status under the Scheme and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

4.Further 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those Seasonal Khalasis who have been regularised in terms of this Commission's letter No.A110101/95-Estt.12 dtd. 30.6.97 regarding scheme for grant of temporary status to the Seasonal Khalasis. It is clarified that if a seasonal Khalasi (now SWA) has been regularized as per the Scheme of 1997, pension is admissible even if he is regularised after 1.1.2004".

5. Admittedly, both the applicants have been granted temporary status as per the Scheme for Grant of Temporary Status and

Regularization – 1997, with effect from 01.06.1997. It is also an admitted position that their services were regularized with effect from 11.12.2006, i.e., after introduction of New Pension Scheme and the applicants retired from service in the year 2013. Having regard to Office Memorandum dated 10.06.2016, the applicants are entitled to count 50% of services rendered under temporary status for the purpose of retirement benefits together with the regular service from 11.12.2006. In view of this, while we are not inclined to grant any relief to the applicant as sought for in the OAs, we would direct the respondents to take into account 50% of service rendered by the applicants under temporary status together with the regular service for the purpose of granting them minimum pension in the light of Office Memorandum dated 10.06.20016, cited supra and in case the applicants are entitled to pension and other admissible dues, the same shall be drawn and disbursed in their favour within a period of 120 (one hundred twenty days) from the date of receipt of this order.

6. In the result, both the O.As are disposed of as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

