
(2009) 02 OHC CK 0033
In the Orissa High Court

Prafulla Chander Pati

APPELLANT

Vs

Vice-Chairman, Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Citation : (2009) 107 CLT 541 : (2009) 2 OLR 731 Supp

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, C.J.—This Writ Petition has been filed challenging the Judgment and Order Dated 13.1.1998 passed by the Central Administrative Tribunal (hereinafter called "Tribunal") in Original Application No. 196 of 1995 by which the Tribunal has rejected the claim of the Petitioner.

2. The facts and circumstances giving rise to this case are that Petitioner filed the Original Application before the Tribunal seeking a direction to regularise his services with retrospective effect and to give consequential benefits. The Petitioner had worked in the Geological Survey of India as a daily rated casual worker and in view of the Government Circular dated 13.11.1979 a casual worker who had put in 240 days of service in a year for two consecutive years was entitled for regularisation. The Petitioner claimed that he had worked for more than 240 days in a calendar year for two consecutive years, i.e., in 1978 and 1979. However, the Tribunal did not find the claim of the Petitioner acceptable. As per the calculation made by the Tribunal, on the basis of record produced before it by the parties, the Petitioner had worked as per the details given below.

Period of duty Days of work 13.5.77 to 20.3.78 311 26.6.77 to 31.12.78 174
1979 30 1980 141 1981 87 1982 210 1983 98 1984 205 1985 103

3. The Tribunal after appreciating the evidence on record came to the conclusion that the Petitioner had not put in 240 days in any calendar year for two

consecutive years and therefore, he was not entitled to get the benefit of the aforesaid Circular. Hence this petition.

4. Mr. S. Palit, Learned Counsel for the Petitioner has submitted that the findings recorded by the Tribunal are perverse and are based on no evidence. According to him, the Tribunal failed to appreciate the certificate issued by the authorities dated 27.6.1978 to show that he had worked in the said year for more than 240 days in correct perspective. Therefore, the petition deserves to be allowed.

5. On the contrary, Mr. J.K. Misra, Learned Assistant Solicitor General appearing on behalf of the Opposite Parties has opposed the petition contending that this Court cannot sit in appeal against the findings of fact recorded by the Tribunal unless it is found to be perverse. The Tribunal has considered the very certificate and recorded a finding that it was not worth placing reliance for the simple reason that the period shown in the certificate overlapped for the working days in another year also. In such situation, he submitted that the petition is liable to be dismissed.

6. We have considered the rival submissions of the Learned Counsel for the parties and perused the record.

7. The Tribunal has taken into consideration all the materials placed before us and came to the conclusion as under:

...From the details of the applicant's engagement, quoted above, it is seen that in 1977-78, he has put in 311 days and in 1978-79 he has put in 174 days, i.e., in the second year his service falls short by 66 days. As a matter of fact, Orissa Office has pointed out this short-fall of 66 days and asked for its condonation. As the Scheme specifically provides for 240 days of engagement in two consecutive years. From the details it is clear that the applicant has not put in 240 days of service in two consecutive years.

xxx xxx xxx ...But the office of respondent No. 3 pointed out that the two certificates at Annexures 1 and 2 are contradictory because some period covered in both the certificates is common and it was physically impossible for the applicant to have been engaged at both Lanjigarh and Pattangi Camps at the same time. It was also pointed out that according to the certificate at Annexure-2, the applicant worked at Pattangi Camp till April 1978 whereas from the letter Annexure-7 from Bhubaneswar office, it appears that Pattangi Camp was closed down on 20.3.1978. Because of these discrepancies, Bhubaneswar office was asked to re-verify the period of his engagement. At Annexure-16 is a letter from the officer who gave the two contradictory certificates at Annexures 1 and 2 wherein he mentioned that certificate at Annexure-2 was issued by him from his residence without verifying official records and on the basis of official records the applicant's case should be decided....

xxx xxx xxx ...In other words, 240 days of engagement in a year has to be calculated ignoring the periods of disengagement during that year. This does not

lend any support to the contention of the Learned lawyer for the Petitioner that the words "including the broken period of service during each of the two years of service" would mean that the period during which the person was not in engagement should be taken into account. That will make the requirement of engagement for 240 days totally illusory. This contention of the Learned lawyer for the Petitioner cannot, therefore, be accepted. In consideration of the above, it is held that the applicant has not been able to make out a case proving that he has put in 240 days of work in two consecutive years and therefore, he is not entitled to have the benefit of the circular dated 13.11.1979.

In view of the above, the Tribunal has rightly reached the conclusion after examining the evidence on record that the certificate which has been issued by the officer concerned from his residence without verifying the record could not be taken into consideration. We do not see any cogent reason to interfere with the aforesaid findings of fact recorded by the Tribunal and taking a view that the Petitioner could be regularised.

8. More so, the Petitioner had worked in the last in 1985. Regularization is being claimed on the basis of the Circular dated 13.11.1979. The Original Application was filed in 1995.

9. Mr. Palit, Learned Counsel for the Petitioner is not in a position to explain as under what circumstances the Petitioner could approach the Tribunal at such a belated stage, i.e., after ten years from ceasing of the work. We are at a complete loss to understand as to whether a person who is not in service either on ad hoc or on temporary basis can claim regularisation at such a belated stage.

10. The Apex Court in Himachal Pradesh Housing Board Vs. Om Pal and others, has held that a retrenched employee cannot claim regularisation unless his termination from service is found to be illegal. Similarly in Ram Chander and Ors. v. Additional District Magistrate and Ors. AIR 1999 SC 1543, the Apex Court has held as under:

...In view of the fact that the services of the appellants had been terminated, they will not be eligible for regularisation under the amended Rules of 1984. Those who are not in service cannot be regularised. In the Writ Petition which was filed, the appellants who were the Petitioners, prayed for regularisation. Although they made averments relating to their termination of service, they did not pray for setting aside the order of termination passed in their cases. So long as the order of termination stand, they cannot get the benefit of regularisation under the amended Rules of 1984.

11. This matter was heard at length on 10.2.2009, 11.2.2009 and 13.2.2009. Mr. Palit was asked to render proper assistance and explain the issue as how a employee who is not in service since long could claim regularisation after ten years of his termination. However, today no light could be thrown on this issue by Mr. Palit, though he argued merely challenging the findings of facts recorded by the Tribunal. This Court not being an appellate forum, can disturb the said

findings as no cogent reasons exist for doing the same.

For the reasons aforesaid, we do not find any merit in this Writ Petition. The Writ Petition is dismissed.

B.N. Mahapatra, J.

I agree.