

Daya Ram and Others Vs. Union of India and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-22-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. a.K. Mishra, Member (a)

Appeal No. : O.A. No. 3821 of 2010

Appellant : Daya Ram and Others

Respondent : Union of India and Others

Advocate for Pet/Ap. : For the Applicants: Ms. Meenu Mainee, Advocate. For the Respondents: Shailendra Tiwary, Advocate.

Judgement :

ORAL:

MRS. MEERA CHHIBBER, MEMBER (J)

1. Applicants, numbering six, have filed this OA claiming the following relief:-

“8.1 That this Hon’ble Tribunal in the interest of justice may be graciously pleased to allow this application and direct the respondents to extend the benefit of the judgment of the Hon’ble High Court of andhra Pradesh as well as the judgment of this Tribunal in the case of Chander Pal and Ors. V/s Union of India and Ors and Chhottan Prasad and Ors V/s Union of India and Ors and take into consideration

full period of temporary status for the purpose of working of qualifying service and 50% period working before acquisition of temporary status.

8.2 That the Hon'ble Tribunal may also be pleased to award any other or further relief which this Hon'ble Tribunal may deem fit and proper on the facts and in the circumstances of the case.

8.3 That the cost of these proceedings may kindly be granted in favour of Applicants".

2. It is submitted by the applicants that they were working under the Chief Workshop Manager, Signal Workshop, Northern Railway, Ghaziabad. They were initially engaged as casual labour from 1972 to 1982 and had already acquired temporary status and have been regularized. However, the period from the date they were initially engaged on casual basis till temporary status is not being computed by the respondents for the purposes of pension nor full period from temporary status till they were regularized was being computed.

3. Being aggrieved, they had given a representation on 30.7.2010 through the Uttariya Railway Mazdoor Union (page 42) but no reply has been given to them. They are all nearing their retirement, so in such circumstances, they had no other option but to file the present OA. They have placed reliance on the judgment given by the Hyderabad Bench of the Tribunal in the case of General Manager Vs. Sheikh Abdul Khadir reported in ATJ 2004 (2) page 24 to the effect that full period of temporary status has to be taken into consideration as qualifying service. They have also placed reliance on the judgment given by the Hon'ble High Court of A.P. in the case of General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. and another Vs. Shaik Abdul Khader reported in 2004 (2) ATJ page 23. They have also placed reliance on the judgment given in the case of Shri Chander Pal and Another Vs. U.O.I and Others in OA No.1502/2005 and Shri Manash Sarkar Vs. U.O.I. and Others in OA No. 665/2011.

4. Respondents on the other hand have opposed this OA. They have stated that the OA is barred by limitation and applicants cannot be allowed to agitate stale claims.

5. On merits, they have stated that 100% of the benefit for the period spent as temporary status employee cannot be granted as that is contrary to the rules. As far as the judgment given in the case of Chander Pal and Others Vs. U.O.I. and others is concerned, that was challenged before the Hon'ble High Court of Delhi and the judgment has been stayed. As per directions given by the Hon'ble High Court of Delhi on 20.9.2006 respondents in the aforesaid Writ Petition are entitled to pension on the basis of counting of 50% of the period for computing the qualifying service. As per Railway Board's letter dated 28.11.1986 it was decided that even in case of project casual labour, half the service rendered by them after attaining the temporary status in terms of instructions dated 1.6.1984 and 11.9.1986 would be reckoned as qualifying service for the purposes of pension on their eventual absorption in regular employment.

6. They have further stated that the applicants are working under the Chief Workshop Manager, Northern Railway, Ghaziabad, U.P., therefore, jurisdiction lies with the Allahabad Bench of the Tribunal. This Tribunal has no territorial jurisdiction, therefore, this OA is liable to be dismissed on this ground also.

7. They have further stated that no representation has been received in the office of Chief Workshop Manager, Northern Railway, Ghaziabad, U.P., where the applicants are working. Annexure A-6 is not a representation submitted by the applicants and even the said representation has not been received in the department. They have thus prayed that the OA may be dismissed.

8. Applicants have reiterated their stand in the rejoinder.

9. We have heard both the counsel and perused the pleadings also.

10. Even though applicants are claiming that the entire period from the date they attained temporary status till they were regularized and 50% of the period prior to acquiring the temporary status should be reckoned as qualifying service, but neither the exact dates when the applicants were initially engaged, at what place, when they were granted temporary status or when they were regularized nor any of the supporting documents have been placed along with the OA. The only averment made by the applicants on facts are as follows:-

“That the Applicants were initially engaged as Casual Labour during the period from 1972 to 1982 and had acquired temporary status after having served for 5 to 8 years but the respondents are only giving the benefit of service for the period of temporary status in the qualifying service and the period served prior to temporary status is being ignored completely. They were all regularised in or about the year 1990. In spite of the judgment of this Hon’ble Tribunal in respect of the colleagues of the applicants, the respondents are still insisting to give the benefit of only 50% for the period of temporary status and no benefit for the earlier period.”

11. Perusal of same shows the averments made are absolutely vague and they have not even given the basic facts on the basis of which they can lay their claim. When we asked counsel for the applicants to show us specific averments or at least their representations by narrating the basic facts, none could be shown to us except the representation which is annexed at Annexure A-6. Annexure A-6 was also given by the Uttariya Railway Mazdoor Union and is not given by the applicants in their individual capacities. Even in this representation, no details have been given as to when the applicants were initially engaged, at which place, when were they granted temporary status, by which order and by which order were they regularized. Since these are the basic facts, we feel OA in the present form is not maintainable. After all, the law is well settled that a person who comes to the court must establish his claim by filing supporting documents. In the absence of supporting documents or basic averments, this OA is not maintainable. However, we would give liberty to the applicants to give a detailed self contained representation to the appropriate authority by narrating all the facts by annexing supporting documents and the judgments which they wish to rely on within a period of 6 weeks from the date of receipt of a copy of this order. In case any such representation is given by the applicants, respondents shall decide the same by passing a reasoned and speaking order in accordance with law within a period of 6 weeks thereafter under intimation to the applicants.

12. With the above directions, this OA stands disposed of. No order as to costs.