

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 4611 of 2022

Union of India and another

.....

Petitioners

Mr. D. Tripathy, CGC

Vs.

Y. Jagannath

.....

Opposite Parties

Mr. S. Behera, Adv.

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

12.04.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. Heard Mr. D. Tripathy, learned counsel appearing for the Union of India- petitioners and Mr. S. Behera, learned counsel appearing for opposite party.

3. The Union of India- petitioners have filed this writ petition assailing the order dated 15.11.2021 passed in O.A. No. 4 of 2019, by which Central Administrative Tribunal, Cuttack Bench, Cuttack has directed therein to regularize the services of the opposite party w.e.f. 14.11.2000 at par with his juniors, who were regularized in Group-D post, and treat the period of his service for pensionary and other retiral benefits, as due and admissible in accordance with law.

4. Mr. D. Tripathy, learned counsel appearing for the Union of India- petitioners contended that earlier the opposite party along with others had approached the tribunal by filing O.A. No. 523 of 2009, which was disposed of by the tribunal vide order dated 18.11.2011 with the observation that opposite party is entitled to be empanelled for absorption against Group-D post. Challenging the said order, the Union of India- petitioners approached this Court by filing W.P.(C) No. 11491 of 2012, which was dismissed by this Court by observing that the opposite party has furnished the required documents for empanelment. Since the case of the

opposite party was not considered, he approached the tribunal by filing O.A. No.4 of 2019 and on consideration of the facts and circumstances, the tribunal passed the order impugned.

5. Having heard learned counsel for the appearing for the Union of India- petitioners and after going through the records, this Court finds that opposite party was earlier serving as commission bearer at Khadagpur Railway Station. He joined the service on 23.02.1967 and retired on 09.07.2010 on attaining the age of superannuation. Therefore, he wants that the period from 23.02.1967 to 09.07.2010 be considered as qualifying service for the purpose of granting pension in his favour, since the other period of service under the Union of India- petitioners organization is not for ten years. The opposite party also relied upon the decision of the apex Court in W.P.(C) No.196 of 1995 wherein direction was issued to the following effect:-

“That the commission vendor and bearer of erstwhile south eastern railway now east coast railway now east coast railway who are now getting Rs.1500 per month are not absorbed against the available vacancies they will be paid minimum of the revised scale of pay on the basis of 5th pay commission recommendations together with dearness allowance and other allowance and also the HRA which would have payable on permanent absorption but no increment should be given them until they are regular absorbed against the available vacancies.”

6. The opposite party along with others had earlier approached the tribunal by filing O.A. No. 523 of 2009, wherein present opposite party was applicant no.3. The said original application was disposed of vide order dated 18.11.2011 with the following direction:-

“ For the discussion made above ,We quash the order under Annexure A/14 dated 26.10.2009 denying the applicants to be empanelled for absorption in Gr. D post pursuant to the order of the Hon’ble Apex Court and hold that the Applicant are entitled to be

empanelled for absorption in Gr. D post from the date other similarly situated candidates empanelled/absorbed out of the screening test held on 26.05.2008 & 05.06.2008 retrospectively with all consequential service benefits which the Respondents shall do an pass necessary orders within a period of 120 days from the date of receipt of copy of this order.”

7. Though the opposite party filed representation before the Union of India- petitioners, who were opposite parties before the tribunal, but the same was rejected vide order dated 23.08.2018, as despite due opportunity given to file relevant documents like deposit receipts, security deposits and other relevant documents before the screening committee for screen test, the opposite party did not file the same. But fact remains, since opposite party rendered service w.e.f. 23.02.1967 till the date of superannuation, i.e., 09.07.2010, his service for the said period should be regularized to be counted as qualifying service for grant of pensionary benefits, which has been taken care of by the tribunal by passing a reasoned order by extending such benefits to the opposite party. Thereby, this Court does not find any error apparent on the face of record to interfere with the same so as to nullify the effect of giving regularization of service of the opposite party.

8. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE