

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 558 of 2012**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Biranchi Narayan Das, aged about 40 years, S/o Purna Chandra Das, At/PO-Charisri, PS-Puri Sadar, Dist.- Puri.
2. Pranab Kumar Baliarsingh, aged about 46 years S/o Paban Bihari Baliarsingh, At/PO-Madanpur, Via-Janla, Dist.-Khurda.
3. Saikat Alli Khan, aged about 52 years, S/o Dilbar Khan, At-Baradapara, PO-Biswalpura, via-Rench, PS-Baliapatna, Dist.-Khurda.

Sl. Nos. 1 to 3 are working as Casual Labourer, O/o the Accountant General (Civil Audit), Odisha, Bhubaneswar, Dist.-Khurda.

4. Dhaneswar Sahoo, aged about 38 years, S/o Dhoia Sahoo, C/o Balabhadra Mohanty, At-Balabhadra Sahi, Jagannath Ballav, Dist.-Puri.
5. Tukuna Nayak, aged about 37 years, S/o Late Raghunath Nayak, At-Narendra Kuaan, Jatin Babgi Chak, PS-Kumbharpada, Dist.-Puri.
6. Sapan Kumar Chatterjee, aged about 38 years, S/o Late Gour Mohan Chatterjee, At-Matiapada, Near Trilocal U.P.School, Dist.-Puri.

Sl. Nos. 4 to 6 are working as Casual Labourer, O/o the Dy. Accountant General, Puri Branch, Chakratirtha Road, Dist.-Puri.

.....Applicants.

VERSUS

1. Union of India represented through its Comptroller & Auditor General of India, Pocket 9, Deen Dayal Upadhyay Marg, New Delhi.
2. Principal Accountant General, Accounts and Entitlements, Odisha, Bhubaneswar, Dist.-Khurda.
3. Deputy Accountant General, Puri, Chakratirtha Road, PO/Dist-Puri.

.....Respondents.

For the applicant : Mr.R.N.Acharya, counsel

For the respondents: Mr.S.K.Patra, counsel

Heard & reserved on : 31.1.2020

Order on : 16.3.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

This Original Application (in short OA) has been filed by six applicants with common grievances seeking following reliefs:-

- “(i) The decision taken by the respondent No.2 to engage/appoint contract labour system to discharge the function of the establishment may kindly be quashed.

- (ii) The order of disengagement w.e.f. 1.7.2012 by way of refusal of employment to the applicants by the Respondent No.2 may be declared as illegal and quashed and the applicants may kindly be allowed to continue as casual labourers in their respective services.
- (iii) The over age of Applicant Nos. 1 to 3 may kindly be condoned.
- (iv) After reinstatement applicants services may kindly be regularized in a permanent cadre with effect from their date of joining by condoning their over age.

And may kindly grant any other benefits which your lordships deem think fit and proper.

And for which act of your kindness the applicants shall as in duty bound ever pray.”

2. The applicants are aggrieved by the decision of the respondent no.2 to engage outsiders on contract by outsourcing through a private agency after disengaging the applicants, who were initially engaged as casual labourer for doing the security work in the office of the respondent No.2. The applicants have sought a direction to quash the respondents' decision not to disengage them and to regularize their services by condoning overage. It is stated that the respondent No.2 was engaging about 130 casual labourers including the applicants since about 20 years. On 30.7.2010, the respondent No. 2 issued a notification in Employment News for the post of MTS requiring the outsiders as well as the casual labourers to apply. A selection test was conducted on 25.12.2011 in which the applicant Nos. 4, 5 and 6 were allowed to participate, but they could not be qualified in the test. The applicant Nos. 1, 2 and 3 were not allowed to participate in the said test as they were overage, which should have been condoned. In the said selection 88 casual labourers were qualified and they were appointed as MTS and rest 42 casual labourers, including the applicants, were not selected. They submitted a representation at Annexure-5 series for reconsideration of their case.

3. In the meantime the respondent No.2 had taken a decision to abolish the existing system and replace it by doing the work through outsourcing agency. It is alleged in the OA that such action of the respondent No.2 was illegal and violation of statutory rules. If it is allowed, then the applicants apprehended retrenchment and loss of their livelihood. Being aggrieved, they have filed this OA stating in para 4.14 of the OA that they were disengaged while engaging some outsiders in place of the applicants.

4. The applicants have cited the judgment in the case of Chief Conservator of Forests & another vs. Jagannath Maruti Kondhare, 1996 LLJ 1223 in which it was held that depriving causal labour of the status of permanent employee was an unfair labour practice. Similarly, the judgment of Hon'ble Apex Court in

the case of State of Karnataka and Ors. vs. M.L. Keshari and Ors (2010) 2 SC (L&S) 826 and of Hon'ble Punjab and Haryana High Court in the case of State of Punjab & others vs. Kulwant Singh & Ors have been cited in the OA to bolster the applicant's case.

5. Counter filed by the respondents opposed the averments made in the OA. It is specifically stated in para 12 of the Counter as under:-

“That, in reply to the averments made in Para-4.8 to Para-4.10 of the Original Application, it is humbly submitted that the contention of the applicants stating the Respondents have taken decision to abolish casual labour system is not correct and is denied. The Respondent No.2 had not issued any appointment letter to the applicants at the time of their engagement. They were engaged to attend such contingent works as and when required and when such type of work was available. After completion of MTS recruitment, the Respondent No.2 had not engaged any Contingent Worker since 01.07.2012. In this context, it is humbly submitted the Comptroller & Auditor General of India (Respondent No.1) vide letter No. 3966/BRS/2012-13 dated 09.08.2012 has categorically instructed not to deploy any casual/contingent workers and no expenditure is to be booked under the head 'Wages'. Further, the Respondent No.1 has also clarified in his letter No. LC/Misc./50-2012 dated 31.07.2012 that casual labour and contingent labour is used mutually as a semantic in the department to denote employees who are not borne on the regular strength of the department and are not paid salaries. Copies of the letter dated 09.08.2012 and letter dated 31.07.2012 are annexed as **ANNEXURE-R/2/2 & ANNEXURE-R/2/3** respectively. As these Respondents have not engaged any contingent labourers since 1.7.2012, the question of retrenchment does not arise. These Respondents have never violated the statutory rules as contended by the applicant.”

5. It is further averred in the Counter that similarly placed contingent workers had filed the OA No. 379/2009 which was dismissed by this Tribunal vide order dated 30.4.2010 of the Tribunal (Annexure-R/4 series), which was challenged by the workers in a writ petition before Hon'ble High Court and was withdrawn by them.

6. Rejoinder has been filed by the applicants enclosing a copy of the circular dated 23.8.1988 of the Ministry of Labour (Annexure-10) in which it is stipulated that if a casual labourer is entrusted with the duty same as that of a regular employee, then he is entitled for the wage at the rate of one thirtieth of the minimum wage plus DA in the pay scale as applicable for the regular employee. It is stated that since the applicants were getting the wages at the rate as specified in the circular dated 23.8.1988, they were required to be shown as casual labourer, not as contingent paid workers. It is stated that the respondents after receiving the interim order dated 30.7.2015 of the Tribunal, did not allow the applicants to work in violation of the Tribunal's order. It is further averred that in case of the applicant no. 6 there was a proposal of the respondent No. 3 (Annexure-13) for grant of temporary status to him as he was engaged since 1992. It is stated that the documents at Annexure- 2,3,4,7 and 8 show that the applicants have worked all along as casual labourers and they

were entitled for reinstatement in service w.e.f. 1.7.2012. It is averred that the order dated 1.7.2012 of the respondent No. 2 disengaging the applicant did not follow the DOPT guidelines on casual labourers. Following judgments have been cited in the Rejoinder in support of the applicant's case:-

- i) Union of India & Anr. -vs- Mohan Pal & Ors. [2002 SCC (L&S) 577]
- ii) Director General, Doordarshan, Mandi House, New Delhi & Ors. -vs- Manas Dey & Ors. [2006 SCC (L&S) 1084]
- iii) Union of India & Ors. -vs- Central Administrative Tribunal & Ors. [2006-II-LLJ 491] – Hon'ble High Court of Patna
- iv) [(2010) 2 SCC (L&S) 63]
- v) Dharma Nand & Ahnr. -vs- Union of India & Ors. [2004 SCC (L&S) 1034]

7. The respondents have also filed the reply to Rejoinder stating that in case of similarly situated persons as the applicants, this Tribunal had passed orders dated 30.4.2010 in OA No. 374/2009 and order dated 1.10.2014 in OA No. 499/2012 which was also upheld by Hon'ble High Court and that the applicants' case is covered by these judgments. It was reiterated that the applicants were not appointed as casual labourer, but as contingent paid workers to be engaged as and when required. The decision taken to engage private agency for outsourcing the work was examined by the Tribunal in OA No. 142/13 which was dismissed on 25.7.2017 (Annexure R-2/8). The respondents have also cited the order dated 3.11.2016 of Hon'ble High Court, copy of which has been enclosed to the reply to the rejoinder as Annexure R-2/7. In the aforesaid order of Hon'ble High Court by which the order dated 1.10.2014 (Annexure R-2/6) of the Tribunal passed in OA No. 499/2012 was upheld.

8. Heard learned counsel for the applicants. He submitted with reference to the documents enclosed to the Rejoinder that the applicants were actually casual labourers, though they were treated as contingent paid workers by the respondents and that the documents show that the applicants were paid wages on monthly basis. It is stated that after the decision was taken to engage manpower through outsourcing, the applicants were illegally disengaged w.e.f. 1.7.2012. He filed two written notes of submissions – one with a date chart citing about nine judgments in support of his case and the second written note stating that the applicant No.6 was also an applicant in OA No. 574/2009, who was not selected in the selection test. It is also submitted that Annexure 12 of the Rejoinder clearly show that although the wages of the applicants were being paid on monthly basis on the basis of minimum scale of pay plus DA in accordance with the Labour Department circular dated 23.8.1998 (Annexure 10 to the Rejoinder). It is also explained that the case of the applicants in OA No. 142/2013 was totally different from all the applicants in the present OA except applicant No.6 who had participated in the selection test and was

unsuccessful. It is stated that the case of the applicants who were not successful filed writ petition before Hon'ble High Court WP(C) 21295/2019. Learned counsel argued vehemently that the applicants were all casual labourers and the respondents should not have disengaged them from 1.7.2012 which is illegal and improper.

9. Heard learned counsel for the respondents. He submitted that in the case of similarly situated employees it has been held by this Tribunal that there are contingent paid workers and not casual labourers. Such findings in OA No. 499/2012 for similarly placed persons have been upheld by Hon'ble High Court vide order dated 3.11.2016 (Annexure R-2/7). He pointed out to the decisions mentioned in the reply to the Rejoinder at Annexure R-2/5, R-2/6, R-2/7 and R-2/8 and submitted that similar issues raised in this OA have already been decided by the Tribunal earlier and that the OA is devoid of merit.

10. We have considered the matter with reference to the pleadings as well as the submissions made on behalf of both the parties. Undisputedly, the dispute involved in this OA has been decided already in case of some of the employees and it is the respondents' case that the case of the present applicants' being similar, the OA will be covered by earlier decisions of this Tribunal cited by the respondents. The question to be decided in this OA is whether the respondents' claim in this regard is correct and whether the judgments furnished by the respondents in their reply to the rejoinder will be applicable to this OA as well.

11. Learned counsel for the applicants has argued vehemently that the case of the present applicants except applicant No.6 is factually different from the cases cited by the respondents in view of some of the pleas and documents furnished in this OA. It was submitted in his additional written submissions that the applicants in OA No. 142/13 were being paid from contingent fund as evident from the Annexure A/8 series. The decision in the said OA was because of the documents at Annexure-A/8 series. In case of the applicant No.6, he had participated in the selection on 25.2.2011 for MTS posts and he was also a party in the writ petition before Hon'ble High Court. It is stated in the additional written submission that the applicant No. 6 is a petitioner in another writ petition which is sub judice. It is claimed on behalf of the applicants that they were engaged as casual labourers and not as contingent workers.

12. Learned counsel has also cited a number of judgments in support of his arguments. In the case of Dharma Nand and another -vs- Union of India and others, 2004 SCC(L & S) 1034, the petitioner was appointed as on 28.3.1988 as a salesman in a canteen under the respondents and was found to be entitled

to be treated as a government servant. His termination on the ground that it was for a term of 5 years was held to be illegal. The facts in the present OA are different. There is no order of appointment to prove their claim that they were appointed as casual labourers as against the claim of the respondents that they were contingent paid employees who were engaged as and work was available. Hence, the cited judgment will not be helpful for the applicants.

13. Similarly, in the case of Union of India and another –vs- Mohan Lal and others, 2002 SCC (L&S) 577, the dispute related to grant of temporary status to the casual labourers as per the scheme of 1.9.1993 by the DOPT and there was no dispute relating to the status of the employees as casual labourers. In that judgment it was held that the scheme of 1.9.1993 was not an ongoing scheme and it was applicable to the casual labourers fulfilling the conditions as stipulated in the scheme as on 1.9.1993. No averment or claim regarding applicability of the scheme of 1.9.1993 to the applicants has been made in the OA, for which the cited judgment will be inapplicable to the present OA.

14. In the case of Devinder Singh and Municipal Council, Sansur the termination of engagement of the petitioner was challenged under the Industrial Disputes Act, 1947 on the ground that the termination was not as per the section 25-F of the Act. There is no claim in this OA under the Industrial Disputes Act, 1947. Hence, the judgment cited by learned counsel for the applicants is distinguishable. For the same reason, the judgment in the case of Range Forest Officer vs. Bhurilal Rambhai Jalu and another, 2014-I-LLJ-415 (Guj) is also not applicable to the present OA.

15. In the case of Harbhajan Singh and others vs. Nawanshahar Central Coop. Bank Ltd., 2004 SCC (L & S) 1031, the dispute pertained to the validity of the order of removal from service which was passed without following due procedure and without giving any reasonable opportunity of being heard. In this case, there was no dispute about the fact that the petitioner was appointed on regular basis after a selection procedure which was subsequently found to be irregular leading to the order of removal from service. Clearly, the cited judgments will not be any help to the applicants in the present OA.

16. In the case of Chief Conservator of Forests & another vs. Jagannath Maruti Kondhare cited in the OA, the dispute pertained to what can be considered to be unfair labour practice as defined under the Industrial Disputes Act, 1947 read with the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. This is not the case in this OA in which the claims of the applicants are based on the ground that they were engaged as casual labourers. Hence, the cited judgment is not

helpful for the applicants. Similarly, in the case of State of Punjab & others –vs- Kulwant Singh & Ors, the facts are different. In the case of State of Karnataka and Ors. –vs- M.L. Keshari, the principles decided in the case of State of Karnataka and Ors. –vs- Uma Devi were reiterated and direction was given for one time regularization of such employees who fulfill the conditions in para 53 of Uma Devi judgment. The stipulations in the said judgment included continuous engagement of 10 years or more against vacant sanctioned posts. It is clear that in the present OA, such stipulations are not fulfilled as there is nothing on record to show that the applicants were engaged against vacant posts or otherwise fulfill the conditions stipulated in the judgment in the case of Uma Devi. Hence, the cited judgments will not be applicable to the present OA.

17. Coming to the cases cited on behalf of the respondents, in OA No. 374/2009, some of the employees under the respondents as in the present office of the AG (A&E), Odisha claimed the benefit of regularization in the light of the judgment of Hon'ble Apex Court in the case of State of Karnataka and others vs. Uma Devi read with the DOPT circular dated 11.12.2006. It was held by the Tribunal in order dated 30.4.2010 (Annexure-R2/3 of the Counter) that the Uma Devi judgment will not be applicable to the case of the applicants in OA No. 374/2009 as the applicants were not found to be continuing against the sanctioned post. As discussed earlier in this order, in the present OA also there is no documents produced by the applicants that they were entitled for the benefit of regularization as per the judgment in Uma Devi case.

18. The respondents have cited the order dated 1.10.2014 of this Tribunal passed in OA No. 499/2012 (Annexure-R2/6). It is seen that the case of the applicants and the disputes involved in OA No. 499/2012 are similar to those in the present OA before us. The reliefs sought in OA No. 499/2012 were as under:-

- “i) The decision taken by the Respondent No.2 to engage/appoint contract labour system to discharge the function of the establishment may kindly be quashed.
- ii) The letter dated 6.5.2012 at Annexure-1 issued by the Respondent No.2 to the respondent No.1 for allocation of funds may kindly be quashed.
- iii) The order of disengagement w.e.f. 1.7.2012 by way of refusal of employment to the applicants by the Respondent No.2 may be declared as illegal and be quashed and the applicants may kindly be allowed to continue as casual labourers in their respective services.
- iv) After reinstatement applicants services may kindly be regularized in a permanent cadre in the post of M.T.S. with effect from their date of joining.”

The respondents in OA No. 499/2012 had taken the plea that the applicants in that OA were contingent paid workers and disputed the claim that they were engaged as casual labourers. It was found by the Tribunal that although the

applicants have disputed the respondents' claim that they were contingent workers, but they did not submit any evidence to show that they were engaged as casual workers. After considering the factual circumstances, it was held that **“we are unable to accede to the prayer of the applicants in this regard and accordingly, hold that the Tribunal cannot prevent the Respondents from taking a decision to engage labourers through outsourcing.”** It was further held as under:-

“16. Therefore, the inescapable conclusion which we arrive at this case is that the applicants do not have any legal right to be considered either for regularization or for any engagement under the Respondent-Organization. However, it is admitted by the Respondents that with them the applicants were being engaged from time to time as contingent workers as per the availability of work. They have been working as contingent labours for a considerable number of years. Some similarly placed persons also having qualified in the test have been appointed to the post of MTS. Therefore, if in future, any work of contingent nature is available with the Respondents, the applicants should be considered for such engagement, keeping in view, their previous periods of engagement with the organization and their work experience.”

19. The order dated 1.10.2014 of the Tribunal in OA No. 499/2012 was challenged by the applicants of the OA No. 499/2012 before Hon'ble High Court in W.P. (C) No. 19667 of 2014, which was dismissed vide the judgment dated 3.11.2016 of Hon'ble High Court (Annexure-R2/7). Some other applicants who had also claimed that while being engaged as casual labourers, they had been disengaged by the respondents who had decided to engage contract labour system for the same work, had filed another OA No. 142/2013. The OA No. 142/2013 was also dismissed in the order vide order dated 25.7.2017 of this Tribunal (Annexure-R2/8), holding the decision of the respondents to engage contract labourers for the work to be a policy matter. Learned counsel for the applicants has submitted that the order dated 25.7.2017 will not be applicable to this OA. It is noticed from the order dated 25.7.2017 that the applicant in OA No. 142/13 were applicants in OA No. 374/2009 in which it was held that the applicants were not casual labourers, but contingent paid workers engaged depending on availability of work. It is also stated in the additional written submissions by the applicants that the applicant No. 6 in the present OA was an applicant in the OA No. 374/2009. Hence, the order dated 30.4.2010 of the Tribunal in OA No. 374/2009 will be binding on the applicant No.6 who was clearly not a casual labourer as per the aforesaid order dated 30.4.2010.

20. The applicants' counsel submitted that the list of unsuccessful candidates in the MTS recruitment test was published by the respondents on 2.6.2012 (Annexure-9 of the Rejoinder) in which the applicants had been shown as casual labourers. It is noticed that the same claim was also made in OA No. 499/2012 and before Hon'ble High Court in the writ petition filed to challenge

the Tribunal's order in OA No. 499/12. In the judgment dated 3.11.2016, Hon'ble High Court dismissed the said writ petition and upheld the Tribunal's order with the following observations :-

".....It appears from the case record that the opposite parties at some place used the words 'casual labourers' very loosely which is not meant to be used as such, which is apparent from Annexures-6 and 7, Annexure-6, the final result of MTS recruitment in IA and AD Department does not reflect that the list of candidates appearing therein were casual labourers under the opposite parties. The list under Annexure-6 defeats the claim of the petitioners to the effect that only casual labourers were given appointment pursuant to the selection process under Annexure-3. Further, it appears from Annexure-7, upon which the petitioners strongly relied upon, that the words 'casual labourers' have been loosely used in the said list, primarily for the reason that the same contains the list of names of the unsuccessful candidates. It also does not contain their initial date of engagement as well as the date of their disengagement. Thus, by no stretch of imagination, it can be conclusively held to be the list of unsuccessful casual labourers as contended by the petitioners, as it also included the names of contingent workers."

Hence, the submission that the list of unsuccessful candidates notified by the respondents shows that they were engaged as casual labourers was rejected by Hon'ble High Court and the same argument in this OA is not tenable.

21. Learned counsel for the applicants submitted that the documents submitted in this OA show that the applicants were engaged as casual workers. He pointed out to the documents in Annexure-12 to the Rejoinder in support of his argument that the applicants were engaged as casual labourers. The wage bills in the said Annexure-12 do not show that the applicants were engaged as casual labourers. The bills were shown as contingent bills for contingent menials. In one of the list for payment of bonus, the persons have been shown as casual labourers, but the applicants' names were not there in the list and the list does not have any signature of any official. Hence, these documents cannot be taken as evidence that the applicants were engaged as casual labourers.

22. Learned counsel for the applicants mentioned that as per the copy of the file notes enclosed at Annexure 13 of the Rejoinder. It shows conferment of temporary status to the applicant No. 6. The document was not produced before the Tribunal when the applicant No. 6 had filed the OA No. 374/2009 in which it was held that the applicants (including the applicant No.6 in the present OA) cannot be treated as casual labourer. As the Tribunal's order dated 30.4.2010 in OA No. 374/2009 has attained finality, it is not open to the applicant No.6 to raise the same issue again.

23. From the above discussions, we are of the considered opinion that the facts and circumstances in this OA being similar to those in OA No. 499/2012, the order dated 1.10.2014 of the Tribunal in OA No. 499/2012 (Annexure-

R2/6) and the judgment dated 3.11.2016 of Hon'ble High Court (Annexure-R2/7) W.P. (C) No. 19667 of 2014, in by which the Tribunal's order dated 1.10.2014 was upheld, will squarely cover the present OA. Following the aforesaid judgments, we are unable to allow the reliefs sought for in this OA which is disposed of with direction to the respondents that if any work of contingent nature is available with them, the applicants should be considered for such engagement, keeping in view their previous periods of engagement with the organization and their work experience.

24. The OA stands disposed of as above with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

I.Nath