

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 195 of 2017

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

Sri Girija Nandan Rout, aged about 34 years, S/o Sri Jhadwswar Rout, Vill/Po- Pratappur, P.S. Baliapal, Dist- Balasore.

.....Applicant

VERSUS

1. Union of India represented through its Director General of Posts, Govt. of India, Ministry of Communication, Dept. of Posts, Dak Bhawan, New Delhi- 110001.
2. The Chief Post Master General Orissa Circle, Bhubaneswar.
3. The Superintendent of Post Offices, Balasore Division, At/Po/Dist- Balasore.
4. The Sub-Postmaster of Pratappur, S/O Pratappur, Balasore- 756083

.....Respondents

For the applicant : Mr. D.K. Mohanty, Counsel

For the respondents: Mr. P.K. Mohanty, Counsel

Heard & reserved on : 05.3.2020

Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the OA seeking the following reliefs (vide para 8 of the OA):-

- (i) To quash the order dt 06.08.2012 under Annexure-A/9.
- (ii) To direct the Respondent to regularization to the applicant as the applicant in the said post or any other post has worked 240 days in each year (from 2001 to 2011) in view of D.G. posts instruction retrospectively with all service and consequential benefits as per law laid down by Hon'ble Supreme Court.
- (iii) To pass any other order/orders as deemed fit and proper in this case.

2. The facts, in brief, are that the applicant claims that he was engaged by the Respondent No. 4 as a part time casual worker on contingent basis w.e.f. 2.7.2001 and he was working as sweeper-cum-waterman in Pratappur SO for

10 years putting in more than 240 days in a calendar year. According to the applicant he was discontinued from September, 2011 after which he submitted two representations and when no action was taken he filed the OA No. 895/11 before the Tribunal. That OA was disposed of by order dated 4.1.2012 (Annexure-A/8) with the direction to the Respondent no. 3 to dispose of the applicant's representation dated 22.11.2011 (Annexure-A/6). In compliance of the order of the Tribunal, the Respondent No. 3 passed the order dated 6.8.2012 (Annexure-A/9) rejecting the representation of the applicant.

3. The applicant has challenged the order dated 6.8.2012 (A/9) in this OA, which has been filed with the MA No. 167/17 to condone the delay in filing the OA. The MA No. 167/17 was considered by this Tribunal vide order dated 1.5.2017 of this Tribunal by which the MA was allowed and the delay in filing the OA was condoned, directing the parties to file Counter/Rejoinder so as to consider the OA on merit. In support of the applicant's claim, he has enclosed a copy of the order dated 5.7.2001 (Annexure-A/3) by which he was engaged as a part time casual worker by Respondent No. 4. It is averred in the OA that the applicant was disengaged in September, 2011 without any notice in violation of the rule of natural justice. The applicant has also relied on the DG's circular dated 6.6.1988 (Annexure-A/7) to claim that his case should have been considered. He objects to the reason that the documents enclosed as forged since no reference to GEQD was made before concluding that the documents including the appointment order dated 5.7.2001 (A/3) as forged.

4. Counter has been filed by the respondents stating therein that though there is provision for managing the work of waterman-cum sweeping by engaging outsiders on payment of sweeping -cum- water allowance daily on prorata basis. Accordingly, in Pratappur SO, such allowance being paid to outsider, but no record is available regarding appointment of the applicant. It is stated that the letter at Annexure-A/3 of the OA is a forged document since the letter appears to have been prepared through computer, where as there was no computer at Pratappur SO in the year 2001. There is no record in Pratppur SO about any payment made to the applicant for his work as claimed in the OA. It is further stated that the representations dated 17.10.2011 and 22.11.2011 referred in the OA have not been received by the Respondent No. 3 who has passed the speaking order dated 6.8.2012 basing on records available. It is denied that the applicant was ever a contingent worker of the Department as no record is available to that effect as per the letters at Annexure-R/1 and R/2 of the Counter.

5. We heard learned counsel for the applicant and respondents and perused the pleadings on record. While considering the MA No. 167/17, this Tribunal vide order dated 1.5.2017 has observed as under:-

“It is quite evident from the facts of the case that applicant did not take prompt steps to challenge the impugned order. On the other hand, he made further representations to the respondent authorities. The main ground on which order of rejection was based is that appointment letter produced by applicant was forged one. In the representation dated 11.5.2015, the applicant has pleaded that the appointment letter was genuine and if, the respondents are holding that this is a forged one, they can send the said document for examination by the GEQD for which he will pay the costs. The respondents did not respond to his representation. There is a specific plea taken by respondents in the impugned order that the appointment letter was forged. Subsequently, on the basis of the representation of the applicant, they have not reconsidered the matter.”

6. From para 4 of the Counter, it appears that the respondents have assumed that the letter at Annexure-A/3 appointing the applicant is a forged one on the basis of the letters at Annexure- R/1 and R/2 of the Postmaster, Jaleswar HO. No other document or letter except Annexure-R/1 and R/2 has been enclosed with the Counter to show that any inquiry has been conducted by the respondents before concluding that the letter at Annexure-A/3 is a forged letter. The letter of SPM, Pratappur dated 11.2.2012 (Annexure-R/1) does not state anything about the authenticity of the letter dated 5.7.2001 (A/3), while it states that no file/records/memo available. In the letter dated 23.2.2012 (Annexure-R/2) of the Postmaster, Jaleswar has stated the following regarding the letter dated 5.7.2001:-

“No copy of memo No. 13/2001-2 dated 05.07.2001 regarding appointment of Sri Girijanandan Rout as sweeper-cum-waterman of Pratappur SO endorsed by SPM Pratappur SO has been received by office.”

The letter dated 23.2.2012 also stated that no sweeping cum water allowance has been drawn in name of Sri Girijanandan Rout, Pratppur since 02.07.2001. It is clear that from the findings as recorded in the letters dated 11.2.2012 (Annexure-R/1) and 23.2.2012 (Annexure-R/2) , it cannot be concluded that the letter dated 5.7.2001 (Annexure-A/3) was a forged letter furnished by the applicant. No effort has been made to check from the issue/despatch register to verify through a responsible officer if the number quoted in the letter at Annexure-A/3 (i.e. 13/2001-02 dated 05.07.2001) is genuine or not. In the Counter, it is stated that some outsider was engaged by the SPM, Pratappur for the period in question and the payment was done to outsider.

7. From the above observations, we are of the view that the case of the applicant has been rejected without ascertaining the genuineness of the letter

dated 5.7.2001 (Annexure-A/3), terming it as a forged document without conducting any proper inquiry to ascertain its genuineness. Further, nothing has been mentioned in the Counter about the genuineness of the documents enclosed at Annexure-A/4 series of the OA with reference to para 4.4 of the OA, although it is stated in the Counter (based on the letter of the SPM/Postmaster at Annexure-R/1 and R/2 of the Counter) that no payment has been made to the applicant. In that case, the documents at Annexure-A/4 series showing payment to the applicant time to time, should have been explained or commented in the Counter.

8. We take note of the following averments in the Counter as under:-

“18.....It may be a fact that a contingent worker would have been conferred with temporary status followed by regularization against GDS vacancies as per Directorate’s instruction but in this case the applicant is not a contingent worker for which his demand for temporary status or regularization against GDS post is not feasible.

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29.....It is a fact that a casual labourer who had rendered 240 days service in a calendar year may be given the benefits of regularization/grant of temporary status as per rule. In the instant case when the appointment of the applicant to the post of casual labour/part time casual worker is not genuine his claim to the said post in the plea of part time casual worker does not arise. The claim of applicant is bad in law and therefore liable to be rejected.”

We also note that the respondents have concluded that the letter at Annexure-A/3 to be not genuine and forged basing on inadequate evidence as per the letters at Annexure-R/1 and R/2 of the SPM/Postmaster concerned without getting the matter inquired through a responsible official to ascertain the genuineness of the documents furnished by the applicant at Annexure-A/3 and Annexure-A/4 series. Hence, the impugned order dated 6.8.2012 rejecting the applicant’s case only on the basis of above conclusion is not sustainable.

9. In the circumstances, we quash the impugned order dated 6.8.2012 (Annexure-A/9 of the OA) and remit the matter to the Respondent No. 3 to inquire about the genuineness of the documents at Annexure-A/3 and Annexure-A/4 series through the GEQD or through a senior officer of the department, keeping in mind the observations made in this order and if these documents are found to be genuine and applicant had indeed worked as a contingent labourer, then his case for re-engagement is to be considered in terms of the DG’s circular dated 6.6.1988 (Annexure-A/7) or any other circulars/rules applicable and to pass a speaking order to that effect, copy of which is to be communicated to the applicant within four months from the date

of receipt of a copy of this letter. It is made clear that this order is passed based on the facts and circumstances specific to the case as discussed above.

10. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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