

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/511/2016

Date of Reserve:06.01.2020
Date of Order: 20.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Uttam Kumar Pradhan, aged about 50 years, S/o. Late Brundaban Pradhan, working as GDSMD/MC, Dera B.O., P.S-Rajnagar, Dist-Kendrapara.

...Applicant

By the Advocate(s)-M/s.D.K.Mohanty
S.Nayak

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda, PIN-751 001.
3. Superintendent of Post Offices, Cuttack North Division, Cantonment Road, Cuttack.
4. Inspector of Posts, Pattamundai Sub-Division, Pattamundai, Dist-Kendrapara.

...Respondents

By the Advocate(s)-Mr.C.M.Singh
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the order dated 26.02.2016 under Annexure-A/6.
 - ii) To direct the Respondents, especially, Respondent No.2 to extend the said benefit of pay protection as has given the scale in the post of Postman.
 - ii) To pass any other order(s) as deemed fit and proper.
2. Shorn of unnecessary details, it would suffice to note that the applicant while working as GDSMD cum MC, Dera Branch Post Office in account with Rajnagar SO under Kendrapara HO.O. had been directed to manage the

delivery work of Rajnagar SO and accordingly, he joined at Rajnagar SO on 8.3.2006 and worked as such till 26.07.2007. Claiming daily wages for the work done by him as Postmaster, Rajnagar SO, he had submitted an application, which however, having not been considered, the applicant approached this Tribunal in O.A.No.523/2011. On the basis of the direction issued by this Tribunal in that O.A. to consider and dispose of the representation, the respondents having so considered turned down the same, as a result of which, the applicant again approached this Tribunal in O.A.No.814/2011. This Tribunal vide order dated 21.10.2013 disposed of the said O.A. with direction to respondents to pay daily wages for 505 days as ordered vide order dated 30.04.2010. The Respondents complied with this order of the Tribunal and as revealed from the record, the daily wages meant for the post of Postman, Rajnagar SO for the period from 08.03.2006 to 25.07.2007 was drawn and disbursed to the applicant on 18.12.2013.

3. While the matter stood as such, the applicant approached this Tribunal in O.A.No.260/01001/2015, alleging inaction of the Respondents in taking prompt steps to extend the benefit of pay protection as provided in the post of Postman. This Tribunal vide order dated 01.02.2016 disposed of the said O.A. with direction to Respondent No.2 to consider and dispose of the pending representation dated 22.05.2015 within a stipulated time frame, *inter alia*, with a direction that if it is found that the applicant is entitled to relief claimed, expeditious steps should be taken to extend the same. Complying with the aforesaid direction, Respondent No.2 vide order dated 26.02.2016 (A/6) rejected the said representation. In view of this, the applicant questioning the legality of this order, has invoked the jurisdiction of this Tribunal in the instant O.A. praying for the reliefs as quoted above.

4. Heard the learned counsels for both the sides and perused the records.

In the fitness of things, the relevant part of the order dated 26.02.2016, which is impugned herein, is quoted herein below:

"In the said representation dated 22.05.2015, the applicant has put forth the following grievances.

- (i) That he was working as Postman, Rajnagar SO on daily wages basis during the period from 08.03.2006 to 23.07.2007 and the daily wages has been paid, but after relief from the post of daily wage Postman, Rajnagar SO, the benefit of pay protection has not been extended to him.
- (ii) That he is not eligible to participate in the Departmental examination for promotion to Postman cadre due to overage and since he was working in higher post his pay should be protected even after his repatriation to lower.

That he was initially appointed as EDDA/MC, Dera BO w.e.f. 03.10.1994 by IP, Pattamundai Sub Division. His service is regulated vide ED Conduct and Service Rules, 1964, now amended as GDS (Conduct and Engagement) Rules, 2011. So, as per the provisions of Rule 3A (VI) of GDS (Conduct and Engagement) Rules, 2011, a GD Sevak shall not claim to be at par with the Central Government Employees. So, his contention that he can be compared with the Postman cadre, which is a regular Central Government cadre post, is not acceptable and hence pay protection in pay, is not admissible.

The applicant, Shri Pradhan had worked in the post of Postman at Rajnagar SO on daily wage basis for the period from 08.03.2006 to 23.07.2007 for which he has been paid the admissible allowance as per his entitlement for payment of salary at minimum scale applicable to Postman cadre.

As per D.G., P & T letter No.47/31/72-SPB-I dated 07.12.1972, an ED Agent can be appointed in the vacancy of Postman/Group-D in an unapproved capacity on daily wage basis in preference to an outsider and such casual appointment does not confer on him any right for regular absorption in the Departmental post".

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5. Perusal of the above order leads us to a conclusion that in view of DG P & T letter dated 07.12.1972, an ED Agent could be appointed in the vacancy of Postman in an unapproved capacity on daily wage basis in preference to an

outsider. This daily wage having not been paid to the applicant, he had approached this Tribunal and in pursuance of the direction of this Tribunal, he was disbursed the daily wage for the post of Postman in respect of the period he had worked against the said post. If at all the applicant was conscious about his claim to pay protection in the post of Postman, there was no justifiable reason as to why instead of claiming so, he claimed for grant of daily wages, which he was granted in compliance of the direction of this Tribunal. In our considered view, it is an superimposition of claim by the applicant and in respect of the cause of action which arose in the year 2007, he submitted an application to the respondent-authorities in the year 2015, i.e., after about eight years when the cause of action arose. He has not explained the delay as to what prevented him from exercising his remedy within the period as prescribed under Section 21 of the A.T.Act, 1985. Since his claim for grant of daily wages for the post of Postman has been settled already, we are of the opinion that there does not exist any further grievance for the applicant to revamp his claim in the form of protection of pay on the eve of DG(P&T) letter dated 07.12.1972, cited supra. In view of this, the order dated 26.02.2016 (A/6) passed by Respondent No.2 is sustained.

6. For the reasons stated above, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)