

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

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

OA No. 20/2019

Chandan Kumar Behera, aged about 34 years, S/o Sri Sarbeswar Bhoi, At-Huda Sahi, Gyana Nagar, PO/PS-Old Town, Bhubaneswawr, Dist.-Khurda, presently working as a casual worker at Archaeological Survey of India, Sub Circle, Samantrapur, Bhubaneswar, Dist.-Khurda.

OA No. 21/2019

Santosh Kumar Barik, aged about 30 years, S/o Late Basudev Barik, At-Plot No. 4762, Gouri Nagar, PO/PS-Old Town, Bhubaneswawr, Dist.-Khurda, presently working as a casual worker at Archaeological Survey of India, Sub Circle, Samantrapur, Bhubaneswar, Dist.-Khurda.

OA No. 22/2019

Prasanta Kumar Swain, aged about 30 years, S/o Sri Pradeep Kumar Swain, AT/PO-Sundarpada, PS-Air Field, Bhubaneswar, Dist.-Khurda, presently working as a casual worker at Archaeological Survey of India, Sub Circle, Samantrapur, Bhubaneswar, Dist.-Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Culture, Govt. of India, Shatri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Superintending Archaeologist, Archaeological Survey of India, Puratatwa Bhawan, At/PO -Samantrapur, Bhubaneswar, Dist.-Khurda, Odisha.

.....Respondents

For the applicant : Mr.B.Rout, counsel

For the respondents: Mr.P.K.Mohanty, counsel (OA 20/2019)
Mr.M.R.Mohanty, counsel (OA 21/2019)
Mr.A.K.Mohapatra, counsel (OA 22/2019)

Heard & reserved on : 22.1.2020

Order on : 04.02.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicants have filed the present OAs seeking the following reliefs:

- “(i) To pass appropriate orders directing the Departmental Respondents to grant 1/30th status to the applicant by quashing Annexure A/5.
- (ii) To pass such other orders/directions calling for the relevant records from the Respondents as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with cost.”

2. All the OAs in this batch involved the same dispute and similar reliefs prayed for by the applicants. The relief claimed in the OAs is to get the wage at the rate of one thirtieth of the minimum of the basic pay scale for the Group-D employees (in short referred as ‘1/30th status’) in accordance with the DOPT’s OM dated 7.6.1988 copy of which is annexed to the OAs. Hence, these were considered together and are being disposed of by this common order. For the purpose of the order, the facts and circumstances of OA No. 20/19 will be considered.

3. The applicant in OA No. 20/19 was first engaged as a casual labourer on 1.4.2004 and claims that he is continuing to be engaged by the respondents since then against a vacant post, performing same duty as that of a Group-D post of Monument Attendant/MTS. It is further claimed that some of the similarly placed persons like the applicant have been allowed 1/30th status vide order dated 12.4.2013 (Annexure-A/3). The applicant filed representations from time to time and when the same was not considered, he filed the OA No. 133/2018 which was disposed of at the admission stage vide order dated 19.3.2018 (Annexure-A/4) directing the respondents to dispose of the representation of the applicant.

4. In compliance to the order dated 19.3.2018 (Annexure A/4) of the Tribunal, the respondent No.3 has passed the order dated 6.6.2018 (Annexure A/5) rejecting the representation of the applicant. The applicant has challenged such rejection in this OA on the ground that the action of the respondents is a case of discrimination and violation of Article 14 & 16 of the Constitution of India. It is further stated in the OA that applying the ratio of the judgment of the Hon’ble Supreme Court in the case of Director General of Posts & Ors. –vs- K.Chandrasekhar Rao [(2013) 3 SCC 310] laying down the principle that policy guidelines issued by the Government are binding. Since the circular was issued by the DOPT was binding on the respondents, he is entitled to the 1/30th status.

5. Counter filed by the respondents has stated that the applicant has never attended the duty of Group ‘D’ post/MTS and has been working as a casual worker. Hence there is no violation of the DOPT OM dated 7.6.1988 and director General ASI’s circular dated 7.7.1992 since he has not been entrusted

with the work of a regular employee. Hence the applicant is not entitled to 1/30th status. It is stated that the respondents have not committed any irregularities or illegalities. It is further stated that a consolidated list of casual labourers has been prepared indicating the final year and those who completed 240 days of engagement vide letter dated 26.3.2013 (Annexure R/2).

6. Rejoinder filed by the applicant mainly reiterated the grounds mentioned in the OA. It is stated that the applicant was serving under the respondents department uninterruptedly since long by doing the regular work of Group 'D' i.e. he was working since 2004 and has completed 240 days of engagement.

7. Heard learned counsel for the applicant. He submitted that this is a matter already covered by the order dated 23.6.2017 of this Tribunal passed in OA No. 934/2014 and other two similar OAs. Copy of the same order has been submitted by the learned counsel for the applicant.

8. Learned counsel for the respondents was heard. He submitted that the detailed reasons have been explained in the impugned order dated 6.6.2018 (Annexure A/5) as well as in the Counter. He stated that the applicant was never entrusted same duty as the regular Group 'D' employee and no person engaged initially after initial engagement of the applicant has been granted the 1/30th status in pursuance to the circular dated 7.7.1992 of the respondent No.1. Those casual labourers who were engaged prior to 2004-05 and had completed 240 days of work as on 2011-12 have been allowed to get 1/30th status after discharging the duty of Group 'D' as stated in the impugned order.

9. With due regard to the pleadings as well as submissions by both the parties, it is noted that the order dated 23.6.2017 passed by the Tribunal in OA No. 934/2014 Prasant Nayak -vs- Union of India represented through Secretary, Ministry of Culture and others, the applicant in that OA had taken the plea that he was engaged prior to 2007-08 and has completed 240 days work as on 2011-12 and that persons engaged after his engagement and juniors to him have already been granted 1/30th status. The plea taken by the respondents in the case was that he was never given the duty of Group 'D' staff and will not be eligible for 1/30th status. After hearing the parties it was held by the Tribunal in that case as under :

“6.If some casual workers were allowed to perform duties of regular nature why the present casual workers who approached the Tribunal will not be allowed to do so is an issue which the Respondents have not addressed in their reply. The Respondents organization should have a separate policy for considering such prayer as per the DOP&T O.M. dated 07.06.1988 as mentioned above. The settlement under Section 12(3) of the I.D. Act 1947 which has been brought to the notice of the Tribunal by the applicant reflects that the cases of casual workers who have completed 240 days of work shall be taken for consideration of 1/30th status. In the above circumstances the reasons assigned in the impugned order cannot be supported. The Respondents

organization could of course have their own policy for consideration of such cases in a transparent manner. But as per policy, case of casual workers should be considered and on the round that the applicants were never entrusted to discharge the work of a regular employee no employee can be ousted from consideration. This is because as articulated in the order the decision to allow a casual worker to perform duties of a regular Group 'D' has been taken by the Respondents themselves. The Ld. ACGSC while replying to the allegations of discrimination has submitted that negative equity cannot be claimed. However, making such a submission would amount to indirect admission that the facility of 1/30th status to the other casual workers was extended in an irregular manner. It is not clear from the submission of the Respondents what are the criteria they have following in allowing cases of workers to do work of regular nature, same as that of a Group 'D'./ One thing is clear that the claim of the applicants cannot be summarily thrown out. The Respondents need to keep their cases under consideration under suitable criteria for conferring 1/30th status by following the guidelines of the Government as laid down by the DOP&T in their O.M. dated 07.06.1988. it is also very important to ensure that discrimination and arbitrariness should be completely avoided in the matters of such consideration.

7. Based upon the discussions made above it is directed that Respondents may reconsider the matter in the light of the observations made above. The orders impugned in all the OAs are quashed and the matters are remitted to Respondent No.2 for reconsideration, on the basis of observations made above."

10. From the facts of the above cited case, the applicant in OA No. 934/2014 had taken specific plea that the persons junior to him were given the 1/30th status and the direction of the Tribunal was passed in the background of that fact, which was not disputed. But in this OA, there is no such averment that the persons who were engaged after the initial engagement of the applicant have been granted 1/30th status. The plea taken in this OA No. 20/2019 is that the applicant has been given the duty of a regular Group 'D' employee and similarly situated persons have been allowed 1/30th status vide order dated 12.4.2013 (Annexure A/3). It is seen from the list at Annexure R/2 dated 26.3.2013 submitted by the respondents with their Counter that the name of the applicant finds place at Sl. No.2 of the list of persons engaged on or before 2005-06 and completed 240 days as on 2011-12. The applicant has not furnished any document or proof to show that he has been entrusted the duty of a Group 'D' staff. The contention in the Counter that he was never been given the same duty as Group 'D' staff has not been contradicted by the applicant backed by document/proof. Hence, we are of the view that the facts and circumstances in OA No. 934/2014 and in the present OA No.20/2019 are different and hence, the cited judgment will not be helpful for the applicant.

11. Further it is seen from the order dated 12.4.2013 (Annexure A/3) that the persons who were granted 1/30th status were engaged on or before 2004-05 as would be revealed from the list at Annexure R/2 whereas the applicant was engaged after the persons who have been granted 1/30th status vide order dated 12.4.2013. Hence it cannot be said that anyone junior to the applicant has been allowed the benefit of 1/30th status while ignoring the case of the applicant.

12. In view of the discussions above, there is no valid ground to interfere in the matter. However, taking into account the fact that the applicant has completed 240 days of working in 2011-12 as would be revealed from the list at Annexure-R/2 of the list enclosed with the Counter, the case of the applicant deserves to be reconsidered if any of their junior was granted 1/30th status while ignoring the applicants' case. Accordingly, this OA is disposed of with liberty to the applicant to inform the respondents the details of his juniors, if any, who were granted 1/30th status ignoring his case, and if such information is furnished by the applicant within fifteen (15) days from the date of receipt of a copy of this order, the respondents will reconsider the case of the applicants for grant of 1/30th status as per the provisions of law from the date their junior was allowed such benefit, with all consequential benefits as per the rules and the decision of the respondents after such reconsideration will be communicated to the applicant through a speaking order within three months from the date of receipt of a copy of this order.

13. The facts in OA No. 21/2019 are similar to OA No. 20.2019. In this OA, the applicant is found in the list at Annexure R/2 (vide Serial No.9) and was engaged after 2005-06 and before 2006-07. The applicant in the OA No. 22/2019 is also included in the list at Annexure R/2 at Serial No.3 and was engaged after 2008-09 and prior to 2009-2010. Accordingly, these two OAs are also disposed of in terms of paragraph 12 of this order.

14. The OAs in this batch are accordingly disposed of as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)