

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/71/2016

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)

Ashok Kumar Sethi, aged about 41 years, S/o. Late Bairagi Sethi, Vill-Satakbadi, PO-Biswanathpur, PS-Balipatna, Dist-Khurda.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Telecommunication, Dept. Of Posts, Dak Bhawan, Sansad Marg, New Delhi-1.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Khurda.
3. Sr.Supt.Posts Offices, Bhubaneswar Division, Bhubaneswar, Khurda.
4. Assistant Suptd. Post Offices Bhubaneswar North Sub-Division, Bhubaneswar.
5. Postmaster, IRC Village Post Office, Bhubaneswar

...Respondents

By the Advocate(s)-Mr.G.R.Verma
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 01.10.2013 & 30.9.2015 under Annexure-A/3 & A/9 respectively.
- i) To direct the Respondents to absorb permanently to the applicant in any GDs posts/Group-D keeping in view the GI dept. Of Posts circular dated 17.5.1989 and various judgment made law.
- iii) To pass any other order/orders as deemed fit and proper in this case.

2. Shorn of unnecessary details, it would suffice to note that the applicant belongs to Scheduled Caste Community and has passed HSC Examination. It has been submitted that the applicant has been working as Extra Departmental Packer-cum-Mail Carrier as substitute since 1991 with intervals in different post Offices at Bhubaneswar. He submitted a representation dated 17.06.2014 to the Chief Post Master General, Orissa Circle with a prayer to regularize his services as has been extended to similarly placed persons. Since there was no response, he approached this Tribunal in O.A.No.260/00200 of 2015 and this Tribunal, vide order dated 21.-4.2015 disposed of the said O.A. with direction to Respondent No.2 to consider and dispose of the said representation and communicate the decision thereon in a well-reasoned order. In the above background, Respondent No.2 passed a speaking order dated 30.09.2015 (A/9), the relevant portion of which reads as follows:

"It is a fact that Shri Ashok Kumar Sethi had worked as substitute of regular Gramin Dak Sevaks (GDSs) in their leave vacancy on the sole risk and responsibility of the absentees for sometimes as per the provisions contained in ED Agents (Conduct & Service) Rules, 1964, now GDS (Conduct and Engagement) Rules, 2011. Shri Sethi was never engaged in any post by the Department rather he was engaged as substitute of regular GDS on their sole risk and responsibility. Hence the department has no liability for his engagement or disengagement. As such, Shri Sethi is not entitled for any preference in selection of GDS Posts/regularization.

Further, vide representation dated 17.06.2014, the applicant cited the case of 15 mazdoors who have been declared Part Time Casual labourer as per the direction of Hon'ble CAT, Cuttack vide order dated 08.05.2012 in O.A.No.277/2011, confirmed by the Hon'ble Orissa High Court vide order dated 05.05.2014 in WP(C) No.20406/2012. The said order dated 08.05.2012 of the Hon'ble C.A.T., Cuttack Bench, Cuttack does not hold any8 automatic universal application. The benefit of the judgment is restricted to the applicants of O.A.No.227/2011 i.e., 15 mazdoors only.

The representations dated 12.12.2013 and 17.06.2014 preferred by Shri Ashok Kumar Sethi are considered and rejected being devoid of merit".

3. Hence this Application seeking for the reliefs as mentioned above.
4. Opposing the prayer of the applicant, respondents have filed a detailed counter with the same standpoint as contained in the order dated 30.09.2015 (A/9) and therefore, we do not feel inclined to reiterate the same point. However, the main thrust of the counter is that the decision taken by this Tribunal in O.A.No.227/2011 has no universal application and the same is restricted only to the applicants therein.
5. Heard the learned counsels for both the sides and perused the records. We have also gone through the orders of this Tribunal in O.A.No.227 of 2011 as upheld by the Hon'ble High Court of Orissa (supra) as well as the orders of this Tribunal in O.A.No.888 of 2004 dated 28.10.2004 (Chiranjibi Naik vs. UOI & Ors.) (reported in [(2005) 1 ATT(CAT) 111], relied on by the applicant.. In the fitness of things, the relevant Paragraphs in Chiranjibi Nayak (supra) are reproduced hereunder.

"5. Law, by now, is well settled that a substitute has no right to get a regular appointment per-se. However, taking into consideration the Government of India, Department of Posts Letter No.65-24/88-SPB.I dated 17th May, 1989, the Division Bench of this Tribunal in O.A.No.146 of 2003 (that was disposed of on 6.10.2004) of Kunmun Mohanty vs. Union of India and Others, have observed as under:

"Aforesaid submission of the learned counsel for the Applicant touches the policy matter of the Government and this Tribunal, in our considered view, should go slow in giving any direction to the Government in that regard. However, while parting with this case we leave the matter to the Government in Department of Posts to explore the possibility of providing/making a scheme so that the substitutes in extra Departmental Organization

of the Postal Department can get a chance to be recruited with some relaxation in GDS establishment".

6. The Postal Department having provided (under DG's letter No.65-24/88-SPB.I dated 17th May, 1989) a channel of recruitment (as Gr.'D' employee) for substitutes in regular establishment, this Tribunal has felt in the case of Kunmun Mohanty *supra*) to ask the Department to provide a channel for recruitment (in Extra Departmental/GDS organization) for those who gathered experience as substitute.
7. In the aforesaid premises, this Original Application is disposed of with direction to the Respondent to examine the case of the Applicant in light of the circulars of the Department of Posts of Government of India dated 17th May, 1989 and the observation quoted above, to render substantial justice to the Applicant. No costs".

6. We have considered the points urged by the respective parties. Since the point to be decided by this Tribunal has already been decided in Chiranjibi Nayak's case (*supra*), following the same ratio, we direct the Respondents, particularly, Respondent No.2 to examine the case of the applicant in the light of the DG Posts Letter No.65-24/88-SPB.I dated 17th May, 1989 and pass an appropriate orders within a period of 120 days from the date of receipt of this order.

7. In the result, the O.A. is thus disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)