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O.A. No.350/00808/2016.
O.A. No.350/00809/2016.
O.A. No.350/00810/2016.
O.A. No.350/00811/2016.



Date of order : This the 29 Day of May, 2020.

Hon'ble Mrs.Bidisha Banerjee, Judicial Member

Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member

Shri Upendra Singh (O.A. 808/2016)
Shri Malay Dutta (O.A. 809/2016)
Shri Susanta Bhattacharye (O.A. 810/2016)
Smt Aparna Das (O.A. 811/2016)

- Versus -

1. Union of India
Service through the Secretary,
Department of Posts,
Ministry of Communication & IT,
Dak Bhavan, Sansad Marg,
New Delhi – 110001.
2. The Director General
Department of Posts,
Government of India,
Dak Bhavan, Sansad Marg,
New Delhi – 110001.
3. The Assistant Director General (GDS/PCC)
Government of India,
Ministry of Communication & IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 110001.
4. The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan, Kolkata-700 012.
5. The Senior Superintendent of Post Offices,
South Kolkata Division, Deptt. Of Posts,
211, Sarat Bose Road, Kolkata-700029.
6. The Post Master,
Tollygunge Head Post Office (HPO)
Kolkata – 700 033.

.....Respondents

Advocate for the Applicants : Mr S.K.Datta
Mr B.L.Gangopadhyay

Advocate for the respondents: Mr S. Paul.

ORDER

MS BIDISHA BANERJEE, MEMBER(J)



Since identical issues have been raised, identical pleas have been taken and identical reliefs have been sought, these four O.As are taken up analogously for hearing and to be disposed of by this common order.

2. For the sake of brevity, O.A.No.808/2016 is delineated and discussed hereinbelow.

The admitted facts are that applicant Upendra Singh was recruited as Contingent Paid Staff for the post of Gate Keeper by an order dated 16.05.1994, Annexure A-1. He was offered provisional appointment liable to be terminated when regular appointment is made and to be governed by Contingent Staff Rules. On being employed as such, the applicant continued. He was appointed, police verification was conducted and he assumed charge with effect from 01.09.1994 and continued as such. By an order dated 18.05.1998 Department of Post revised the rate of pay of Group 'D' staff as that on pro-rata basis plus admissible DA at the rate of Rs.159.50 only per half hour effective from 01.05.1998 which was granted to the applicant. His name even figured in the gradation list at SI.No.189. By an order dated 30.06.2005 the department of Post directed payment of arrear wages consequent to increase of DA from time to time as admissible. By an order dated 22.09.2006 the basic monthly wages to the Part Time Workers has been increased to Rs.308.50 per half hour with effect from 01.07.2006, which was effected to the applicant as evident from Annexure A-13 to the O.A, relevant portion of which is reproduced below :

"So far as Part Time Casual Labourers are concerned, their wages would be calculated on pro-rata basis in terms of hours of duty put in, with respect to the minimum of Pay Band-1 (Rs. 5200-20200) i.e. Rs.5200 plus a Grade Pay of



Rs.1300/- and Dearness Allowance as admissible from time to time. In addition, the benefit of merger of 50% of dearness allowance would also be admissible in terms of DoPT OM No.49014/5/2004-Estt(C) dated 31.05.2004.

The revision as aforesaid in sub paras (i) and (ii) will take effect from 01.01.2006."

The benefit of the said O.M was granted to the applicants as evident from Annexure-A-14. Further by an order dated 23.09.2015 of the Department of Post a list of Part Time contingent paid staff prior to 01.09.1993 was prepared and they should be treated as Daily Rated Mazdoor (DRM). The order is extracted hereunder for clarity :

"Sub- List of Part Time contingent paid staff prior to 01/09/1993.

In connection with above, it is to intimate that workers engaged at their own capacity after 01/09/1993 should not be treated as Part time contingent paid staff for whom scale of pay has recently been fixed. However, these workers should be treated as Daily Rated Mazdoor (DRM) as they are not entitled same scale of pay.

A list of Part Time contingent paid staff is sent herewith for taking necessary action. The amount of wages which has already been paid since 01.03.2015 to be recovered from those part time contingent paid staff, whose name is not included in the above list & who is working after 01.09.1993 are not entitled to same scale of pay."

3. The order dated 01.10.2015 is impugned in the present O.A. By that order at Annexure A-16 the amount of wages which was already paid since 01.03.2015 was directed to be recovered from these Part Time Contingent Paid Staff who were working after 01.09.1993 as they were not entitled for the same scale of pay. Assailing the impugned orders dated 01.10.2015 and 23.09.2015 the applicants preferred O.A.1698/2015, 1699/2015, 1700/2015 and 1701/2015. The O.A preferred by the present applicant Upendra Singh was 1699/2015. The matters were disposed of with a direction to consider their grievance and till consideration not to effect any recovery. Detail representations followed. Finally a reasoned order dated 07.03.2016 was issued as contained in Annexure A-21 to the O.A which is extracted hereunder for clarity :

ANNEXURE-U
(TYPE COPY)

Memo No. LI/skol div/Part time/15-16 dtd at kol 29 th 7/3/16

This is regarding compliance of Hon'ble C A T's order dated 30/11/15 passed in OA no. 350/1698/15 filed by Upendra Singh residing at 28, DPS Road, KIT Bldg. PS-Charu Market, Kolkata-33.

The applicant filed the OA no. 350/1698/15 for seeking following relief:

1. To cancel/quash the impugned memo of SSPOs. South Kolkata division, Memo no. A9/Part time/MISC/2015-16 dtd at kol-29 the 23/9/15.
2. To cancel/quash the impugned order of Postmaster Tollygunge HO memo no. AI/TLG/Contg staff dtd 1/10/15.

The Hon'ble CAT in it's order dtd 30/11/15 disposed the case with direction to the respondent authority to issue a speaking order within 2 months of receipt of representation from the applicant, after giving a personal hearing to the applicant, with observation that the applicant had straightaway filed the OA without exhausting the remedy as contemplated in section 20 of CAT.

The applicant was given personal hearing by the SSPOs. South Kolkata division at his chamber on 29/2/16, where he heard the side of the applicant.

Now as per document submitted by the applicant where he contests that he was engaged as part time gate keeper Tollygunge HO by the then Postmaster Tollygunge HO in his order dtd 23/5/96 though no document found at the end of engagement authority.

While as per order of DG Posts order no. 45-95/87-SPB-I (pt-II) DTD 15/5/88 no new Casual Labour should be employed for the work of regular nature in any of the offices. If engagement of casual Labourer is inescapable then it should have prior approval of Postmaster General and the IFA which is not done in the said case.

While as per DG Posts order no. 2-10/88-PE-I, DTD 29-3-90 there is complete ban on recruitment of casual labourers in the entire department including civil wing at all levels. Proposal for employment of casual labourers, if absolutely necessary, may be referred to the

Directorate. All such proposals should have express approval of IFA concerned. Engagement of casual labourers in anticipation of approval of Directorate is also prohibited. No such approval found in the instant case.

However considering the side of the applicant, the documents produced by him i/r/t his engagement as part time casual labourer on 23/5/96, the undersigned will review the legality of the engagement of the applicant as part time casual labourer (p/t gatekeeper Tollygunge HO) as per domain of departmental rules applicable for engagement of casual labourers. Till that time the order memo no. A9/Part time/MISC/2015-16 dtd at kol-29 the 23/9/15 is kept in abeyance. Consequent upon the order of Postmaster Tollygunge HO memo no. A1/TLG/Contg staff dtd 1/10/15 will automatically be under abeyance.

S/d- dated - 7/4/16

Meet Kumar
Sr. Supdt of Postoffices.
South Kolkata division. Kol-29.

4. At hearing Ld. counsel for the applicant would strenuously urge that since the orders dated 23.09.2015 and 01.10.2015 have been kept in abeyance the natural consequence of such orders would be revival of the order dated 22.01.2015 whereby and whereunder Part Time Casual Labourers were directed to be paid wages on pro-rata basis and therefore, the respondents should be directed to implement the order dated 22.01.2015 and grant benefit flowing from the said order until a decision is arrived at by the competent authority which kept the subsequent orders in abeyance.

5. Ld. counsel for the respondents would admit that no decision has been arrived at, as yet by the competent authority about the orders dated 23.09.2015 and 01.10.2015.

6. In such view of the matter, since the matter is to be decided by appropriate authority and the impugned orders affecting the pay of the present applicants have been kept in abeyance, as evident from the speaking order, we direct the authorities to restore the previous pay prior to issuance of

23.09.2015 order and to continue grant of the benefit of order dated 22.01.2015
subject to further orders by the competent authority:

7. All the O.As are accordingly disposed of. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)



(BIDISHA BANERJEE)
MEMBER (J)