

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 629 of 2016

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Anand Mathur, Member (A)

Dipti Kumar Mahanta, aged about 48 years, S/o Late Rai Mohan Mahanta, At-Bada Brahamanamara, PO-Pathara Chakuli, Via-Laxmiposi, Dist-Mayurbhanj, now working as Casual Labour, mail Escort, Baripada-Deuli Line.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist-Khurda-751001.
3. Superintendent of Post Offices, Mayurbhanj Division, At/PO-Baripada, Dist-Mayurbhanj – 757001.
4. Head Post Master, Baripada head Post Office, At/PO-Baripada HPO, Dist-Mayurbhanj-757001.
5. Inspector of Posts Baripada West Sub division, At/PO-Baripada, Dist-Mayurbhanj-757001.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.C.M.Singh, counsel

Heard & reserved on : 8.1.2021 Order on :

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following relief :

"In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash Annexure A/8 and direct the respondents to implement the order passed in OA No. 341/1999 in its letter and spirit and direct the respondents to pay interest on the entire arrears as per GPF rate of interest as if the salary was kept in GPF and the same may be recovered from the officers at fault and further impose heavy cost ion Res No. 3 for harassing a poor casual labourer for last 25 years.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the applicant as in duty bound shall remain ever pray."

2. The brief facts of the case are that the applicant was appointed as Casual labour on 27.6.1988. On 12.4.1991 department introduced the scheme to

regularize casual labourers those who have rendered 206/240 days as on 29.11.1989. Since he was not regularized, he along with some others filed OA 80/1997 before this Tribunal which was disposed of on 6.2.1997 (Annexure A/2) directing the respondent No.2 to dispose of the representation within a period of three months. Since nothing was done by the respondents, the applicant filed OA 341/1999 (Annexure A/3) which was disposed of on 23.3.2003 with the following direction :

“.....I therefore, direct the respondents to take immediate action to mitigate the hardship of the Applicant, grant temporary status on the applicant from the date it was due as per the scheme and to give him the benefit of seniority according to the date of his initial appointment as casual labourer including other consequential service benefits wages etc. as due and admissible under that scheme.”

The respondents approached Hon’ble High Court in WP(C) No. 8723/2004 which was dismissed vide order dated 28.9.2005 (Annexure A/4). The applicant again approached this Tribunal in OA 595/2011 which was disposed of vide order dated 11.10.2011 (Annexure A/5) directing the respondent No.2 to consider and dispose of the representation filed by the applicant dated 20.6.2010 by way of reasoned and speaking order taking into consideration the earlier order dated 23.3.2003 passed in OA 341/1999 within a period of 60 days from the date of receipt of the copy of the order. The applicant also submitted that his co-applicants in OA 80/1997 were regularized after conferment of temporary status but he is waiting since 1992 for conferment of temporary status and consequential regularization in Group D/MTS. The applicant further filed OA 772/2015 which was disposed of at the admission stage on 9.11.2015 (Annexure A/7) with a direction on the respondent No.3 to consider the representation of the applicant dated 13.7.2015 (Annexure A/6) and dispose of the same with a reasoned and speaking order to be communicated to the applicant within a period of two months from the date of receipt of the copy of the order. Respondent No.3 vide order dated 29.1.2016 (Annexure A/8) rejected the case of the applicant stating that the applicant has worked for only six hours and is not sponsored through Employment

Exchange. Being aggrieved by such order dated 29.1.2016 the applicant has approached this Tribunal in the present OA.

3. The respondents have filed their Counter stating therein that the applicant was engaged to escort mails in Baripada-Deoli line in Private buses on 27.6.1988. Since there was no sanctioned post of either departmental or extra-departmental mail escort, the applicant was engaged to escort mails, temporarily on daily rated basis like daily labourers. The applicant filed OA 80/1997 praying for conferment of temporary status on him which was disposed of vide order dated 6.2.1997 with a direction to the respondent No.2 to consider the case of the applicant in accordance with existing rules/circulars, notifications of the department. The case of the applicant was considered and rejected since he did not fulfill the conditions as prescribed in OM dated 12.7.1994 according to which it is mandatory for casual labourers to come through Employment Exchange and the appointment of casual employees other than through Employment Exchange is irregular and such casual labourers cannot be bestowed with temporary status. Further he was not eligible for getting exemption of sponsorship through Employment Exchange since his engagement as casual labourer was not prior to 7.6.1988. He was engaged on 27.6.1988 as a part time casual labourer i.e. after the crucial date of 7.6.1988 and his working hours is only six hours. So in the light of the OM dated 12.4.1991 the applicant is not eligible for conferment of temporary status of Group D because only full time casual labourers with working hours for eight hours fulfilling other terms and conditions as narrated above are eligible for conferment of temporary status. The applicant also filed OA 341/1999 which was disposed of on 23.4.2003 directing the respondents to take immediate action to mitigate the hardship of the applicant and grant temporary status on the applicant from the date it was due as per the scheme and to give him the benefit of seniority according to the date of his initial appointment as casual labourer and all other consequential service benefits etc. as due and admissible under that scheme,. Against the said order of this Tribunal the respondents filed writ petition before Hon'ble High Court and the

same was dismissed on 28.9.2005 but the order was not received by the respondents. When the fact was mentioned in OA 772/2015, a certified copy of the order dated 28.9.2005 was obtained from the Hon'ble High Court after lapse of more than 10 years. Although a reasoned and speaking order was issued to the applicant in compliance of the order dated 9.11.2015 passed in OA 772/2015. Being dissatisfied with that order the applicant has approached this Tribunal in the instant OA. The respondents have also submitted that the averments made by the applicant regarding some other persons namely Bhabasankar Samal and Sanatan Nayak are not correct. Since these two persons are Escorting Mails in different two Mail Lines and their working hours were 8 or more and they were engaged as casual labour prior to the crucial date 7.6.1988, they were regularized vide letter dated 15.4.1998. On the other hand Radhakanta Das working for 8 hours was granted temporary status by virtue of the order of Hon'ble Supreme Court dated 1.8.2014. The respondents have submitted that in view of the foregoing discussions the applicant is not entitled to get temporary status and the present OA being devoid of any merit is liable to be dismissed.

4. We have heard both the learned counsels and gone through the pleadings on record.

5. Basically in this OA the applicant wants implementation of the earlier order passed in his favour on 23.3.2003 in the earlier OA No. 772/2015 (Annexure A/7). The applicant had approached this Tribunal previously in OA 341/1999 which was disposed of vide order dated 23.3.2003 (Annexure A/3), OA 595/2011 disposed of vide order dated 11.10.2011 (Annexure A/5) and OA 772/2015 disposed of vide order dated 9.11.2015 (Annexure A/7). In OA 341/1999 order was passed on 23.3.2003 in his favour for consideration but that order was not complied with by the respondents. There is no dispute that the applicant did not file any contempt petition of any MA for non-implementation of the said order dated 23.3.2003.

6. Learned counsel for the applicant submits that the respondents had filed Writ Petition before Hon'ble High Court challenging the earlier order passed in

the OA and the said Writ Petition was dismissed. It is seen that the said case was dismissed for non-removal of defects as seen from Annexure A/4 in the year 2005. Learned counsel for the respondents submits that the said case was not disposed of on merit by Hon'ble High Court. But the fact remains that no attempt has been made by the respondents for filing any restoration application before Hon'ble High Court. No review application has been filed before this Tribunal for modification of the final order passed in the OA. It is submitted by learned counsel for the applicant that the respondents have taken a false plea that they came to know about the dismissal of the writ petition after about a period of 10 years. It is further submitted that the applicant being a person belonging to Scheduled Tribe and of interior area of Mayurbhanj district, he was not properly advised to file contempt petition or MA for non-implementation of the order passed in the OA.

7. The plea taken by the applicant for the delay in approaching this Tribunal by filing another OA is not acceptable. The applicant cannot take advantage of the mistake or wrong, if any, made by the respondents is not filing any restoration application for the writ petition before the Hon'ble High Court which was dismissed in the year 2005 as seen from Annexure A/4. We have examined the scope of treating the OA as MA in the facts and circumstances of the case in order to examine as to whether any suitable relief can be molded in favour of the applicant. But the principle of law that the delay defeats justice stands in the way. The undue delay and laches on the part of the applicant to approach this Tribunal cannot be ignored. Ignorance of law cannot be an excuse that too undue delay for conferment of temporary status. The claim being stale and old, we are not inclined to come to the rescue of the applicant.

8. Besides that the mere plea that the applicant belongs to Scheduled Tribe and resides in tribal area of Mayurbhanj cannot be a ground to approach this Tribunal by filing a fresh OA at this belated stage. Since the matter was finally decided and adjudicated upon in the earlier OA, therefore the applicant not having filed any contempt petition or MA for implementation of the final order

dated 23.3.2003 passed in OA 772/2015 (Annexure A/7), we are of the view that the present OA is devoid of merit and is liable to be dismissed.

9. Accordingly the OA stands dismissed. There will be no order as to costs.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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