

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.732/2016

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Baidhar Sahoo, aged about 42 years, S/o Batakrushna Sahoo, Working as Sweeper, Farash-cum-Gardner Scavenger, Chandabali Sub-post Office, Chandabali, Dist. Bhadrak, Resident of Patuli, P.O. Baligaon, P.S. Chjandabali, Dist.Bhadrak.

.....Applicant

VERSUS

1. Union of India represented through Director General, Department of Posts, Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist. Khurda.
3. Superintendent of Post Office, Bhadrak Division, Bhadrak, P.O./Dist. Bhadrak.
4. Post Master, Chandbali Sub-Post Office, Chandbali, Dist-Bhadrak.

.....Respondents.

For the applicant : Mr. S. Patra-1

For the respondents: Mr. Mr. A.C. Deo

Heard & reserved on :08.12.2020

Order on :13.01.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

The present O.A. is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “(a)The Original Application be allowed with Cost.
- (b) The order dated. 22.03.2016 under Annexure-A/4 be quashed.
- (c) Respondents be directed to allow the applicant in Temporary Status after completion of one year or two years from his initial appointment as casual labour and in absorbing him in Group-D post w.e.f. the completion of three years thereafter with all other service benefits as per

the Scheme dated 12.04.1991 and 01.11.1995 with financial benefits within a stipulated period of time.

(d) Pass any other order/orders may be passed giving complete relief to the Applicant in the interest of justice and equality.”

2. The facts of the present O.A. are that the applicant was engaged as Sweeper farash-cum-Gardner Scavenjure in Chandbali Sub-post Office w.e.f. 02.11.1992 by the respondents. He is continuing as such on casual basis. For his regularization, he had submitted a representation dated 10.12.2013. Thereafter, he filed O.A. No.1081 of 2014 (Annexure-A/3) which was disposed by this Tribunal vide order dated 17.02.2016 with a direction to respondents to consider and dispose of the representation of the applicant dated 10.12.2013.

3. In compliance of this direction the respondents have considered the representation dated 10.12.2013 and rejected the same vide impugned order dated 22.03.2016 (Annexure-A/4). Being aggrieved, the applicant has filed this OA with the above prayers on the ground that in compliance to the direction of the Hon’ble Supreme Court a scheme was drawn up by the Ministry of Communication, Department of Posts vide letter dated 12.04.1991(Annexure-A/6), Clause-1 of the scheme provides that “Temporary status would be conferred on casual labour in employment as on 29.11.1989 and who continue to be currently employed and have rendered continue service of at least one year”. During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days in a week). Clause-8 provides for the other benefits as indicated therein at par the temporary employee after rendering of three years continuous service after conferment of temporary status.

4. It is further submitted that vide letter dated 01.11.1995 (Annexure-A/7) the benefits were extended to those full time casual labour were engaged/recruited after 29.11.1989 in view of the judgment dated 13.03.1995 of Hon’ble CAT, Ernakulum Bench passed in O.A. No.750/1994. It is further submitted that in

similar circumstances three persons had filed O.A. No.819/1994 which was allowed by this Tribunal vide order dated 23.11.2000 with a direction to the respondents to confer temporary status on the applicants in terms of scheme dated 12.04.1991. Challenging the said order a writ petition vide OJC (C) No.5246 /2001 was filed before the Hon'ble High Court of Orissa, which was dismissed on 29.03.2010. It is also submitted that the applicant fulfilled all required eligibility conditions for being considered to the post in question. Thus, the order rejecting in extending the benefits to the applicant is bad, illegal and discriminatory which violates Articles-14 & 16 of the Constitution of India.

5. The respondents in their counter submitted that as per Annexure-A/1 to the O.A., the applicant claims to be in engagement as a part time contingent worker/casual labourer w.e.f. 01.11.1992, but when asked to submit his original document for verification, he has informed vide his letter dated 06.01.2017 (Annexure-R/1) that he has no official engagement letter with him. The applicant has submitted his original education/transfer certificate vide Annexure-R/2 issued in the year 201 sowing his date of birth as 14.12.1974. His age when compared with reference to his education/transfer certificate and his letter of engagement as per Annexure-A/1 was 17 years 10 months and 18 days as on the date of his engagement on 02.11.1992. It cannot be a case where the applicant being a minor was engaged in a Govt. Department.

6. It is further submitted that the seal below the signature of the Sub Postmaster, Chandbali is of HSG-II rank in the year 1992 while his rank is mentioned as LSG at the top of the engagement letter. This glaring discrepancies in the so called engagement letter and his state of minority of age at the time of reported engagement have given rise to enough ground that the applicant has come up with a claim through this OA on the basis of manufactured or forged documents to seek undue relief from this Hon'ble Tribunal. The department is

weighing the option of resorting to further investigation into this case to establish the manipulation/forgery committed by the applicant for suitable departmental and legal action.

7. When his very claim of engagement without attaining the age of majority and without having genuine document of engagement is questionable in view of the submissions made above, his claim for relief is entirely baseless. The applicant has never been in full time engagement as contingent worker/casual labourer at any point of time. The claim of the applicant that he has been working for more than 12 hours a day is entirely false and fabricated. As per Postal Directorate letters dated 12.04.1991 and 01.11.1995, temporary status can be conferred on a casual labourer who has been in employment as on 29.11.1989, subsequently modified as 01.09.1993, for 8 hours of duty per day (including half an hour lunch time). The applicant according to his own version was engaged as a part-time casual labourer w.e.f. 02.11.1992. He has never been engaged as a full-time casual labourer until now. Moreover, the applicant has submitted a forged engagement letter vide Annexure-A/1 to show that he was in engagement w.e.f. 02.11.1992 though he was a minor on the date of his reported engagement. When his very engagement as contingent worker/casual labourer w.e.f. 02.11.1992 is questionable, he has no rights to claim relief as sought through this O.A. As already explained in detail in the reasoned and speaking order vide Annexure-A/4, the case of the applicant has no merit on the aspects of the relief sought for by him through this OA for which the OA is liable to be rejected. In view of the aforesaid submissions, this O.A. may be rejected with award of cost to the respondents and award suitable penalty against the applicant for filing this OA unnecessarily on the basis of false information.

8. The applicant has filed a rejoinder stating that he was asked by the respondent No.3 to produce the order under Annexure-A/1 wherein, the applicant

replied that the said document was not available with him. The applicant told the same as he had handed over the same to his advocate during filing of the case. There the respondent No.3 directed the applicant to sign in a statement which was prepared and in the good faith the applicant signed. However, the said document under Annexure-R/1 is non-est in the eyes of law in as much as the respondent No.3 has already admitted in his counter filed in O.A. No.1081 of 2014 about continuance of the applicant in the post. It is further submitted that at the time of engagement the applicant was 17 years 11 months and 14 days which is equivalent to 18 years. Thus, the allegation about the applicant was a minor at the time of engagement cannot be accepted at belated stage of 24 hours after. It is further submitted that in view of the notifications dated 17.05.1989, 12.04.1991, and 01.11.1995 and the judgments passed by this Tribunal and different High Courts including the Orissa High Court the applicant is entitled for the benefits as claimed in the O.A.

9. By filing written note of submission the applicant submits that as per the scheme dated 12.04.1991 which was drawn up in compliance to direction of the Hon'ble Supreme Court the applicant is a part time casual labourer. Clause -I of the scheme provides that "Temporary status would be conferred on casual labour in employment as on 29.11.1984 and who continue to be currently employed and have rendered continue service of at least one year". During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days in a week). Clause-8 provides for the other benefits as indicated there in at par the temporary employee after rendering of three years continuous service after conferment of temporary status. It is extremely important to note hear that DG(P) vide its letter dated 17.05.1989 has certified that those casual labourers who were engaged for a period of less than eight hours a day should be disengaged as a part time casual labour. In para -3(iii) of the said

letter made clear that for the purpose of computation of illegible service, half of the service rendered by a part time casual labour should be taken into account i.e. if a part time casual labour has served for 480 days in a period of 2 years, he would be treated for the purpose of recruitments to have completed one year of service as full time casual labour. Further vide letter dated 01.11.1995 the benefits were extended to those full time casual labour were engaged/recruited after 29.11.1989 in view of the judgment dated 13.03.1995 of CAT, Ernakulum Bench passed in O.A. No.750 of 1994. Further it was indicated there in that it has been decided that full time casual labourers recruited after 29.11.1989 and up to 01.09.1993 may also be considered for the grants of benefits under the scheme.

10. It is further submitted that in arrear pay particulars of the applicant submitted w.e.f. 01.01.2006 as per the Directorate Letter dated 22.01.2015, the working of the applicant was indicated as 7.5 hours. Even if the applicant has been working less than 8 hours, then he is entitled for Temporary status after 480 days in two calendar year from the date of his initial engagement. It is pertinent to submit here that in view of the Order dated 05.05.2004 of the Hon'ble High Court passed in W.P(C) No.20506 of 2012, confirming the order dated 08.05.2012 passed by the Tribunal in O.A. No.227 of 2012, the applicant is entitled for regularisation. In similar circumstances, in the case of Abhimanyu Nayak and two others in O.A. No.819 of 1994, this Tribunal allowed the O.A. vide order dated 23.11.2000 which was confirmed in OJC No.5246 of 2001 vide its order dated 29.03.2010 and the benefits were given to the parties.

11. It is submitted that the applicant was engaged when he was minor is redundant as the same was alleged after 24 years while the respondents allowed the applicant to work after receipt of his educational certificate. Further, it submitted that at the time of engagement the applicant was 17 years, 11 months and 14 days which is equivalent to 18 years as per the fraction. It is extremely

important to submit here that the above mentioned objections indicated in the counter are not tenable in eyes of law as the impugned order is silent. Thus, the respondents are stopped to supplement the same by way of affidavit as per the settled principles of law.

12. Applicant's counsel relied on few citations including the following:-

- (1) Order dated 12.04.1991 of Ministry of Communication (Annexure-A/6).
- (4) Order dated 01.11.1995 of ADG (SPM) (Annexure-A/7).
- (3) O.A. No.819 of 1994 of CAT, Cuttack Bench order dated 23.11.2000.
- (4) O.A. No.805 of 2015 of CAT, Cuttack Bench order dated 16.04.2019.
- (5) O.A. No.227 of 2011 of CAT, Cuttack Bench dated 08.05.2012.
- (6) W.P. (C) No.20506 of 2012 of Hon'ble High Court dated 05.05.2014.

13. Respondents' counsel relied on few citations including the following:-

- (1.) Copy of letter dated 06.01.2017 of the applicant (Annexure-R/1).
- (2) Copy of education/transfer certificate of the applicant (Annexure-R/2).

14. I have heard learned counsels for the applicant and the respondents, gone through the pleadings and citations relied upon. The citations relied upon by the respondents are not applicable to the facts and circumstances of this case.

15. The fact that the applicant is still continuing to serve under the respondents as Sweeper farash-cum-Gardner Scavenjurer in Chandbali Sub-post Office (casual labourer) is not disputed. It is claimed by the applicant that he worked as casual labourer, may be as part time, but for more than 480 days and it was submitted by learned counsel for the applicant that this aspect was also admitted by the respondents in the counter filed in earlier OA. That being the position this Tribunal accepts the claim made by the applicant that he has completed 480 days as part time casual labourer under the respondents.

16. Learned counsel for the respondents had brought to the notice of the Tribunal that the date of birth of the applicant is 14.12.1974 as shown in the

school certificate vide Annexure-R/2. And submitted that the ground of rejection for conferring temporary status on the applicant is that he was below 18 years by the cut off date of 29.11.1989 (Annexure-A/7). In this regard learned counsel for the applicant had submitted that on the date of joining of the applicant he was 17 years 11 months and 14 days. The said aspect has also not been successfully controverted or denied by the respondents. It was also submitted by learned counsel for the respondents that it appears that document filed by the applicant vide Annexure-A/1 is forged one. The mere conjecture in the absence of any valid ground or material to support the claim made by the learned counsel for the respondents that Annexure-A/1 is forged document cannot be accepted when there is no such material to support said stand made by learned counsel for the respondents. Therefore, this Tribunal is unable to accept the said stand made at a belated stage by the respondents and do not accept the claim made by the respondent that Annexure-A/1 appears to be not genuine documents.

17. The applicant has been sincerely serving under the respondents and that there is no material to show that any complain or dissatisfaction regarding the work of the applicant for such a long period. In this regard this Tribunal also lies upon the decision of Hon'ble Supreme Court reported in Dr. M.S. Mudhol Vs. Shri S.D. Halegkar 1993(3) SCC 591. The said decision has also been relied upon and referred 2019 (2) SLJ 517 in Varinder Hans Vs. Union of India and others decided on 31.07.2019 in which in similar circumstances the applicant having served so many years he was not permitted to be dismissed from service. In the circumstances it is necessary in the interest of justice to remand back the matter for fresh consideration by the competent authority for conferring 1/30th status on the applicant taking into consideration the observations made and the citations referred to in this order by this Tribunal. The competent authority/respondent shall complete the entire exercise within a period of three months from the date of

receipt of copy of this order and shall pass a speaking and reasoned order, which is to be communicated to the applicant within the said stipulated period. The impugned order at Annexure A/4 is hereby quashed.

Accordingly, the OA is allowed to the above extent but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

K.B.