

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 302 of 2016

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr.C.V.Sankar, Member (A)**

Prasanta Kumar Sethi, aged about 44 years, S/o Bighneswar Sethi, At-Samardafa, PO-Bhalubasa, Via-Rairangpur, Dist-Mauyurbhanj-757043.

.....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. 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.B.P.Nayak, counsel

Heard & reserved on : 27.1.2021 Order on :19.03.2021

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 reliefs :

“In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may be graciously pleased to quash annexure A/2 & A/5 and direct the respondents to implement the order passed in OA No. 51/2012 in its letter and spirit and direct the respondents to confer Temporary Status and regularize the service and 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 for harassing a poor casual labourer for last 26 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 every pray.”

2. The facts of the case in brief are that the applicant was appointed as Mail Escort in Baripada-Sarat Line (Casual Labourer) on 9.7.1989 in Mayurbhanj Division. It is submitted by the applicant that DOP&T issued OM dated

8.4.1991 for granting temporary status to Casual Labourer subject to completion of 240 days as on 29.11.1989. As the applicant has been continuing since 1989, his case is coming within the purview of the scheme and he is entitled to get the benefits of the scheme. The applicant represented to the respondent No.3 for the above scheme on 13.9.2010 but the same being not considered, he approached this Tribunal in OA 51/2012. The Tribunal disposed of the said OA vide order dated 12.9.2014 (Annexure A/1) with a direction to the respondents to consider the case of the applicant under the scheme of conferment of Temporary Status, if he otherwise satisfies the other eligibility criterion as prescribed and the decision in the matter be conveyed to the applicant within 90 days of receiving the order. The respondent No.3 considered the representation of the applicant and rejected the same vide order dated 11.12.2014 (Annexure A/2). Thereafter the applicant submitted a representation dated 6.11.2015 (Annexure A/3) before the Chief Postmaster General, Odisha Circle, Bhubaneswar and since the same was not being considered, he approached this Tribunal in OA 814/2015. This Tribunal disposed of the said OA vide order dated 19.11.2015 (Annexure A/4), with a direction to the Chief Postmaster General, Odisha Circle, Bhubaneswar to consider and dispose of the representation dated 6.11.2015 having regard to each and every aspect of the contentions raised therein and pass a reasoned and speaking order within a period of two months from the date of receipt of the order under intimation to the applicant. It was further directed that status quo in respect of continuance of the applicant shall be maintained till 31.3.2015. Accordingly the respondents passed a speaking order dated 1.2.2016 (Annexure A/5) and communicated the same to the applicant. Moreover, from 2.11.2015 the applicant is not allowed to discharge his duty without any order, notice, show cause or giving any opportunity of being heard. Being aggrieved with the said order dated 1.2.2016 the applicant has approached this Tribunal in the present OA.

3. The respondents have filed their Counter stating that the applicant was engaged to escort mails in Baripada – Udala Line on 10.7.1989 but he was not

engaged against a sanctioned post. 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. It is also submitted that the applicant was engaged as a casual labour without being nominated through Employment Exchange and as per DOPT OM dated 12.7.1994 (Annexure R/2) it is mandatory to engage casual labour through Employment Exchange and the appointment of casual labour otherwise than through Employment Exchange is irregular, and hence such casual labours cannot be bestowed with temporary status. The respondents have further stated that the Tribunal vide order dated 12.9.2014 passed in OA 51/2012 directed the respondents to consider the case of the applicant under the Scheme of Conferment of Temporary Status if he otherwise satisfies the other eligibility criterion as prescribed and the case of the applicant was considered by respondent No.3 and rejected being devoid of merit. The applicant has referred to the cases of Bhabashankar Samal and Sanatan Nayak who have also approached this Tribunal and as per direction of this Tribunal they were regularized after conferment of temporary status. The respondents have stated that this averment is incorrect because these two Escorting Mails were regularized by respondent No.2 as both of them were engaged as casual labourer prior to the crucial date i.e. 7.6.1988 and therefore they were eligible for getting exemption of sponsorship through Employment Exchange. The applicant has also referred to the case of one Radhakanta Das but the respondents have submitted that this person was granted Temporary Status by virtue of the order dated 1.8.2014 of Hon'ble Supreme Court. It is also submitted by the applicant that as the engagement of the applicant was irregular and he was continuing in escorting mails without any approval of the proper authority, the applicant was disengaged from the duty of Mail Escort. The respondents have therefore prayed for dismissal of the present OA being devoid of any merit. The respondents have relied on the judgment of Hon'ble Supreme Court in the case of State of Karnataka -vs- Uma Devi where Hon'ble Apex Court has observed as under :

“appointments made without following the due process of Rules relating to appointment did not confer any right on the appointee and the court cannot direct their absorption, regularization nor make their service permanent.”

4. We have heard both the learned counsels and have gone through the pleadings on record. The applicant is claiming that he was initially appointed as mail escort (casual labourer) on 09.07.1989 and he is continuing in service without any break. He was not working prior to 07.06.1988, therefore the mere fact that he was engaged as such and was doing that job on 08.04.1991 cannot bring his case into the purview of the scheme vide DOPT OM dated 08.04.1991 (Annexure R/3).

5. This Tribunal is unable to accept the submission of learned counsel for the applicant that the language of the said scheme vide Annexure R/3 dated 08.04.1991 would bring his case under the purview of the said scheme since he was in employment as of 08.04.1991. Since the applicant was not engaged prior to 07.06.1988, therefore the said scheme is not applicable to him and no temporary status can be conferred on him as prayed for in this case. The applicant has not been able to produce any material to the satisfaction of this tribunal that he is entitled to conferring of temporary status as per any other scheme which is applicable to him as also to the respondent department.

6. The citations as relied upon by learned counsel for the applicant are not applicable to the facts and circumstances of this case. In OA 388/2010 disposed of on 24.11.2010 as relied upon by learned counsel for the applicant, the applicant in the said case was engaged since 06.05.1985. In the present case there was no sanctioned post of either departmental or extra departmental mail escort. The applicant was engaged temporarily on daily rated basis without being nominated through employment exchange. As the engagement of the applicant was irregular and he was continuing to work without approval of proper authority, the applicant has been disengaged from duty as revealed from counter affidavit. Accordingly the applicant is not entitled to relief in this case.

7. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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