

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 141 of 2016

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

Parsuram Sethi, aged about 46 years, S/o Late Bhramara Sethi, At/PO – Haripur, Via-Singhpur, PS-Nirakarpur, Dist-Khurda, Pin – 752021, now working as 'Daftary' on Daily wage basis in the office of the Sub Regional Employment Officer, Govt. of India, Door No.2, Barak No.4, Unit No. 5, Bhubaneswar-751001.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Ministry of Labour and Employment, DGE&T 3/10, Jam Nagar, New Delhi-110011.
2. Director of Employment Exchange, Govt. of India, Ministry of Labour and Employment, DGE&T 3/10, Jam Nagar, New Delhi-110011.
3. Sub Regional Employment Officer, Coaching-cum-Guidance Centre for SC/ST, Govt. of India, M/O Labour (DGE&T), Door No.2, Barak No. 4, Unit No. 5, At/PO-Bhubaneswar, Dist-Khurda.
4. Section Officer, E.E. III Section, Govt. of India, M/o Labour & Employment, DGE&T, 3/10, Jam Nagar, New Delhi-110011.

.....Respondents

For the applicant : Ms.U.R.Padhi, counsel
Mr.M.Mohapatra, counsel

For the respondents: Mr.M.R.Mohanty, counsel

Heard & reserved on : 28.1.2021 Order on :16.03.2021

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 :

- “(i) To allow the Original Application and notice to show cause to the Respondents No. 2 and 4, why the impugned order under Annexure A/1 shall not be quashed/set aside keeping in view of the judgment held by the Hon'ble Apex Court the term one time measure reported in AIR 2010 SC 2587 in case of State of Karnataka & Ors. –vs- M.L.Kesari & Ors.
- (ii) And, thereby direction may be given to the Respondent No.2 to 4 directing to consider generously, for regularizing the applicant as 'Daftary' keeping in view of continuous length of service vide Annexure A/3 & A/10 series.
- (iii) And thereby to pass an appropriate direction directing the Respondent No.2 to 4 not to take any reversive action without giving priority to the length of service of the applicant.

And

- (iv) thereby pass appropriate orders may deemed just and proper in the facts and circumstances of the case and allow this OA with cost.”

2. The facts of the case in a nutshell are that the applicant has been engaged/appointed by the then SREO on the daily wage basis in the year 1996 in an existing vacant post of 'Daftary' after retirement of one Sri Bana Naik, Daftary in the year 1996, whereby the regular post of Daftary has not yet been filled up and the applicant is continuing in the said post since 1996. Respondent No.3, Sub Regional Employment Officer sent a letter to the respondent No.2 on 30.4.2008 (Annexure A/3) requesting for regular appointment of the applicant since he is working as Daily rated worker since 1996 in the concerned centre. On 30.6.2008 respondent No.3 once again sent a letter to respondent No.4 for consideration of the regularization of the applicant as he has been continuously working in a vacant post since 1996. On 15.7.2009 respondent No.3 sent a letter to the Under Secretary to the Govt. of India for filling up the post of Daftary and further published notice for appointment of Daftary in a regular manner. The applicant made representation dated 17.9.2010 to the respondent No.2 for considering his case for regularization in a vacant post as he is continuing as Daftary. The present SREO sent a letter to the respondent No.2 on 14.8.2014 requesting to accord sanctioned post for contractual MTS in absence of regular staff. Because of this the applicant is going to be prejudiced as he has been working in that vacant post for more than 18 years. On 21.11.2014 the applicant sent a representation to the respondents No. 2 and 3 for his regularization (Annexure A/10 series). Being aggrieved by the inaction of the respondents by not considering his representation he filed OA 543/2015 before this Tribunal which was disposed of by order dated 6.10.2015 directing the respondents to consider and dispose of the representation. In the present OA the applicant has challenged the impugned order dated 7.12.2015 (Annexure A/1) passed by the respondent No.2 in not considering the applicant's representation generously

by virtue of the order dated 6.10.2015 passed by this Tribunal in OA 543/2015.

The applicant has relied on the following decisions in support of his case—

- i) State of Karnataka –vs- Umadevi & Ors. [AIR 2006 SC 1806]
- ii) State of Karnataka –vs- M.L.Keshari [JT 2010(8) SC 96]
- iii) Amarkant Rai –vs- State of Bihar [Civil Appeal No. 2835/2015]
- iv) Pradipta Ku. Das & Ors. –vs- UOI [TA 34/2009, 4/2013 and 5/2013 vide judgment dated 12.3.2018]

3. The respondents have filed their Counter stating that the applicant has been engaged in the year 1996 on break up basis as and when required till 2003 and after April 2003 he has worked continuously. Respondent No.3 has sent letters to respondent No. 2 on 30.4.2008, 30.6.2008 and 14.8.2008 for regular appointment of the applicant. The applicant also filed a representation dated 21.11.2014 for regularization of his service. The said representation has been disposed of on 7.12.2015 by a speaking order rejecting the prayer for regularization by taking into consideration of DOPT OM dated 7.6.1988 which issued policy guidelines regarding engagement of casual workers on daily wage basis in Central Government Offices. It is also submitted that DOPT OM dated 10.9.1993 formulated a scheme called 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993, w.e.f. 10.9.1993. Further it is submitted that according to the instructions issued by DOPT on the regularization of Casual Labour with Temporary Status (CL-TS) vide Om dated 16.10.2014, the scheme titled Casual Labourers (Grant of Temporary Status & Regularization), 1993 is not an ongoing scheme and the temporary status can be conferred on the casual labourers under that scheme only if they were in employment on the date of commencement of the scheme i.e. 10.9.1993. It is also submitted that the applicant was engaged purely on daily wage basis not by any regular appointment process. The respondents have also submitted that the post of Daftary is required to be filled up as per the provisions of the recruitment rules and the applicant's case is not falling within the ambit of the said rules. They have therefore submitted that the

representation of the applicant has been rightly rejected and the present OA is therefore liable to be dismissed.

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

5. The claim made by the applicant that he is continuing in the job in question since 1986 is not supported by any document. The said stand is not supported by the averment made in the Counter. Although there is an averment made in para 4 of the Counter that the applicant is continuing from the month of March 1999 to March 2003 and is continuing till date without interruption. The concerned authority i.e. Sub Regional Employment Officer (respondent No.2) in letter dated 30.4.2008 (Annexure A/3) and letter dated 30.6.2008 (Annexure A/4) had mentioned that the applicant is very sincere, honest and hardworking and is continuing in the post in question from 1996 and had requested to take steps for regularization of the service of the applicant.

6. The applicant had earlier filed OA 543/2015 which was disposed of by this Tribunal vide order dated 6.10.2015 (Annexure A/2). The said OA was disposed of with a direction to the respondents to consider the representation of the applicant dated 21.11.2014. In the impugned order dated 7.12.2015 (Annexure A/1), there is reference to the claim made by the applicant that he is continuing as Daily Rated Worker (DRW) in SGC for SC/ST, Bhubaneswar from March 1999 to March 2003.

7. As per the admitted case of both sides, the applicant is continuing as Daftary/Peon in the office of respondent No. 2 at least since 1999 as against one existing vacancy due to retirement of one Bana Nayak. The applicant has got HSC qualification as per the certificate vide Annexure A/5 series and has made averment to that effect at Para 5 of the OA. The correspondence and the averment made from the side of the respondents also show that the post is necessary for the functioning of the department. In spite of the advertisement dated 26.3.2010 (Annexure A/7) nobody has turned up to join in the post in question. The representation of the applicant has been rejected vide order

dated 7.12.2015 (Annexure A/1) inter alia on the ground that the applicant was not in service as on the cut off date i.e. 10.9.1993 and it was not a continuing scheme.

8. Thus it seems that the applicant has been engaged as against a regular vacant post and there has been no interruption in his service since 1999. He has already served in the department for more than 10 years. He has got requisite qualification of HSC pass certificate. The department has not been able to fill up the said post inspite of issuing advertisement vide Annexure A/7. There is no adverse report against the applicant by the department. Thus it appears that the performance of the applicant is satisfactory till date. There is no specific averments from the side of the respondents if any one time exercise was taken up by them to fill up the vacant post as per the decision at para 44 held by Hon'ble Supreme Court in the case of Secretary, State of Karnataka – vs- Umadevi & Ors. [AIR 2006 SC 1806] and in the case of State of Karnataka & Ors. –vs- M.L.Keshari & Ors. [AIR 2010 SC 2587].

9. The para 44 of decision of Hon'ble Supreme Court in Umadevi (supra) case is extracted below:

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the

constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

10. In the above circumstances the matter is remanded back to respondents/competent authority for fresh consideration of the case of the applicant for his regularization in accordance with decision of Hon'ble Supreme court in para 44 of Uma Devi case and M L Kesari case, as the applicant has been continuing in the job in question since the month of March 1999 without the cover of order of any Tribunal or Court. He is continuing as against one sanctioned post and has got required qualification. The respondent department could not fill the post in question inspite of advertisement issued earlier as discussed in para 7 of this order.

11. In view of the above the respondents are directed to consider his representation in accordance with law and the above decisions and pass a speaking and reasoned order to be communicated to the applicant within a period of three months from the date of receipt of copy of this order.

12. The OA is accordingly disposed of with above observation but in the circumstances without any order as to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)