

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 362 of 2016

Present: Hon'ble Mr. Swarup Kumar Mishra, Judicial Member
Hon'ble Mr. T.Jacob, Administrative Member

1. Madhusudan Parida, aged about 51 years, S/o Gokuli Charan Parida, At – Birijanga, PO: Bamara, PS Patakura, Dist: Kendrapara, Ex- Generator Operator, Railway Mail Service, Bhubaneswar.
2. Ashok Senapati, aged about 33 years, S/o Sanakar Senapati, at – Banamalipur (Golam Md. Patna) PO: Bhakarsahi, PS Balipatna, Dist: Khurda, Ex-generator operator, Railway Mail Service, Bhubaneswar.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Communications, Department of Posts, Dak Tar Bhawan, New Delhi – 110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist – Khurda – 751001.
3. The Sr. Superintendent Railway Mail Service “N” Division, Cantonment Road, Cuttack – 753001.

.....Respondents

For the applicant : Mr. D. K. Mohanty, counsel.

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

Heard & reserved on : 4.3.2021

Order on :23.04.2021

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 quash the order dtd. 19.01.2016 under Annexure A/9.
- ii. To direct the respondents to absorb permanently to the applicants in any MTS post/Group D keeping in view of GI Dept. of Posts circular dt. 17.05.1989 and various judgemade laws;
- iii. To pass any other order/orders as deemed fit and proper.

2. The facts of the case in brief are that the applicant's had approached this Tribunal earlier by filing OA 463/2012 wherein they had prayed for absorption in regular vacancy having regard to instruction of GI Dept of Posts letter dated

17.05.1989. This Tribunal had disposed of the said OA vide order dated 06.07.2015 granting liberty to the applicants to make individual representation to the respondents and with direction to the Respondents to consider the same in light of the relevant rules/instructions and communicate the same in a well reasoned order. The applicant submitted that the respondents rejected the claim of the applicant's in unreasoned and without answering the points raised in the representation. Hence this OA.

3. The respondents have filed their Counter stating that the applicant's were not engaged as casual labourers by the SRO Bhubaneswar through formal appointment memo as full time or part time as they have not come through proper manner i.e through employment exchange. The respondents submitted that the applicant were engaged by private contractors and then by the department on as when required basis for Rs. 1000/- per month to each for 8 hours initially and Rs. 1200/- w.e.f. 01.12.2005. The respondents further submitted that the duty of applicant was for a certain period of time in a day i.e. during power failure.

4. The applicant's filed rejoinder more or less reiterating the same points are raised in the OA.

5. Learned counsel for the applicant had relied on few citations including the following:

- a) Hon'ble Apex Court in the case of Secretary State of Karnataka & others vrs Umadevi (3) and others reported in (2006) 4 SCC 1.
- b) Hon'ble Apex Court in the case of State of Karnataka and others vrs M. L. Keshari and others reported in AIR 2010 SC 2587
- c) Hon'ble Apex Court in Civil appeal No. 2835/2013 in the cse of Amarkanti Rai vrs State of Bihar.

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

7. The applicants joined in the department of the respondents in the year 1998. No appointment letter or offer of appointment in favour of the applicants has been filed by them. Instead they have filed Annexure A/1 series to show

that they were getting wages in the year 2000. The applicants are not working in the said establishment since September 2015. It is submitted by learned counsel for the respondents that the work which the applicants were doing, is being done by newly appointed MTS since 2015. It was further submitted by learned counsel for the respondents that the applicants were intermittently engaged on weekly basis as and when required by the department when there were power crunches/ power cut and they were given lump sum amount and there work was on weekly basis. So they were on contractual basis. It was submitted by learned counsel for the respondents that the applicants were engaged by private contractors from 1.9.1998 and by the department on weekly basis as and when required by paying lumpsum amount as wages. The applicants have filed OA 463/2012 and on the basis of the direction given by this Tribunal vide order dated 06.07.2015 their representation was rejected vide order dated 19.6.2016 (Annexure A/9) wherein it has been mentioned in para 4 that "*on careful study of the case, it is observed that both Sri Madhusudan Parida and Shri Ashok Kumar Senapati are operating generator in CRC, Bhubaneswar, SPC, Bhubaneswar and Bhubaneswar, RMS at the time of need during the power failure since 01-09-1998 on weekly payment of Rs. 250/- up to 30.11.2005 and Rs. 300/- w.e.f. 01.12.2005 without any formal order of engagement*".

8. Learned counsel for the respondents have relied upon the decisions in Manoj Kumar Das Vrs. State of Orissa [2017 OLR (2) pg 583] and another decision in the case of State of Tamilnadu -vs- S. Singamuthu [2017 (4) SCC 1113] in support of their contention.

9. It was submitted by learned counsel for the applicant that there was no pleadings in the Counter that the applicant was engaged intermittently. He has further submitted that it was illogical on the part of the respondents to take the stand that the applicants were engaged by the department as and when there was power crunch, since it is normal that one person is required to standby. But it is seen from the pleadings in the Counter that the applicants were engaged on weekly basis for which they were paid lumpsum amount. There

was no offer of appointment filed by the applicant. There is nothing to show that the applicants were engaged since 1998 till September 2015. Besides that once the applicants are not in job since September 2015, cause of regularization does not arise. There is no satisfactory materials from the side of the applicants to show that they had joined the job in question through the regular recruitment process. It was submitted by learned counsel for the applicant that direction of this Tribunal has not been complied with by the respondents since the Tribunal had directed the respondents to consider the representation of the applicant in accordance with the circular dated 08.05.2012. After going through the materials on record we are of the opinion that the said point has lost its importance. The ground taken by the applicant for having legitimate expectation that the applicants are to be regularized, cannot be accepted in view of the decision of Hon'ble Supreme Court in the case of Secretary, 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.”

10. In view of the above, the OA is dismissed. There will be no order as to costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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