

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 205 of 2020

Present: Hon'ble Mr. Swarup Kumar Mishra, Judicial Member
Hon'ble Mr. C. V. Sankar, Administrative Member.

Sudarsana Behera, aged about 35 years, S/o Shri Surendra Behera, At-Plot No. 1211, At/PO/PS Mancheswar, Bhubaneswar, Dist-Khurda, Pin-751017 working as a Casual worker in the office of the Zonal Accounts Office, CBDT, Aayakar Bhawan, 5th Floor, Rajaswa Vihar, Bhubaneswar.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110001.
2. The Principal Chief Controller of Accounts, Central Board of Direct Taxes, 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. The Deputy Controller of Accounts, Government of India, Ministry of Finance, Office of the Central Board of Direct Taxes, Zonal Accounts Officer, Bamboo Villa (Annex) 169, AJC Bose Road, Kolkata-700014.
4. The Principal Chief Controller of Accounts, Government of India, Ministry of Finance, Office of the Central Board of Direct Taxes, Zonal Accounts' Officer, Bamboo Villa (Annex) 169, AJC Bose Road, Kolkata-700014.
5. Principal Chief Controller of Accounts, Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue, Zonal Accounts Office, Central Board of Direct Taxes, Ayakar Bhawan, 5th Floor, Rajaswa Vihar, Bhubaneswar, Pin – 751007.
6. The Zonal Accounts Officer, O/o the Principal Chief Controller of Accounts, Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue, Zonal Accounts Office, Central Board of Direct Taxes, Ayakar Bhawan, 5th Floor, Rajaswa Vihar, Bhubaneswar, Pin – 751007.
7. Senior Accounts Officer (Estt.), Office of the O/o Principal Chief Controller of Accounts, Central Board of Direct Taxes, 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.

.....Respondents

For the applicant : Mr.J.M.Patnaik, counsel

For the respondents: Mr.G.R.Verma, counsel

Heard & reserved on :18.06.2021

Order on :29.06.2021

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 :

“(a) To quash the OM dated 27/3/2020 under Annexure-A/3 and to direct the Respondents to regularize the applicant in the post of Gr. D/MTS w.e.f. 30.11.2009 i.e. the date when Gr. D/MTS vacancy was made available due to retirement of the regular incumbent and pay him all his service and financial benefits retrospectively;

(b) To pass any other order/orders as deemed fit and proper.”

2. The brief of the case as inter alia submitted by the applicant in the OA is that he was working in the respondents department for over 16 years and was recruited in the year July 2004. The applicant submitted that after retirement of one regular MTS, the Zonal Accounts Officer i.e Respondent No. 6 had written a letter dated 24/25.02.2009 to Head of Office at New Delhi for regularization of the applicant. Thereafter Controller of Accounts, Kolkata vide letter dated 14.10.2009 for regularization of the applicant. It was followed up with letter dated 20.11.2009 & 19.07.2011 on the same subject. The applicant made a representation dated 09.09.2011 and had filed OA No. 501/2017 which was disposed of on 24.08.2018. The respondents vide OM dated 27.03.2020 rejected the claim of the applicant for regularization. Hence the OA.

3. The respondents in their counter inter alia averred that the applicant was working with intermittent breaks whenever the work is available on daily wages basis for a period of three to four hours. The respondents submitted that the appointment of the applicant was contingent in nature without any formal or informal appointment order and the applicant has never participated in recruitment process and have not been selected too. The respondents further submitted that the applicant was not working against any sanctioned/regular post and his engagement was not made through any formal recruitment process or not selected through local employment exchange.

4. Heard learned counsel for both the sides and have carefully gone through materials on records, pleadings, notes of submission and citations relied upon by them.

5. It is the case of the applicant that he is continuing as casual labourer with intermittent break in the respondent department. He had earlier filed OA 501/2017 which was disposed of on 24.8.2018 and final order was passed vide Annexure A/1 as under :

“We also find that in the present OA, the facts and points of law are similar to the OA No. 915 of 2013. In the circumstances, the case laws cited by the Respondents will not be applicable in the present case. Following the order passed by the Division Bench of this Tribunal in OA No. 915/2013 in which one of us was a Member, we adopt the same ratio and following judicial precedent, we direct the respondents to extend the same treatment to the applicant in the present OA provided he is similarly placed and eligible for consideration keeping in view his legal entitlement and the departmental norms.”

On the basis of subsequent order dated 3.2.2020 (Annexure A/2) passed by this Tribunal in the MA No. 479/2019, the impugned order dated 27.3.2020, vide Annexure A/3 has been passed.

6. It is inter alia contended by learned counsel for the applicant that the applicant has been continuing in job in question since 2004. One person named Smt. A.R.Baran has retired on 30th November, 2009 and there is no difficulty of absorption of applicant in the said vacant post. It is also urged on behalf of the applicant that immediate authority of the applicant i.e. the Zonal Accounts Officer (Resp. No. 6) and another officer, Controller of Accounts, Kolkata had recommended in favour of the applicant mentioning therein vide Annexure A/7 that the manpower is necessary for running of organization and they have recommended mentioning the satisfactory performance of the applicant.

7. It is submitted by learned counsel for the respondents that there has been no formal appointment order or engagement order in favour of the applicant and no advertisement was issued to fill up any such post. He had also submitted that the applicant has not been engaged against any sanctioned post. The applicant had relied upon the decision of State of Karnataka & Ors. – vs- M.L.Kesari [SLP(C) No. 15774/2006] and Ravi Verma & Ors. –vs- UOI [Civil Appeal Nos. 2795-2796 of 2018] but the said decisions are not applicable to the facts and circumstances of the present case since there has been no advertisement or notification to fill up any such post in question. There has not been formal engagement or appointment order in favour of the applicant. There is no material to show that the applicant has been engaged against any sanctioned post and the respondent department has categorically taken the stand that he has not been engaged against vacant post.

8. It was urged on behalf of the respondents that the applicant is being engaged on need basis on daily wage basis for about two to three hours per day. It was also urged on their behalf that there are no similarly placed persons who have been given relief in question and therefore the prayer of the applicant to absorb him was not accepted by the department with reference to earlier order passed by this Tribunal in OA filed by the applicant.

9. Hon'ble Apex Court in the case of Secretary, State of Karnataka -vs- Uma Devi [(2006) 4 SCC 1] had held as under:

"34. XXXXX

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

10. Taking into consideration the principle of law passed in the case of Uma Devi (Supra) this Tribunal finds that the applicant has not been able to show that he is entitled for regularization of his job in question, since there is no vacant post, no advertisement and no regular mode of selection. Accordingly we do not find any illegality or irregularity in the impugned order passed by the respondents while rejecting the claim of the applicant for regularization and hence we do not find any merit in interfering in the same. The citations relied by learned counsel for the applicant are not applicable to the facts and circumstances of this case.

11. It was next submitted by learned counsel for the applicant that one interim prayer was made for conferring of 1/30th status on the applicant. Learned counsel for the respondents on the other hand submitted that in the main prayer there is no such mention that the applicant should be conferred with 1/30th status. It is also seen that applicant has not made any such prayer to that effect in the previous case filed by him in this Tribunal. It is also further ascertained that the applicant has not made any such prayer before the respondents department for conferring of 1/30th status on him. Therefore in the absence of any relevant materials and pleadings in this regard this Tribunal is unable to give any final finding with regard to this point. However, it is left open for the applicant to give representation before the concerned competent authority of the respondent department praying for conferring of 1/30th status and the respondent department shall do well to consider it in accordance to law within a period of three months from receipt of representation in question. Representation, if any, be filed by the applicant within three weeks from the date of receipt of the copy of this order.

12. The OA is accordingly disposed of. There will be no order as to costs.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

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