

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO:149 OF 1989.

Date of decision : May, 11, 1990.

Madhab Chandra Sahoo, S/o Arakhita Sahoo,
Ex-Casual Worker, Office of the Postal Stores
Depot, Bhubaneswar.

.... Applicant

-versus-

1. Union of India,
Represented through Postmaster General,
Orissa Circle, Bhubaneswar.
2. Assistant Director(Estt.),
Office of the P.M. G., Orissa,
Bhubaneswar.
3. Deputy Manager,
Postal Stores Depot, Orissa
Bhubaneswar.
4. Superintendent,
Postal Stores Depot, Orissa,
Bhubaneswar.

.... Respondents.

For the applicant : M/s.Jayant Das, B.K.Sahoo,
S.Mallik, P.K.Deo, K.P.Mishra
& S.K. Purohit, Advocate

For the Respondents : Mr. T. Dalai, Addl. Standing
Counsel (Central).

C O R A M :

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (ADMN.)

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *No.*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

*Mr. Sengupta
11/5*

JUDGMENT

N.SENGUPTA, MEMBER (J)

The facts, material for this case lie

in a short compass. The applicant's allegations are that he was appointed as a Casual Worker in the Postal Stores Depot at Bhubaneswar. His appointment was in the May, 1981. At the first stage he was being paid Rs. 5/- per day though his services were utilised as a typist. Subsequently, the Post and Telegraphs Department revised the rate of payment to be made to the Casual Workers and ordered that payment was to be made at the rate of 1/30th of the minimum monthly pay of a Group 'D' employee with D.A. at the rate of 75% of the pay. The Ministry of Communication issued instructions in a letter dated 1.9.1987 (Vide Annexure-2), in accordance with which the applicant's remuneration was revised and he was paid what was due to be paid to a Lower Division Clerk/Typist in Group 'C' category. After the judgment of the Supreme Court delivered on 27.10.1987 in Writ application No.373 of 1986 a Circular was issued from the Office of the D.G. of Posts wherein it was provided that the wages of Casual workers would be at the minimum of pay in the pay scales of regularly employed workers in the corresponding cadre, but without any increments. Thereafter a seniority list of Casual Workers was drawn up copy where of from Annexure-5 to the application. In that seniority list the place of the applicant was at Sl.No.5. On 3.3.1989 the applicant's employment was terminated (Vide Annexure-6). The applicant's

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case is that even though his juniors have been allowed to continue in service, he had been denied the opportunity to continue. Making these allegations, the applicant has prayed for quashing the order at Annexure-6 and to grant him all consequences service and monetary benefits deeming him to have been continuing in the employment as a Casual Worker.

2. The Respondents in their reply, have stated that the applicant was employed to do the job of a Group 'C' employee and that was not a regular employment that was on daily wage basis. Their case is that really there is no sanction under the Rules for making a Casual Recruitment to Group 'C' but however, as there was no ^{ad} sanction post of a typist, the applicant was deputed from the Postal Stores Depot to manage the typing work and he was not given any assurance to be absorbed in the establishment. The respondents have denied the allegations of payment to the applicant at the rate of 1/30th of the minimum of scale of pay of a typist, they have alleged that the applicant was paid wages at the rate payable to a Group 'D' employee. Their further case is that as the applicant was working as a typist and as no further work for a typist was thereof necessity his services were to be terminated.

3. We have heard Mr. K.P. Mishra for the applicant and Mr. T. Dalai, Additional Standing Counsel (Central) for the respondent. There is no dispute that

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Annexure-5 represents the names of the Casual Workers in the order of seniority in employment nor is there any dispute that the applicant was placed fifth in order of seniority in that list. That list was prepared in respect of persons who completed more than one year of service and were eligible to be absorbed as Group 'D' employees. From para-11 of the reply of the respondents it would be manifest that juniors to the applicant are continuing to perform the duties of Group 'D' staff and their employment has not yet ceased.

Annexure-6 is a bald order of termination of employment stating that the service of the applicant was no longer required as communicated by the Superintendent of Postal Stores Depot. Since 1987 there has been no doubt as to how such cases are to be dealt with. In the case of Daily R.C. Labour, P & T Department Vs. Union of India reported in 1987 Supreme Court 2342 the Hon'ble Supreme Court observed that Casual workers should be paid wages at the rate of 1/30th payable to regular employees doing the same type of work. In fact the Postal Department, as would be evident from the copy of the Circular made Annexure-2 to the application, followed those directions. It is not the case of the respondents that the applicant was a single casual labourer or worker engaged for the purpose of doing typing work, the case of the respondents is that the applicant was engaged as a Group 'D' person in the Postal Stores Depot but he was deputed to do typing work in the Depot. When the

*Mem Subj
11-5-90.*

applicant did not refuse to get himself employed as a Group 'D' employee and he was enlisted as one in the panel for doing the work of a Group 'D' employee it was not open to the respondents to terminate his employment while retaining his juniors in employment.

4. Mr. Mishra has vehemently contended that there can be no cessation of typing work in the office, therefore, the applicant should not have been relieved of his employment. We have no materials before us to show that in fact there is any work for a typist in the Postal Stores Depot. But it can not be denied that there is work for a Group 'D' person in which category the applicant was first employed and his position in the seniority list was fixed. We would therefore, quash the order of termination of employment as at Annexure-6 and direct that the applicant should be given employment as a Group 'D' person forthwith as we have no doubt, in view of the continuance of the juniors in employment, about availability of work. On being re-instated, ~~that~~ intervening period from the date of termination of service till re-instatement would count towards his seniority. But however, we are not inclined to grant the prayer for back wages. In this connection, the case of V. Safnudheen Vs. Senior Divisional Engineer, Southern Railway reported in 1989 (11) Administrative

Manalpuri

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cases 740 may be seen.

5. This application is accordingly disposed of leaving the parties to bear their own costs.

K. Balasubramanian
 11/5/90
 MEMBER (ADMINISTRATIVE)

K. Balasubramanian 11/5/90
 MEMBER (JUDICIAL)

