

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NO.145 OF 1995
Cuttack, this the 20th day of November, 1997

Paresh Chandra Mohanta Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
20.11.97

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.145 OF 1995
Cuttack, this the 20th day of November, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Paresh Chandra Mohanta,
aged about 36 years,
son of late Mukunda Chandra Mohanta,
Village-Gholagadia, PO-Kishudahi,
Via-Shyamakhunta,
District-Mayurbhanj, at present
working as Temporary Male Escort, in the office
of S.R.O., Baripada Sorting Post Office,
Pin-757 001

Vrs.

1. Union of India, represented through Secretary, Department of Posts, New Delhi.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, District-Khurda-751 001.
3. Superintendent of Post Offices, Mayurbhanj Division, Baripada-757 001.
4. Post Master, Baripada Head Post Office, At/PO-Baripada, Dist. Mayurbhanj.
5. S.R.O., Baripada Sorting, Baripada-757 001, Dist. Mayurbhanj.
6. Sub-Divisional Inspector (Postal), Baripada West Sub-Division, Baripada-757 001, District-Mayurbhanj Respondents.

Advocates for the applicant - M/s P.R.Dash & T.Rath

Advocate for respondents - Mr. Ashok Misra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 12.4.1991 at Annexure-6 fixing

the remuneration of the applicant at Rs.507/- for conveying /escorting mail in Baripada-Joka line. There is also a prayer for regularising his services under the respondents. Before proceeding further it has to be stated that earlier the applicant and two others had come up before the Tribunal in O.A.No.312 of 1988 which was disposed of in order dated 19.12.1988. In O.A.No.312/88 the applicants including the present applicant had prayed for regularisation of their services under the respondents and also for payment to them on pro-rata basis at par with the departmental employees. While disposing of the earlier O.A.No.312/88, the Tribunal had observed as follows:

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"...We would direct that the observations of Their Lordships in the case of Surinder Singh (supra) be given effect to so far as the present petitioners are concerned whenever vacancy arises and subject to their suitability."

Thus, their prayer for regularisation has already been disposed of by order dated 19.12.1988 in OA no.312/88 and therefore, the applicant in the present O.A. is precluded from raising the same prayer once again. As regards the prayer for payment of wages on pro-rata basis, the Tribunal's order is quoted below:

"....We hope that the competent authority would respect the directives given by the Director General of Posts on the basis of the observations of Their Lordships of the Hon'ble Supreme Court and would grant necessary wages in favour of the petitioners and the arrears should be paid to the petitioners within three months from the date of receipt of copy of this judgment....."

The present application has arisen out of implementation of the above order of the Tribunal with regard to payment of wages on pro-rata basis to the applicant.

2. The facts of this case are that the applicant was appointed as casual labourer on 1.4.1986 for escorting mail in Baripada-Joka Line. As his services were not regularised even after completion of 444 days, he came up to the Tribunal along with two others in O.A.No.312/88 which has already been referred to. After receipt of the order, respondent no.3 sanctioned arrear pay and D.A. to the petitioner with effect from April, 1986 to November, 1988 in order dated 18.5.1989, vide sanction order at Annexure-2. An amount of Rs.7059/- was paid to the applicant as arrears of daily wages on pro-rata basis, vide details as per Annexure-2. The applicant's case is that the calculation on pro-rata basis was based on eight hours of duty put in by the applicant, taking into account the departure and arrival time of Mail Bus from Baripada. The applicant's case is that the Mail Bus leaves Baripada at 11.00 A.M. and arrives is at Baripada at 17 hours. This is borne out by the letter dated 27.7.1994 of the owner of the Bus addressed to Superintendent of Post Offices, Mayurbhanj, Baripada (Annexure-3). At Annexure-4 is a letter dated 26.10.1994 from the owner to the Superintendent of Post Offices, in which he has reiterated the timing from 11.00 A.M. to 5.30

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P.M. with one hour rest at Joka. He has also intimated that the timing given by the R.T.O. in the permit is wrong and the owner has already requested the R.T.O. to correct the timing given in the Permit. The applicant's case is that the Bus leaves at 11.00 A.M. and he has to report for duty at 10.00 A.M. to receive Mail Bags and reach the Bus Stand which is 3 K.Ms. away and he again reaches Baripada at 17 hours and hands over the Mail Bags to respondent no.5 at 18 hours. Thus he is entitled to get wages for eight hours at the rate of Rs.25/-. But respondent no.3 in order dated 12.4.1991 at Annexure-6 has reduced the daily wage to Rs.20.30 paise and fixed his monthly wages at Rs.507.50. The petitioner's grievance is that he should be paid Rs.25/- and not Rs.20.30 per day. I have already dealt with his other grievance about regularisation of his services.

3. Respondents in their counter have submitted that mails in Baripada-Joka Line were being conveyed in the private bus prior to April 1986 under the responsibility of the bus conductors. But as the bus conductors refused to carry mails in their custody, temporary arrangement had to be made and the applicant has been continuing to escort mails in Baripada-Joka Line from April, 1986. He has neither been sponsored by the Employment Exchange and appointed in the job, nor is there any sanctioned post. In accordance with the order of the Tribunal, his wages were fixed on pro-rata basis at Rs.25/- per day. Subsequently, one of the

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Trade Unions requested for re-assessing the wages of Mail Escorts and accordingly, re-assessment was made. The Sub Record Officer, R.M.S."N" Division, Baripada, intimated in his letter dated 13.6.1992 that mails of Baripada-Joka line are despatched at 1030 hours and mails are received back at Baripada Sorting Point at 1700 hours. Secretary to Regional Transport Authority in his memo dated 19.3.1994 (Annexure-R/2) reported that the departure time from Baripada is 11.00 A.M. and arrival time at Joka is 1.00 P.m. and again departure time from Joka is 1.20 P.M. and arrival time at Baripada is 4.30 P.M. The respondents claim that the applicant has to report at 10.30 A.M. to receive the mails and the bus returns back to Baripada at 4.30 P.M., and at 5.30 P.M. he delivers the returning mail at Baripada Sorting Office. Thus, according to the respondents, his duty hours have been correctly fixed at 6 hours 30 minutes and accordingly his wages have been fixed at Rs.20.30 paise per day correctly instead of Rs.25/- which was allowed earlier in order dated 18.5.1989, vide Annexure-2.

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4. The applicant has filed a rejoinder in which he has challenged the bus timings and has also submitted that the exact timing of his taking charge of the mail at Baripada in the morning and returning the mail at Baripada in the evening can be found out on the basis of entries made in the

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mail receipts and despatch register maintained by respondent no.5.

5. I have heard the learned lawyer for the applicant and the learned Senior Standing Counsel appearing on behalf of the respondents and have also perused the records.

6. The first point to be noted in this connection is that in accordance with the order of the Tribunal in O.A.No.312/88, the respondents did fix the wage of the applicant at Rs.25/- per day. At that time, they must have taken note of the hours of duty performed by the applicant. The subsequent exercise has come about at the instance of the ~~Trade~~ Union. Respondents have calculated the duty hours of the applicant on the basis of the timings given by Secretary, Regional Transport Authority, in the permit of the bus. Anybody conversant with suburban bus service in Orissa would know that these buses never run on time and delay of half an hour to one hour in a to and fro journey from 11.00 A.M. to 4.30 P.M. is taken as a matter of course by all including the passengers. As such, it would not be correct to reject the contention of the applicant that his duty hours cover eight hours out of hand going by the timings given by the Regional Transport Authority in the permit of the bus. The applicant correctly submitted that besides the departure and arrival time of the bus, he

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requires another half an hour to collect the mail and take the bus on the outward journey and return the mail to the Sorting Office after the bus returns at 4.30 P.M. Thus the exact timings of the applicant's taking over and returning the mails can be found from the mail receipt and despatch register of Baripada Sorting Office. The applicant has produced a register of R.M.5 from Baripada Sorting Office which shows the details of receipt and despatch of the mail bags from 3.4.1995 to 30.5.1995. From the entries for each day in this register, it is clear that the mail bags are taken over at 10.00 A.M. and generally after the return journey the mail bags are received in Sorting Office at 18.00 hours and thereafter. I have not found any day except 4.4.1995 when the mail bags have been received at 17.30 hours. This lends credence to the applicant's version that he takes over the mail bags at 10.00 A.M. and returns the

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mail bags at 6.00 P.M. or thereafter. In consideration of that, prima facie it appears that the applicant is actually putting in eight hours of duty. I have, however, seen only one register of the Sorting Office which gives the hours for about two months. In view of the above, it is ordered that the respondents should check up the mail receipt and despatch register in the Sorting Office for a number of days and accordingly fix the duty hours of the applicant. It is made clear that the respondents should go by the actual

hours on the average spent by the applicant on duty. They should not be guided by the demand of the Unions in such matters which, in this case, has resulted in reduction of wages for the applicant. The above exercise should be completed within a period of 30 (thirty) days from the date of receipt of copy of this order. Needless to say that the applicant will have the liberty to approach the Tribunal if he has any grievance with regard to the fixation of duty hours in the manner indicated by me earlier.

7. In the result, therefore, the application is allowed in terms of the observation and direction given in paragraphs 1 and 6 of this order. No costs.

Somnath Som,
(SOMNATH SOM) 20.11.97
VICE-CHAIRMAN

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