

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 85 OF 1995
Cuttack, this the 8th day of March, 2000

Sri Sukadev Das 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
8/3/2000

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sri Sukadev Das, aged about 32 years, son of Khetra Mohan Das, Bidanasi, Cuttack-8 Applicant

Advocates for applicant - M/s S.P.Mohanty
P.K.Lenka.

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Cuttack City Division, Cuttack.
3. The Post Master, Chandinichowk Head Post Office, Cuttack.
4. Chief Post Master General, Orissa Circle, Bhubaneswar.

..... Respondents

Advocate for respondents - Mr. Ashok Mishra
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to pay him wages applicable to the post of Packer (Group-D) from 1.3.1994.

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2. The case of the petitioner is that he has been working as Waterman in Chandinichowk Head Post Office since 1978. He has also been engaged to work in Group-D cadre against short/long term vacancies on daily wage basis from 1983. The applicant's name stands at serial no.1 in the seniority list prepared for the persons working on daily wage basis for over 240 days for regular absorption. The applicant had earlier approached

the Tribunal in OA No. 237 of 1994 praying for absorption in Group-D cadre. The order of the Tribunal dated 27.4.1994 is at Annexure-1. At present the applicant is working in the post of Packer (Group-D) which is permanently lying vacant since long, with effect from 1.3.1994 on daily wage basis. But unfortunately he is being paid Rs.35/- per day instead of pay and Dearness Allowance applicable to Group-D post. In spite of his representation for getting wages equal to the post of Group-D employees no decision has been taken on his representation. The applicant has stated that it has been settled by the Apex Court that persons doing similar work are entitled to equal pay and though he is working on daily wage basis in the post of Packer he is not being given the pay of the Packer. In view of this, he has come up in this petition with the prayer referred to earlier.

3. The respondents in their counter have opposed the prayer of the applicant. They have stated that he was working as a part-time Waterman in Chandinichowk Head Post Office from 1.1.1983 and therefore he is entitled to draw the allowances attached to Part-time Waterman of Chandinichowk Head Post Office which has been fixed at Rs.480/- plus D.A. at present. With effect from 1.3.1994 he has been engaged on day to day basis as a Coolie on wage of Rs.35/- per day. The respondents have stated that only E.D. Agents are entitled to get wages at the minimum of the scale of pay of Group-D Packer when they were on daily wage basis in the temporary vacancy of Group-D Packer. The existing provisions regarding arrangement in the temporary vacancy in the post of Group-D Packer do not provide for engagement of Part-time Casual Labourer like the applicant in such vacancy. It is stated that the applicant himself being a casual labourer as Part-time Watchman at Chandinichowk Head Post Office, he is not

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eligible to take up the job of another assignment of casual labourer, i.e., temporary vacancy of Group-D Packer. Because of this he has been engaged as a Coolie on day to day basis and was paid remuneration of Rs.35/- per day. As regards his averment that he has completed 240 days of work, the respondents have stated that in accordance with Director-General, Posts' instruction dated 19.2.1988 at Annexure-R/1 a person should have worked for a minimum period of 240 days in each year for any two years to make himself eligible to compete for Group-D post along with other categories of staff. The applicant is not entitled to be treated as casual labourer on the basis of his engagement on daily wage basis as he has not worked for 240 days in any year as on 1.3.1994. This fact is borne out from the representation of the applicant which is at Annexure-2 of the O.A. About seniority of the applicant the respondents have stated that the position of the applicant has been shown at serial no.12 in the list of persons who are working on daily wage basis. In view of this, his claim for regularisation of his services in Group-D post on the basis of seniority is unjustified because he is not entitled to be appointed in a regular Group-D post overlooking eligibility and seniority of other categories of staff. Earlier the applicant had filed OA No.237 of 1994. In the order dated 27.4.1994 the Tribunal had directed that in case the petitioner makes an application for the post of Packer in Chandinichowk Head Post Office, his case should be considered along with others. It is further stated that according to Director General, Posts' circular dated 24.2.1989 at Annexure-R/2, for filling up of the post of Group-D/Packer, the following categories of staff in order of preference have to be considered:

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- (i) Non-test category;
- (ii) Extra-Departmental Agents;
- (iii) Full-time Casual Labourers; and
- (iv) Part-time Casual Labourers.

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The applicant is a part-time casual labourer and belongs to the last category. Even taking into consideration his seniority his chance for appointment to Group-D post can come up only after exhausting non-test category, Extra-Departmental Agents and full-time casual labourers who are above part-time casual labourers in the above list. As regards the representation of the applicant formaking payment of wages applicable to Group-D posts, the respondents have stated that only representation filed by the applicant was on 31.1.1995 which was received on 7.2.1995 and the present O.A. has been filed the very next week. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has mentioned that he has worked in Group-D post on casual basis from 1984 to 1990 for different number of days in these seven years ranging from 129 to 202 days. On 1.3.1994 he was allowed to work on casual basis in the post of Packer in Chandinichowk Head Post Office in the post of Packer which fell permanently vacant on that date. In OA No.237 of 1994 the applicant had prayed for regularisation of his services and for absorbing him permanently in the post of Packer. The Tribunal in their order dated 27.4.1994 had directed the Department to consider his case for the post of Packer, but no selection process has yet been initiated. The applicant has been allowed to work on casual basis but he has not been paid at par with regular employees in Group-D cadre. While the O.A. was pending the applicant was informed on 25.5.1994 that he would not be allowed to work in the said post with effect from 26.5.1995. The applicant has opposed the averment of the respondents that as he comes under category of part-time casual labourers and the rules do not provide for engagement of part-time casual labourers in the temporary vacancy of Group-D cadre, he is not entitled to be appointed on casual basis against

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temporary vacancy of Group-D post. The applicant has stated that this is not correct because the casual employment in Group-D post in short term vacancies upto 1990 has been recognised by the Postal Department as per the seniority list enclosed by him at Annexure-3. The applicant has stated that his name appears at serial no. 12 and casual Watermen whose names have been shown against serial nos. 1 to 11 have already been absorbed in Group-D posts. He has also stated that the departmental rules do not provide for engagement of Coolies in the vacancies of Group-D cadre. In view of this, the applicant has reiterated his prayer made in the O.A.

5. I have heard Shri S.P. Mohanty, the learned counsel for the petitioner and Shri Ashok Mishra, the learned Senior Panel Counsel appearing for the respondents and have also perused the records. The learned Senior Panel Counsel has filed a letter dated 29.1.1996 enclosing D.G., Posts' circular dated 10.3.1989 and the seniority list of part-time casual labourers of Cuttack City Division upto November 1995 and also another seniority list of outsiders engaged on daily wage basis corrected upto 1.1.1995 which have also been perused by me.

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6. Earlier the applicant had approached the Tribunal in O.A. No. 237 of 1994. The order dated 27.4.1994 of the Tribunal disposing of the O.A. is at Annexure-1. It is noted in this order that in that O.A. the petitioner had prayed for a direction to the respondents to regularise his services as Postal Packer in Chandinichowk Head Post Office. The Tribunal directed that in case the petitioner applies for the post of Packer in Chandinichowk Head Post Office in which regular candidates are considered for appointment, his case should be considered along with others and whoever is found suitable should be appointed. The Tribunal also noted that the petitioner's counsel mentioned that he has

now been placed against serial no.1 in the seniority list. The Tribunal noted that correct position was not known to them and a direction was issued to the concerned authorities to take notice of the same if this is true and correct. The applicant has stated in the present O.A. that notwithstanding the above order of the Tribunal, the respondents have not considered his case and the post of Group-D Packer in Chandinichowk Head Post Office is still lying vacant. He has also stated that he was working in that post from 1.3.1994 but with effect from 26.5.1995 he has not been allowed to work in that post. From the above it is clear that the claim of regularisation made by the applicant against the post of Group-D Packer had earlier been considered by the Tribunal. In the present petition the applicant's prayer is only for getting the wages applicable to the post of Group-D Packer from 1.3.1994. The respondents have stated that the applicant has been engaged on day-to-day basis as a Coolie from 1.3.1994. They have stated that the existing provisions do not provide for engagement of part-time casual labourer against the vacancy of group-D cadre. The respondents have not denied the averment of the applicant that he is working in the vacancy of Group-D Packer. They have merely stated that he is not entitled to work against a vacant Group-D post even on day-to-day basis and that is why he has been engaged as a Coolie and is being paid Rs.35/- per day. The law is well settled that if the applicant works against a Group-D post and performs the functions of Group-D post, in this case as Group-D Packer, then he is entitled to daily wages on the basis of 1/30th of the minimum of scale of pay along with D.A. and ADA thereon. As the respondents allowed the applicant to work against the post of Group-D Packer by terming him as a Coolie, the applicant is entitled to get wages which have to be derived on the

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basis of minimum of the pay scale of Group-D Packer plus DA and ADA thereon per month and thereafter broken into daily wages per day. On the basis of monthly emoluments worked out in that fashion, his daily wages have to be worked out. In view of this, I direct the departmental authorities to pay the applicant daily wages from 1.3.1994 till 26.5.1995 on the basis of one-thirtieth of the minimum of the pay scale for Group-D Packer plus dA and ADA thereon. This should be done within a period of 90(ninety) days from the date of receipt of copy of this order.

Sohm, 7. One further point has to be noted in connection with the case of the applicant. The respondents have pointed out that the applicant comes under the lowest category for being considered for Group-D post, i.e., after non-test category, Extra-Departmental Agents and full-time casual labourers. As a matter of fact there being large number of E.D. employees waiting to be absorbed against Group-D post chances of full-time casual labourers and part-time casual labourers getting Group-D post are very little. In view of this, Director-General, Posts, have issued instruction that such casual labourers/part-time casual labourers should be considered for ED Posts if they apply for the same and have the qualification for the post. The applicant has stated in his rejoinder that in the seniority list his name comes under serial no.12 and those who are above him from serial nos. 1 to 11 have all been absorbed against Group-D posts. As this seniority list has been given by the applicant along with his rejoinder the respondents have not had an opportunity to give their reply with regard to the averment of the applicant on this point. But from the seniority list of part-time casual workers enclosed by the respondents themselves to their Memo referred to earlier it appears that in Cuttack South Division the applicant's name stands against serial no.2. From this seniority list it is also seen that the educational qualification of the

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applicant is Class VIII which is the minimum qualification for consideration for ED post. In view of this and in view of the fact that the applicant has been working as a part-time casual labourer from 1983, according to the averments of the respondents themselves, the respondents should consider the applicant for a suitable ED post in case he applies for the same and has the necessary qualification.

8. In the result, therefore, the Original Application is allowed in terms of the observation and direction above but without any order as to costs.

Somnath Som
(SOMNATH SOM)
8/3/2000
VICE-CHAIRMAN

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