

8

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 558 OF 1998

Cuttack, this the 24th day of May, 1999

Madhusudan Nayak

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*.

G. NARASIMHAM
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

24-5-99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 558 OF 1998
Cuttack, this the 24th day of May, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Madhusudan Nayak,
aged about 31 years,
son of Sansari Nayak,
At-Bijipur, P.O-Baunsiapada,
District-Nayagarh, at present working as
casual labourer in the office of Regional Director, Health &
Family Welfare, Government of India, B/J-25, B.J.B.Nagar,
Bhubaneswar-14, District-Khurda, Orissa....Applicant

Advocates for applicant -M/s B.N.Nayak
B.B.Mohapatra

vrs.

1. Union of India, represented through the Secretary, Ministry of Health & Family Welfare, Government of India, Janpath, New Delhi.
2. Director, National Malaria Eradication Programme, 22-Shamanath Marga, New Delhi-110 054.
3. Regional Director, Health & Family Welfare, Government of India, B.J-25, BJB Nagar, Bhubaneswar, District-Khurda

.....

Respondents

Advocate for respondents - Mr.B.K.Nayak
A.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 regularise his service against a Group-D post with all consequential benefits. By way of interim relief, he has prayed for a direction to the respondents to pay him wages at the rate of 1/30th of the minimum of the pay of Group-D post.

S. Som

2. For the purpose of adjudication of the petition, it is not necessary to go into too many details of the case except to note that according to the applicant he was engaged on daily wages as a Sweeper on 23.12.1986 by Regional Director, Health & Family Welfare, Government of India and has been discharging his duties from that day continuously and without any break. The applicant has stated that from the office orders issued from time to time which are at Annexures A/2 and A/3, it is seen that the applicant's duties are perennial in nature. He is also performing the duty of watch and ward besides the duty of Sweeper. It is further stated by him that in spite of working for more than a decade on daily wage basis, he has not been regularised nor has he been paid one-thirtieth of the salary paid to the regular Group-D staff whose work he is performing. It has been further stated that one Group-D post has fallen vacant consequent upon retirement of one Kailash Chandra Ojha and the applicant has prayed for regularisation against that post in accordance with Government of India circular dated 7.6.1988 at Annexure-A/7.

3. Respondents in their counter have opposed the prayer of the applicant on the ground that he has been engaged as a Sweeper purely on daily wage basis and has performed his duties as and when his services were required. As the applicant's engagement is not against any sanctioned post, the applicant is being paid from the contingencies. It is further stated that there is only one sanctioned post of Sweeper against which someone else is working. To meet the occasional absence of regular Sweeper-cum-Watchman the applicant has been engaged on daily wage basis and is being paid the minimum wages as fixed by the Labour Department of the State Government. It is further stated that regularisation of the service of the applicant can be done only against regular sanctioned post. In the absence of

S. Jam

such a post his service cannot be regularised. On the question of payment of one-thirtieth of the minimum of pay of Group-D post as wages, it has been stated that the prayer of the applicant is under consideration and the claim of the applicant is ^{being} examined in consultation with the Ministry. It is further stated that the post of Peon which has fallen vacant consequent upon retirement of Kailash Chandra Ojha, is under the Family Planning Wing whereas the applicant is being engaged and paid from contingency of National Malaria Eradication Programme and therefore in the post vacated by Kailash Chandra Ojha the applicant cannot be regularised. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri B.N.Nayak, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Counsel appearing for the respondents and have perused the records. The learned counsel for the petitioner has filed the scheme entitled "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" issued by the Department of Personnel & Training which has also been taken note of.

5. The applicant had prayed, by way of interim relief, that he should be paid daily wages at the rate of 1/30th of the minimum of the scale of pay of Group-D post. The prayer for interim relief was taken up in order dated 20.11.1998 and it was observed that as the applicant has been engaged, according to his averment, on daily wages from 1986, the prayer for interim relief would lie over till the filing of the counter by the respondents. After filing of counter on 5.5.1999 the hearing was taken up and concluded on 10.5.1999 and therefore, the prayer for interim relief could not be considered earlier and has to be considered along with the main prayer in the O.A.

W.Jam

6. Learned counsel for the petitioner has relied on the circular dated 7.6.1988 of the Department of Personnel & Training which lays down in paragraph (iv) that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of one-thirtieth of the pay at the minimum of the relevant pay scale plus dearness allowance for work of eight hours a day. From the office orders, copies of which are at Annexures A/2 and A/3, it is seen that in the office order at Annexure-A/2 he has been directed to perform his duties for eight hours a day. In the office order at Annexure-A/3 his duty is for seven hours on every working day, but as against this his duty is for twelve hours from 8.00 A.M. to 8.00 P.M. on other holidays. In view of this, it is clear that the applicant has been given duty of eight hours per day. The respondents have mentioned in their counter that there is one post of Sweeper and two posts of Watchman for the office and to meet occasional absence of the regular Sweeper and Watchmen, the applicant has been engaged on daily wage basis. From this, it is clear that the work performed by the applicant as Sweeper or as Watchman is the same as is being performed by the regular incumbents in the posts of Sweeper and Watchman. In view of this, in terms of the circular dated 7.6.1988 the applicant is entitled to daily wages at the rate of one-thirtieth of the pay at the minimum of the pay scale of Sweeper and Watchman, which is the same for both the posts, plus admissible D.A. on that amount. We, therefore, order that the applicant should be paid daily wages at the 1/30th of the minimum of pay scale of Sweeper and Watchman plus admissible DA on the amount in terms of circular dated 7.6.1988.

S. Som.

7. The next question which arises in this connection is the date from which the applicant will be paid

at the above rate. The applicant has not made any averment as to the date from which he has been entrusted duty for eight hours a day. From Annexure-A/2 which is dated 7.9.1991 it is seen that at least from that day the applicant has been entrusted duty for eight hours per day. As such the respondents having extracted work for eight hours per day from the applicant at least from 9.9.1991, are obliged to pay the applicant at the above rate which came into force from 7.6.1988. The respondents have taken the stand that the claim is time barred, the cause of action having arisen in September 1991 and the applicant having approached the Tribunal in 1998. It is not proper for Government of India to seek to deny rightful wages to a daily wage worker on the technical ground of limitation. But even then taking into consideration this aspect, we order that the applicant be paid at the above rate indicated by us from 1.10.1995 taking into account the applicant's representation at Annexure-A/4 filed on 9.10.1995. This amount should be paid to the applicant within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

8. The main prayer of the applicant is for regularisation. It has been conceded by the learned counsel for the petitioner that under the Scheme issued by Department of Personnel & Training for granting of temporary status and regularisation, a casual worker has to be first granted temporary status and thereafter he has to be regularised in his turn. He has, therefore, prayed for a direction from the Tribunal for grant of temporary status to the petitioner and his subsequent regularisation in his turn. The respondents have pointed out in their counter that the applicant can be regularised only against a vacant sanctioned post and in the absence of that his service cannot be regularised. In accordance with the Scheme, which

S. Jam.

came into force on 1.9.1993 temporary status is to be conferred on all casual labourers who are in employment on the date of issue of Office Memorandum dated 10.9.1993 and who have rendered continuous service of at least one year which means that they must have been engaged for a period of at least 240 days in a year which is reduced to 206 days in case of offices observing five-day week. It is also mentioned in paragraph 4(iii) of the Scheme that such conferment of temporary status would be without reference to creation/availability of regular Group-D post. The applicant has averred in paragraph 4(ii) of his O.A. that he has been working continuously without any break since December 1986. This averment has not been specifically denied by the respondents who have stated in their counter that this is a matter of record and anything beyond record is denied. In view of this, it is clear that the applicant is entitled to be considered for being granted temporary status in terms of the scheme circulated by the Department of Personnel & Training in their Office Memorandum dated 10.9.1993. We, therefore, direct the respondents to consider granting of temporary status to the applicant in terms of the Scheme. This should be done within a period of 90 (ninety) days from the date of receipt of copy of this order and the result thereof intimated to the applicant within fifteen days thereafter. It is made clear that the applicant would be free to approach the Tribunal if he has any grievance with regard to conferring of temporary status on him. It is also directed that after the applicant has been conferred with temporary status, his case for regularisation should be taken up against a sanctioned vacant post in his turn.

W. Jam.

9. The last point to be considered is eligibility of the applicant to be considered for the post which has fallen vacant on retirement of Kailash Chandra Ojha. The respondents have stated that the vacancy

has arisen in the Family Welfare Wing whereas the applicant is being paid out of the contingency of National Malaria Eradication Programme and therefore, the respondents have stated that the applicant cannot be considered against the vacant post in the Family Welfare Wing. We are unable to accept this contention because the source from which the daily wage of the applicant is being paid now, cannot be a factor for considering him for the vacant post in accordance with the Recruitment Rules. In view of this, we direct the respondents that while filling up of the post of Peon in the Family Welfare Wing on retirement of Kailash Chandra Ojha the case of the applicant should be considered along with others strictly in accordance with rules. The applicant need not get his name forwarded from the Employment Exchange for the purpose of such consideration. While considering the case of the applicant, in case he has become age barred, age relaxation should be given to him to the extent of the period of his engagement as casual worker under the respondents. The above direction regarding consideration of the case of the applicant for the above vacant post is subject to the condition that the post has not been filled up on regular basis by the time the respondents receive copy of this order.

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

.....
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.5.99