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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.250 OF 1999
Cuttack, this the 27th day of October, 1999

Sri Trilochan Behera 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 .

27-10-99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 10.99

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

Sri Trilochan Behera, aged about 40 years, son of late
Sukadev Behera, village Gangaraj, PS-Baripada,
District-Mayurbhanj Applicant

Advocate for applicant - Mr.T.Rath

Vrs.

1. Union of India, represented through the Chief Post Master General, Orissa Circle, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda.
2. Director of Postal Services, Headquarters, in the office of the Chief Post Master General, Orissa Circle, Bhubaneswar, At/PO-Bhubaneswar, District-Khurda.
3. Superintendent of Post Offices, Mayurbhanj Division, Baripada, At/PO-Baripada, District-Mayurbhanj.
4. Post Master, Baripada Head Post Office, At/PO-Baripada, District-Mayurbhanj Respondents

Advocate for respondents - Mr.J.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to pay the wages of the applicant as per Director General, Posts' circular dated 10.2.1988 and to confer temporary status on him by giving him the benefit of the scheme dated 12.4.1991. The last prayer is to regularise his service from the date of his initial joining in the Department or in the alternative for a direction to the respondents to absorb the applicant against an ED post befitting his qualification.

2. According to the applicant, he was appointed as a Waterman in Baripada Head Post Office on 3.6.1985 and since that date he has been continuously working in that capacity. His job is to collect water and also to supply the same to individual officials throughout the day. He also sprays water on the khas khas during summer season. For these duties he has to work throughout the day from the opening till the closure of the office. The applicant has passed VIII and has read upto Class IX. He is presently drawing Rs.1635/- per month as contingent allowance though he is working for eight hours a day. It is stated that Hon'ble Supreme Court while deciding the case of some casual labourers of Postal Department, directed in their judgment dated 27.10.1987 for paying wages to such casual labourers at the minimum of the pay of the scale of regular Group-D employees working in the Department. In pursuance of the above decision, the Director General, Posts, in his letter dated 10.2.1988 (Annexure-3) directed payment of wages. The applicant's prayer is for payment of wage in accordance with this circular dated 10.2.1988 of Director-General, Posts. It is further stated that Department of Posts have floated a Scheme called "Casual Labourers Grant of Temporary Status and Regularisation Scheme". A copy of the scheme is at Annexure-4. It is further stated that considering the hardship of employees such as the applicant, Director General, Posts, in his circular dated 17.9.1990 (Annexure-5) has directed all Postal Circles to give preference to casual labourers in the matter of their engagement against ED vacancies. But due to misfortune of the applicant, even though he has completed 13 years of continuous service under the respondents, till today

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temporary status has not been conferred on him nor has he been given the benefit under the above scheme. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant has been working as contingent paid part-time Waterman at Baripada Head Post Office since 3.6.1985 and he is being paid wages on pro rata basis on the minimum pay scale of Group-D employees since 5.2.1986 as per instruction of Director General, Posts, at Annexure-3 of the O.A. It is stated that the applicant is engaged for six hours daily and he is not engaged for the whole day from the beginning of the office till closure or for eight hours daily. It is further stated that the applicant has never been engaged for spraying water on Khas Khas during summer season. The respondents have enclosed the order of engagement of different persons from year to year for giving water to Khas Khas in 1996, 1997 and 1998. It is stated that in summer of 1999 nobody has been engaged for spraying water on the khas khas as the same had already been damaged. It is further stated that in accordance with the instructions of Director General, Posts at Annexure-3 the wage of the applicant was originally fixed at Rs.481/- plus D.A. per month with effect from 5.2.1986. This has been subsequently revised to Rs.1635/- plus admissible D.A. with effect from 3.11.1998 according to the same working hours on pro rata basis on the minimum of the pay scale of Group-D officials. The respondents have denied the claim of the applicant that he works for more than eight hours. It is stated that his wages have been fixed pro rata on the basis of his engagement for six hours. On the question of conferring temporary status the respondents have stated

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that the applicant does not fulfil all the conditions for grant of temporary status as laid down in Annexure-4 of the O.A. It is stated that besides fulfilling the other conditions a casual worker has to be engaged for eight hours a day including half an hour lunch break for grant of temporary status. As the applicant is engaged for six hours he is not entitled for grant of temporary status. It is further stated that Director General, Posts, has indicated in his letter dated 17.9.1990 (Annexure-5 of the O.A.) that only such casual labourers who have been sponsored by the Employment Exchange and who fulfil the conditions and qualification required for ED posts are to be considered for appointment to ED posts. In the instant case, the applicant has not been sponsored by the Employment Exchange at the time of his initial appointment as part-time casual labourer and therefore he is not eligible for absorption against any ED post. It is also stated that the applicant has never applied for his engagement against an ED vacancy. On the above grounds, the respondents have opposed the prayers of the applicant.

4. We have heard Shri T.Rath, the learned counsel for the petitioner and Shri J.K.Nayak, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. The first prayer of the applicant is for payment of wages on pro rata basis relatable to minimum of the pay of the scale of regular Group-D employees of the corresponding grade in accordance with the circular dated 10.2.1988 (Annexure-3). The applicant has stated that he is getting Rs.1635/- as contingent allowance per month. The respondents have stated that on the basis of payment on pro rata basis the applicant was originally allowed Rs.481/-

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per month plus D.A. with effect from 5.2.1986 and this has been subsequently revised to Rs.1635/- plus admissible D.A. per month with effect from 3.11.1998 according to the minimum of the pay scale of Group-D employees. According to the respondents this has been worked out on pro rata basis taking that the applicant's engagement is for six hours per day and not for eight hours, as claimed by him. Thus with regard to this claim, the controversy is only on the short point whether his engagement is for six hours or eight hours per day. The applicant has enclosed his initial order of engagement which is dated 21.6.1985 (Annexure-1). The respondents have admitted that the applicant has been engaged with effect from 3.6.1985 and has been working continuously from that date. In this order of engagement, it has been mentioned that his duty hours are from 10 00 hours to 16 00 hours. This indicates that the applicant's engagement was for six hours a day as per the document enclosed by the applicant himself. The applicant has not enclosed any other document showing that later on his duty hours have been increased to eight hours a day. The averment of the respondents that the applicant is engaged for six hours daily has also not been denied by the applicant by filing rejoinder. In view of this, we hold that the applicant is engaged for six hours daily and as he is being paid pro rata on the basis of minimum of the scale of corresponding Group-D employees, he cannot have any grievance in this regard. His first prayer has therefore become infructuous as he has already been paid the wages in accordance with the circular at Annexure-3.

6. The second prayer is for conferment of temporary status in accordance with the Scheme enclosed by the applicant at Annexure-4. Before considering the

conflicting averments of the parties on this point it is necessary to note that in the circular dated 10.2.1988, in paragraph 2, "casual labourers" have been defined in the following words:

"(ii) The words "casual labourers" would cover full time casual labour, part time casual labour and workers engaged on contingency basis. Part time workers casual or contingency paid will be paid on pro rata basis. For the purpose of payment, no distinction should be made whether the casual labourers or contingency-paid staff are being paid wages or from office contingencies."

From the above it is clear that so far as payment on pro rata wages is concerned, part-time casual labourers have been included in the definition of "casual labourers". In the Scheme at Annexure-4, which has also been relied upon by the respondents in the counter, it has been stated in paragraph 1 that temporary status would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year. Paragraph 2 of the scheme provides that such casual workers engaged for full working hours viz. 8 hours including 1/2 hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group-D official including DA, HRA & CCA. From a plain reading of these two clauses, it does not appear that the Scheme as such excludes consideration of part-time casual labourers for conferment of temporary status. Paragraph 2 of the scheme deals with payment of pro rata wages which, as already noted, is covered by the circular dated 10.2.1988 under which part-time casual labourers are also to be taken as casual labourers. Paragraph 1 of the scheme deals with conferment of temporary status on casual workers on certain

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conditions. This does not exclude part-time casual workers. In any case, as has been laid down in another decision of this Bench in OA No. 963 of 1996 (Smt.S.Ramakumari and another v. Union of India and others) (decided on 28.6.1999), the scheme for conferment of temporary status applies to part-time workers also. While deciding this the Tribunal has taken note of a Division Bench decision of Ernakulam Bench in the case of **M.John Rose vs. Head Record Officer, R.M.S.** and also a Full Bench decision in the case of **Smt.Saku Bai's case** reported in **Kalar's Full Bench Judgments 1991-93 at page 18, .** From these earlier decisions it is clear that the entitlement of conferment of temporary status is applicable to part-time casual labourers also and in view of this, we dispose of this prayer of the applicant with a direction to the respondents that temporary status may be conferred on the applicant within a period of 90 (ninety) days from the date of receipt of copy of this order.

7. The last prayer of the applicant is for regularisation in any ED post in accordance with the circular dated 17.9.1990 (Annexure-5). Before considering this prayer it is to be noted that the applicant has prayed for regularisation from the date of his initial engagement. This prayer is absolutely without any merit and is rejected. Just because of his part-time engagement as a contingent worker he cannot claim regularisation from the very first day of his engagement under the respondents. As regards the circular dated 17.9.1990 the Director-General, Posts, has laid down that for recruitment to Group-D posts, the following categories of employees should be given preference:

(a) Non-test category

(b) E.D. Employees

(c) Casual labourers

(d) Part-time casual labourers

In this circular the Director General, Posts, has noted that as part-time casual labourers come lowest amongst the four categories they hardly get any chance for being absorbed against Group-D posts. In view of this, it has been laid down that casual labourers, whether full time or part-time, who are willing to be appointed to ED vacancies may be given preference in the matter of recruitment to ED posts provided they fulfil all the conditions and have put in minimum service of one year. From this it is clear that the applicant is entitled to be considered for ED vacancy. He has the minimum educational qualification for some of the ED posts as he has passed Class VIII, according to him. But for being considered for ED post, the petitioner has to apply first. The respondents have indicated in their counter that the petitioner had never applied for any ED vacancy. In view of the above, this prayer of the applicant is disposed of with a direction to the respondents that in case the petitioner applies for any ED vacancy and in case he has the minimum qualification for the post and is otherwise eligible, then he should be given preference in accordance with the circular dated 17.9.1990 of Director-General, Posts. We make it clear that while considering the candidature of the applicant in such cases, cases of other part-time casual labourers similarly situated like the applicant, who apply for ED vacancy, should also be considered.

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

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(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
27.10.99
VICE-CHAIRMAN

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