

ORIGINAL APPLICATION NOS. 79 & 80 OF 1999
Cuttack, this the 21st day of July, 1999



CORAM:

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

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In OA 79/99

Bijay Kumar Sahoo,
aged about 37 years
son of Sri Gopal Chandra Sahoo,
Postal Group-D Employee,
Office of the Superintendent,
Postal Stamp Depot,
Bhubaneswar-751 007

In OA 80/99

Sri Raghunath Behera,
aged about 40 years,
son of Sri Dusasan Behera,
Postal Group-D employee,
Office of the Superintendent
Postal Stamp Depot
Bhubaneswar-751 007

Applicants

Advocates for applicants - M/s P.V.Ramdas
P.V.B.Rao

Vrs.

1. Union of India, represented by the Director General (Posts), Dak Bhawan, New Delhi-110 011.
2. Director, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), New Delhi-110 001.
3. Chief Post Master General, Orissa Circle, Bhubaneswar-751 001.
4. Superintendent, Postal Stamp Depot, Bhubaneswar-751 007.

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Respondents

Advocate for respondents - Mr.S.Behera
A.C.G.S.C.

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SOMNATH SOM, VICE-CHAIRMAN

These two Applications have been heard together. Facts of this case are similar. The relief asked for is also the same. The O.As. and counters are also on the same lines. Therefore, one order will cover both the cases, but the facts of each case are indicated separately.

2. In OA No. 79/99 the applicant has stated that he was working as a casual labourer in the Postal Stamp Depot, Bhubaneswar. In compliance with the direction of the Hon'ble Supreme Court, a Scheme was drawn up by the Postal authorities for conferring temporary status on the casual labourers who were in employment as on 29.11.1989. A copy of this Scheme circulated in letter dated 12.4.1991 is at Annexure-1. Under this Scheme the applicant was conferred temporary status with effect from 29.11.1989. At present the applicant is drawing Rs.2780/- with date of next increment on 1.11.1998. In an order dated 30.11.1992 which is at Annexure-2 it was provided that those casual labourers who have rendered three years of continuous service with temporary status shall be treated at 'par with temporary Group-D employees of the Department. Subsequently in order dated 30.10.1998 (annexure-3) the applicant was appointed and absorbed as a regular Group-D employee in the Circle Stamp Depot in the scale of Rs.2550-3200/- with usual allowances. At the time of joining as a Group-D employee the applicant was drawing Rs.2780/-. In order dated 29.1.1998 (Annexure-5) it was indicated that when casual labourers with temporary status are regularised against Group-D posts their pay should be fixed at the minimum of the scale of pay of Group-D post. Accordingly, the applicant's pay has been fixed at Rs.2550/- even though



as a casual labourer with temporary status he was drawing Rs.2780/- . That is why the applicant in OA No. 79/99 has come up with a prayer that the direction contained in Annexures 4 and 5 should be quashed and the applicant's pay should be fixed at Rs.2780/- in the scale of Rs.2550-3200/- . By way of interim relief it was claimed that Superintendent, Postal Stamp Depot (respondent no.4) should be directed not to reduce the pay of the applicant till final disposal of the OA. On the day of admission of the petition on 2.3.1999 the respondents were directed not to reduce the pay of the applicant from Rs.2780/- to Rs.2550/- for a period of fifteen days. That order has continued till date.

3. Applicant in OA No.80/99 was also a casual labourer in Postal Stamp Depot. He was conferred with temporary status on 29.11.1989 in accordance with the Scheme referred to earlier and at present he is drawing Rs.2780/- with the date of next increment as on 1.11.1998. The applicant in OA No.80/99 has also referred to the circular dated 30.11.1992 at Annexure-2 and has averred that in order dated 28.9.1994 at Annexure-3 the applicant, who had earlier been conferred with temporary status with effect from 29.11.1989, was appointed in a regular Group-D post in the Postal Stamp Depot. The applicant has further stated that in accordance with the circular dated 29.1.1998 at Annexure-4 his pay has been fixed at the minimum of the Group-D scale of Rs.2550-3200/- . As at the time of his appointment in Group-D post the applicant as a casual labourer with temporary status was drawing pay of Rs.2780/- , he has made identical prayer for quashing Annexures 4 and 5 and for a declaration that the respondents should fix the pay of the applicant in the

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scale of Rs.2550-3200/- . In this case also by way of interim relief it was ordered that the applicant's pay should not be reduced from Rs.2780/- to Rs.2550/- for a period of 15 days which order has continued till date.

4. In both the O.As. the respondents have filed identical counters and it will only be necessary to refer to the counter filed in OA No.79/99. The respondents have stated that the applicant was not a Group-D employee. He was for all time at par with a Group-D employee and was enjoying some of the benefits. He has been drawing pay at Rs.2780/- Under the provisions of the Scheme at Annexure-1 and also orders at Annexures 4 and 5, the applicant was regularised against a sanctioned post of Group-D. In paragraph 16 of the Scheme it has been specifically mentioned that conferment of temporary status has no relation to availability of a regular Group-D post. As there is no relation of conferment of Group-D status to the availability of sanctioned post, the Department have proposed to reduce the pay of the applicant to the minimum of the scale of Rs.2550-3200/-. The respondents have also submitted that process of reduction of pay was started but it has been stopped as per direction of the Tribunal. It is stated by the respondents that at present the applicant is drawing pay of Rs.2840/- with the date of next increment on 1.11.1999. The respondents have further stated that it was proposed to reduce the pay of the applicant to the minimum of the Group-D pay scale, i.e., to Rs.2550/- in accordance with the guidelines at Annexure-1. From 31.8.1994 the applicant has been absorbed in Group-D post and therefore he is entitled to get Rs.2550/- as the minimum of the Group-D scale. On the above grounds, the respondents have opposed the prayer of the applicant in OA No.79/99.

5. As earlier mentioned, in OA No.80/99 the respondents have submitted an identical counter and therefore it is not necessary to refer to the averments made in the same.

5. We have heard Shri P.V.Ramdas, the learned counsel for the petitioners in these cases and Shri S.Behera, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

7. For the purpose of considering the prayer of the applicants, it will be necessary to refer to Casual Labourers (Grant of temporary status and Regularisation) Scheme which is at Annexure-1. Under paragraph 1 of the Scheme it is provided that temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days which would be reduced to 206 days in case of offices observing five-day week. 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 and CCA. Paragraph 3 of the Scheme is material for the present purpose which is quoted below:

"3. Benefit of increment at the same rate as applicable to a Group-D employee would be taken into account for calculating per month rate wages, after completion of one year of service from the date of conferment of temporary status. Such increment will be taken into account after every one year of service subject to performance of duty for at least 240 days (206 days in establishment observing five days week) in the year."



From the above three paragraphs of the Scheme it is clear that on conferment of temporary status, the casual labourer will start getting daily rates derived from the minimum of the scale of pay of Group-D employee. After one year this will be increased by taking into account the benefit of increment at the same rate as applicable to Group-D employee and on that basis his monthly rate of wage will be worked out after completion of one year. From the above it is clear that before regularisation what a casual labourer with temporary status was getting is the daily rate of wage for the first year and from the second year monthly rate of wage. The wages paid to them are relatable to the minimum of the pay scale of Group-D post in the first year and from the second year onwards the higher rates adding the increment in the pay scale of Group-D employee. But even after adding the increment, the emolument to a casual labourer with temporary status after one year of service remains wage and not pay. For the first year it is a daily rated wage and from the second year onwards it is monthly rated wage. This being so, on their appointment on regular basis in a Group-D post they have to start at the minimum of the pay scale meant for a Group-D employee. As temporary status is conferred on a casual labourer without any reference to availability of any post and as what he gets as casual labourer with temporary status is daily rate of wage in the first year and monthly rate of wage from the second year onwards, on regularisation a casual labourer with temporary status cannot claim that his previous service has to be taken into account while fixing his pay and his higher rate of monthly wages should be protected. While fixing pay in the scale of pay, there is provision for protecting pay which an employee was getting



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earlier. But as in these cases the two applicants were getting daily rated wage and monthly rated wage, their wage cannot be protected. In view of this, we hold that their pay on regularisation has been rightly fixed at the minimum of the scale of pay. The prayer for quashing Annexures 4 and 5 is therefore held to be without any merit and is rejected. In any case Annexure-4 in OA No. 79/99 and Annexure-5 in OA No. 80/99 are nothing but the forwarding letter enclosing the Office Memorandum dated 29.1.1998 of the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training and there is no question of quashing of the forwarding letter.

8. In view of the above, we hold that the applicants have not been able to make out a case for the relief claimed by them. The Original Applications are therefore held to be without any merit and are rejected but without any order as to costs. The stay orders granted earlier also stand vacated.

Sd/-G.Narasimham
Member (Jud)

Sd/-Somnath Som
vice-Chairman
VICE-CHAIRMAN

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Section Officer,
Central Administrative Tribunal
Cuttack Bench, Cuttack.

