

of

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.284/01

Cuttack, this the 16th day of February 2004

Bhramar Mallik Applicant

Vrs.

Union of India & Others Respondent

FOR INSTRUCTIONS

(1) Whether it be referred to the Respondents or not ?
(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

No

Yes.


(B.N. SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO.284/01

Cuttack, this the 16th day of February, 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

Shri Bhramar Mallik, aged about 55 years, S/o. Late Nalu Mallik of Belesarpur, Sompur, Dist.Jagatsinghpur and at present working as Gardener, Cuttack G.P.O., Po-Buxibazar, Cuttack-1.

..... Applicant.

By the Advocate(s) M/s Ashok Mohanty,
T. Rath,
J. Sahu,
H.K. Tripathy,
M.K. Rout,
J.P. Patra

-Vrs-

1. Union of India represented through Chief Post Master General, Orissa Circle, Bhubaneswar, Dist-Khurda.
2. Superintendent of Post Offices, Cuttack City Division, Cantonment Road, Cuttack-1.
3. Sr. Postmaster, Cuttack G.P.O., Po-Buxibazar, Cuttack-1.

..... Respondent(s)

By the advocate(s) Mr. A.K. Bose, Sr.S.C

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN: Shri Bhramar Mallik has filed this O.A praying for direction to be issued to the Respondents to grant him the

benefit of temporary status with effect from May, 1989, to direct them to pay him the differential amount of wages to which he is entitled on fixation of his remuneration on pro-rata basis by taking into consideration the minimum of the revised pay of Group 'D' employees and D.A. as admissible from time to time.

2. The case of the applicant is that he has been working as a part time Gardener at Cuttack GPO from August, 1955. He has been put in not less than 7 hours of work every day by the Respondent since his initial engagement. Then, with effect from 29.03.89, without any notice, Respondent No.3 had reduced his hours of duty from 7 hours to 4 hours and consequently reduction in his wages. However, by virtue of the direction of this Tribunal in O.A No.363/88 cut in wages was restored to 7 hours per day on pro-rata basis and the Respondent was also directed to consider him for regularization in the cadre of Gardener in his turn as per rules. But, his service has not yet been regularized as Gardener. His allegation is that the Respondents are not only implementing the order of this Tribunal, but they are also not following the instructions contained in Director General Posts letter dated 10.02.88, 16.09.92, 28.04.97 and 30.11.98 by virtue of which order the DG Posts had directed the Respondents to make efforts to create

full time casual labour posts to absorb the part time casual labourers who were engaged on or before 01.09.93. He has finally submitted that in view of the aforesaid instructions of the Director General Posts, the Respondents should grant temporary status to him by declaring him as full time casual labourer if necessary combining his services rendered as Gardner and Pump operator.

3. The Respondents have contested the O.A. While admitting that the applicant was employed on February, 1955 as a part time casual worker, they have submitted that payment of wages has been made strictly in-terms of the direction of the Apex Court with respect to this category of workers in writ petition No.373/86. His allowance was fixed vide their Memo No. dt.29.03.88 (Annexure R-3). In the circumstances they have submitted that the applicant could have no grievance about the correctness of the wages paid to him. They have also submitted that in compliance with the order of this Tribunal in O.A. No.363/88 the applicant has been paid wages on pro-rata basis for 7 hours per day from 11.11.88 (Annexure R-4). They have further submitted that with effect from 04.08.00 the applicant has been relieved of the work of Pump Operator and since then he is doing the

gardening work with effect from 05.08.00 and getting his wages on pro-rata basis for 7 hours a day.

4. We have heard Mr. Ashok Mohanty, Ld. Counsel for the applicant and Mr. A.K. Bose, Ld. Sr. S.C. and have also perused the records placed before us.

5. From the discussions made above it is clear that the applicant is being paid wages strictly on the ratio of the judgement of the Apex Court in Writ petition No.373/86 regarding payment of wages to casual labourers including those paid from the contingencies and he is being paid wages for 7 hours as per the order of this Tribunal. This averment of the Respondent has not been controverted by the applicant either in his rejoinder or during the oral argument. Hence nothing more in this O.A. to be adjudicated in this regard in the matter of payment of wages to him.

6. With regard to his prayer for regularization, the Respondents have submitted that as per the judgement of the Apex Court in Civil Appeal No.300-361 of 1994 dated 02.04.97 he being a part time contingent worker he is not entitled to temporary status. This judgement of the Apex Court was rendered in appeal against the order of different Benches of this Tribunal

with respect to part time workers under the scheme introduced by the Respondent Department with effect from 12 April 1991. It was held by some of the coordinating Benches of the Tribunal that "Part time Casual Workers are also covered by the said scheme". The Apex Court after hearing the rival parties in the said Civil Appeal found that the Scheme of 1991 clearly covers only those casual workers who are engaged on full time basis for 8 working hours, and the benefits under the Scheme are to be conferred on those casual workers who are so covered. Finally their Lordship held as follows:-

"The Tribunal in our view, was not right in going to the conclusion that the scheme for conferring temporary status to full time casual laborers is also applicable to the part time casual labourers". From the above discussion the irresistible conclusion is that the case of the applicant is not covered by the Scheme of regularization framed by the Respondent Department in 1991. It is, however, a fact that in this case the applicant has been working since 1955 and he was working for 7 hours daily for long period of term. The Apex Court while ruling that the scheme of 1991 does not cover the part time casual labourers had also observe as follows:-

“ It does not take away the benefit of the absorption conferred on part time casual labourers in terms of the letter of 17.05.89, provided they fulfill the eligibility criteria.”

7. In view of the above I would dispose of this O.A. by directing the Respondents to examine the case of the applicant in-terms of the eligibility criteria laid down in the DG Posts letter dated 17.05.89 for the purpose of absorbing the applicant in a regular post.

I accordingly dispose of this O.A to the extent directed above. No costs.



(B.N. SOM)
VICE-CHAIRMAN