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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 174 and 175 of 2006

Cuttack, this the 17th day of April, 2007.

Bhabasankar Samal and Another	... Applicants
Versus	
Union of India and Others	... Respondent

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

Moorthy
(M.R.MOHANTY)
VICE-CHAIRMAN

B.B. Mishra
(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 174 & 175 of 2006
Cuttack, this the 17th day of April, 2007

C O R A M:

THE HON'BLE MR. M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

O.A.No. 174 of 2006.

Shri Bhabasankar Samal,
aged about 38 years,
Son of late Judhistir Samal,
Village/Post-Haripur,
Via-Amarda, Mayurbhanj,
presently working as Mail Escort Baripada-Amarda line.

..... Applicant

By legal practitioner: Mr. P.K.Padhi, Advocate

-Versus-

1. Union of India represented by Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General (Orissa Circle), At/Post: Bhubaneswar, Dist. Khurda-751 001.
3. Superintendent of Post Offices, Mayurbhanj Division, At/Po-Baripada, Dist. Mayurbhanj-757 001.
4. Assistant Superintendent of Post Offices (I/C), Baripada Central Sub Division, At/Po:Baripada, Dist. Mayurbhanj-757 001.

...Respondents.

By legal practitioner: Mr.R.N.Mishra, ASC

O.A.No. 175 of 2006.

Shri Sanatana Naik,
aged about 44 years,
Son of late Biseswar Naik,
At: Juna, Post: Ashana, Via: Bangiriposi, Dist. Mayurbhanj-757 032
Presently working as Mail Escort Baripada Bhimda Line.

..... Applicant

By legal practitioner: Mr. P.K.Padhi, Advocate

-Versus-

1. Union of India represented by Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General (Orissa Circle), At/Post: Bhubaneswar, Dist. Khurda-751 001.
3. Superintendent of Post Offices, Mayurbhanj Division, At/Po-Baripada, Dist. Mayurbhanj-757 001.
4. Sub-Divisional Inspector (Postal), Baripada East Sub Division, At/Post: Baripada, Dist. Mayurbhanj-757 001.

... Respondents.

By legal practitioner: Mr.R.N.Mishra, ASC

ORDER

MR.B.B.MISHRA, MEMBER(A):

Since common question of fact and law involved, these two case are heard analogously and direct that this common order will govern in both the cases.

Undisputed fact of the matter is that Applicants were working as casual Labours under the Respondent No.2 since

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07.11.1986 continuously. They having not been granted the benefits of the temporary status as per the scheme of the Government of India circulated vide DG Posts, New Delhi letter dated 12.4.91 and communicated vide CO letter dated 23.4.1991, approached this Tribunal in OA No. 80 of 1997. The said OA was disposed of by this Tribunal on 06.02.1997 with liberty to the Applicants to make a comprehensive representation to the Respondents who shall examine the matter in the light of the scheme of the Government of India with regard to conferment of temporary status on casual labourers within a period of three months. On consideration of the representation submitted by applicants, pursuant to the orders of this Tribunal, the Chief Postmaster General, Orissa Circle, Bhubaneswar (Respondent No.2) directed to confer temporary status on the applicants after verification of the records of his engagement prior to 07.06.1988.

The Superintendent of Post Offices, Mayurbhanj Division, Baripada, on verification of records, when found that the engagement of the applicants was prior to 07.06.1988 and they fulfilled all the conditions provided in the Scheme, conferred the

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temporary status on the applicants vide order dated 6th May, 1998 (Annexure-A/4) with immediate effect. Being aggrieved by the action of the Respondents in conferring the temporary status on him prospectively and thereby depriving them their right to be absorbed and other ancillary benefits, they have taken up the matter with their higher authorities through various representations. The same having not yielded any result, they have approached this Tribunal in the present Original Applications filed under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

“...to give a direction to the Respondents more particularly to Respondent Nos.3 & 4 to confer temporary status w.e.f 29.11.1989 with consequential benefits and regularize his service in regular Group D.”

2. Respondents have filed their counter stating that vacancies are declared by the Respondent No.2 indicating the name of the category from which the vacancy of Group D will be filled in. As per Director General (Posts), New Delhi Letter No. 17-141/88-ED & Trg. Dated 17.09.1990, circulated vide respondent No.2 letter No. ST/10-1/65/Pt.III (Rlg) dtd. 20.09.1990, the order

of preference among various segments of eligible employees for recruitment to Group D cadre is as under:

1. Non-test category;
2. ED Employees now called Gramin Dak Sewaks (GDS);
3. Casual labours;
4. Part time casual labours.

3. After conferment of temporary status to the applicant, there was no recruitment to fill up Group D vacancy.

However, approval was received from Respondent No.2 vide Letter No. RE/30-10/2003 dated 4/7.02.2005 to make recruitment to one post of Group D and that vacancy was also kept reserved for Ex-Serviceman candidate. Thereafter another approval was received from Respondent No.2 to make recruitment to one post of Group D vide letter No. RE/30-10/2004 dated 10.02.2005. As per rule, the only one vacancy was filled up from amongst Gramin Dak Sevaks on the basis of seniority cum fitness. As such, though the applicant appealed from time to time for his absorption as regular Group D his case was considered but he was not found eligible, because the only one vacancy was to be filled up from GDS as per Director General Posts, New Delhi Letter No. 37-15/2001-SPB-I dated

30.1.2002, communicated vide Chief Postmaster General, Orissa Circle, Bhubaneswar letter No. RE/30(3)/2002 (Rlg-Corr) dated 05.02.2002. Therefore, they have opposed the prayer of the Applicants.

4. Heard Learned counsel for both sides. The short point involved in these case are whether the Applicants are entitled to conferment of temporary status with effect from 29.11.1989 for having completed the required number of days. In this connection we would like to place reliance on the relevant portion of the instructions issued vide GI Deptt. Of Posts Letter No.45-93/87-SPB I dated 12th April, 1991 and they run thus:

“1. ‘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 (206 days in the case of offices observing five days week);

8. After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group D employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival

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Advance/Flood, Advance on the same conditions as are applicable to temporary Group D employees, provided they furnish two sureties from permanent Government servants of this Department;

16. Conferment of temporary status has no relation to availability of sanctioned regular group D posts."

5. It is not in dispute that Scheme framed by Government of India for grant of temporary status and regularization of the services of casual labourers is not an ongoing scheme [Ref: **Union of India vs. Mohan Pal etc.etc.**, AIR 2002 SC 2001]. Also there is no quarrel that mere completion of 240/206 days work in a year ipso facto will not entitle casual worker to get temporary status. He must also be in employment as on date of commencement of scheme [Ref. **Union of India v. Gagan Kumar**, AIR 2005 SC 3107]. In this case it is seen that pursuant to the direction made by this Tribunal in OA No. 80/97, the Chief Postmaster General, Respondent No.2 had specifically directed to confer the temporary status. If there was any doubt with regard to date of conferment of temporary status, instead of implementing it prospectively, Respondent No.3 ought to have sought for instructions. The scheme clearly envisages that "temporary status" would be conferred on the casual labourers in employment as on

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29.11.1989 and on those who continue to be currently employed and have rendered continuous service of at least one year. Therefore, if at all there was any lack of understanding, then at least benefits could have been extended from the date of order i.e. 12th April, 1991 instead of 6th May, 1998. We find no reasonable ground of conferring the temporary status at a later date when the scheme is not an ongoing one. It is also the case of the Applicants that similarly situated persons have been conferred with temporary status retrospectively i.e. w.e.f. 29.11.1989. But he has produced no document to substantiate that temporary status has been conferred on similarly situated persons retrospectively.

6. We, therefore, dispose of this Original Application with direction to the Respondents to examine this aspect of the matter and if at all any such employee has been conferred with temporary status with effect from 28.11.1989, the Applicants should be granted such benefits retrospectively. In case it is found that the assertion of Applicants is incorrect, then they should be granted the benefits of temporary status w.e.f. 12th April, 1991 with all consequential benefits flowing there from. The entire

exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order.

7. In the result, these OAs are allowed to the extent stated above. There shall be no order as to costs.


(M.R.MOHANTY)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

KNM/PS.