

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No.388 of 2010

Cuttack, this the ~~24~~ November, 2010

Radhakanta Das Applicant
Versus
Union of India & Others Respondents

.....
CORAM

THE HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER
.....

It is the case of the Applicant that he is in continuous engagement as Escort Mails on casual basis since 6.5.1985 and as such, he having fulfilled the norms of the departmental instruction is entitled to conferment of temporary status and subsequently regularization but despite all the above, the Respondents rejected his prayer for conferment of temporary status and regularization and communicated the same in letter under Annexure-A/4 dated 3.5.2010 on the ground that the initial engagement of the applicant was not through employment exchange nor he was in engagement prior to 07.06.1988 so as to be conferred with temporary status which are the conditions stipulated in the departmental instruction for conferment of temporary status and consequential regularization under Annexure-R/2. Hence by filing this OA the Applicant

while seeking to quash the order of rejection communicated in Annexure-/4, prays direction to the Respondents to confer temporary status on the applicant w.e.f. 29.11.1989 and regularize his service in Group D post with all consequential service benefits.

2. By filing counter, Respondents objected to the grant of the relief claimed by the Applicant in this OA. In furtherance to the ground taken in the order of rejection in Annexure-A/4 it has been contended by the Respondents that there was no sanctioned post of either departmental or extra departmental mail escort the Applicant was engaged to escort mails temporarily on daily rated basis like daily labourers to escort mails in Baripada Mantri line in Private Mail Motor Service since 30.7.1988. By filing OA No. 431 of 1988, applicant along with others claimed direction to the Respondents to absorb them on regular basis and for payment on prorata basis at par with the scale of pay of the regular departmental employees. This Tribunal disposed of the matter on 17.5.1990 directing the Respondents to pay the applicant his wages in accordance with the instructions of the DGP&T No.45/95/87-SPB I dated

1002.1988. Copy of the order of this Tribunal dated 17.5.1990 is annexed to the counter as Annexure-R/1. Thereafter the applicant filed OA No. 80/97 seeking conferment of temporary status. The said OA was disposed of by this Tribunal on 6.2.1997 directing to consider the case of applicant in accordance with the instructions of the DGP&T on the subject. Copy of the said order dated 6.2.1997 of this Tribunal is filed along with the counter as Annexure-R/2. The case of Applicant was examined with reference to the instruction under Annexure-R/3 in which it is provided that engagement of casual labourer otherwise than through employment exchange being irregular such employee is not entitled to the benefit of conferment of temporary status. The Director General of Posts and Telecommunication vide letter No.37-23/97-SPB-I dated 19/21.11.97 forwarded copy of the instruction of the Ministry of Personnel and Public Grievances and Pension issued vide OM No. 49014/4/90-Estt.(C) dated 8.4.91 in which it is provided that the conditions of sponsorship through employment exchange for regularization of casual employees against

Group D post would not apply in the case of casual laborers engaged prior to 7.6.88 and who were in service on the date of issue of the order dated 8.4.91. Copy of the said OM dated 8.4.91 has been annexed to this counter as Annexure-R/4. As the engagement of the applicant was w.e.f. 30.7.88 purely on temporary and coolie basis without sponsoring through employment exchange, he is not entitled to the relief claimed in this OA. Accordingly, Respondents have prayed for dismissal of this OA.


3. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length, perused the materials placed on record. By placing reliance on Annexure-A/1 and the recordings made by this Tribunal in earlier order under Annexure-R/1, Learned Counsel for the Applicant disputed the stand taken by the Respondents that the applicant's engagement was only w.e.f. 7.6.88 and as such, he is not entitled to the concession granted i.e. for exemption from coming from Employment Exchange vide DOP&T instruction under Annexure-R/4. Fact remains that while contesting the matter the Respondents in their

C

counter did not dispute the order of engagement of the applicant w.e.f. 6.5.1985 under Annexure-A/1. It is also noticed that the Respondents in clear-cut term admitted before this Tribunal in OA 431/88 that the applicant was engaged from 01.04.1984 to 30.4.1985 as a substitute in place of one Shri Abdul Zahid Ray and during the aforesaid period he worked on the responsibility and security of Mr. Ray. Annexure-R/4 clearly provides conferment of temporary status on the casual Labourers whose engagement was prior to 7.6.88 even though such engagement was without being sponsored through Employment Exchange. In view of the above, I find substantial force in the submission of the Learned Counsel for the Applicant that the impugned order under Annexure-A/4 is without due application of mind and as such the same is liable to be set aside. Accordingly, the order under Annexure-A/4 is hereby quashed and the matter is remitted back to the Respondents to consider/reconsider the case of the applicant for conferment of temporary status and consequent regularization against the vacancy in his turn in accordance with the instructions on

the subject notwithstanding the fact that his initial engagement was not through employment exchange.

4. In the result, with the aforesaid observation and direction this OA stands disposed of. No costs.


(C.R. Mohapatra)
Member(Admn.)