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 CENTRAL ADMINISTRATIVE TRIBUNAL
 CUTTACK BENCH, CUTTACK

O.A.No.314 OF 2010

Cuttack this the 20th day of September, 2013

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
 HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sri Birabara Bahira
 Aged about 38 years
 S/o. of Sri Jayaram Bahira
 Resident of Vill-Durgapur
 PO-Olara
 Via-Borikina
 District-Jagatsinghpur

...Applicant

By the Advocate(s)-Mr.PK.Padhi

-VERSUS-

Union of India represented through

1. The Chief Post Master General
 Orissa Circle,
 At/PO-Bhubaneswar,
 Dist-Khurda-751 001
2. Superintendent of Post Offices
 Cuttack South Division
 At-R.K.Parija Marg
 Po-Cuttack G.P.O.
 Dist-Cuttack-753 001
3. Assistant Superintendent of Post Offices
 Jagatsinghpur Sub Division
 At/PO/Dist-Jagatsinghpur
 Orissa-754 013
4. Sub Post Master
 Borikina Sub Post Offices
 At/Post-Borikina
 Dist-Jagatsinghpur

...Respondents

By the Advocate(s)-Mr.S.B.Jena



ORDERHON'BLE SHRI R.C.MISRA, MEMBER(A):

The applicant has approached this Tribunal praying for direction to be issued to Respondents, i.e., the authorities of the Department of Posts to allow him to continue to discharge his duties as Waterman of Borikina Sub Post Office in the District of Jagatsinghpur and also to release his allowances with effect from 15.6.2009 along with interest.

Facts of the Case:

2. The applicant was employed as a part-time Contingent Paid Waterman by an order dated 18.8.2003 issued by Respondent No.4, i.e., Sub Post Master, Borikina Sub Post Office. Since the applicant was a Graduate he made representation to the concerned authorities for appointment to G.D.S. Posts which were lying vacant. He also approached this Tribunal in O.A.No.233/2009 in which directions were issued by this Tribunal to the Respondents to dispose of the pending representation of the applicant vide order dated 4.6.2009. His representation was disposed of but he was not offered any appointment. On the other hand, he was asked orally not to come to office with effect from 1.4.2010. His pay and allowances were also held up with effect from 15.6.2009 and his representation for release of his pay and allowances elicited no response from the concerned authorities. The applicant has submitted in this O.A. that in spite of his sincere work for seven years his pay and allowances were stopped from 15.6.2009 and he was not allowed to perform his duties with effect from 1.4.2010. He was getting only Rs.20/- per day and managing his family with such a paltry amount and now his livelihood has

been affected. His grievance is that his appointment was terminated on the whims and fancies of the Respondents and even for the period for which he performed his work there was no payment of pay and allowances.

The position taken in the counter affidavit:

3. In the counter affidavit the Respondents have on the other hand submitted that the applicant was appointed as a part time contingent paid waterman with effect from 18.8.2004¹³ in Borikina Sub Post Office by the Sub Post Master of the said Post Office. This was an irregular appointment since Sub Post Master did not have the authority to recruit contingent paid workers. The applicant's name was not sponsored through the Employment Exchange and in fact there was complete ban on any such recruitment since the year 1993. The Post Master of Jagatsinghpur Head Office ~~on detecting~~^{ed} ^R these irregularities and upon his direction in August, 2003, the Sup Post Master, Borikina cancelled this appointment. The applicant, however, has been paid all the admissible daily wages for the days that he has worked. At present the work of contingent paid waterman has been combined with the work of contingent paid Sweeper since 1.4.2010 as per the prevailing ^{rules} ^R rates. It has been admitted in the counter affidavit that in O.A.No.233/2009 this Tribunal gave a direction for disposal of representation of the applicant and in accordance with this direction, the representation was considered and disposed of informing the applicant that there was no vacancy to be filled up at that time. In future if he will apply in response to any notification his case will be considered and disposed of as per the departmental rules and regulations. With regard to the payment of wages, it has been clearly stated in the counter affidavit that the arrears amount of wages for the

period from 20.6.2009 to 31.3.2010 excluding Sundays and Holidays have been sanctioned and the same wages have already been paid. From 1.4.2010 onwards the applicant has not been engaged. In view of the factual position given in the counter affidavit it has been pleaded that the case of the applicant is without any merit.

Reply in the rejoinder:

4. Learned counsel for the applicant has also filed a rejoinder in which he has submitted that he was not aware of any ban order on recruitment. In fact many casual labourers similarly placed who were recruited after 1993 have been allowed to work unlike the applicant and therefore, this is a discriminatory treatment meted out to him. He has further argued that if the selection of the applicant is irregular, even the selection of Sweeper is also irregular as he has been recruited after 1993. The services of the applicant were terminated even without serving any order on him and he was asked not to come to the office from a particular date. The learned counsel for the applicant has further alleged that the applicant was getting wages at the rate of Rs.20/- per day as per the 5th CPC's report and this rate was not revised. In fact the wages from 20.6.2009 to 31.3.2010 have been paid at the reduced rate of Rs.10/- per day as he has approached this Tribunal. The reasons why the reduced allowance was paid from 20.6.2009 to 31.3.2010 have not been clarified by the Respondents.

Discussions:

5. Having heard the learned counsel for both the sides, perused the records. First of all we need to look at the status of the applicant. The

admitted position is that he is a contingent paid daily worker who was employed as a Waterman in the Borikina Sub Post Office. He was getting Rs.20/- per day and was not being paid wages for Sundays and other Holidays. It is, therefore, quite evident that the applicant was not holding any civil post under the Government. Secondly, when we look at the order of appointment at Annexure-A/1, it is clearly stated that the appointment is purely temporary and likely to be terminated at any time without giving any notice. It has been pleaded by the learned counsel for the Respondents that the appointment was made without any authority by the concerned Sub Post Master when there was a ban on any such recruitment. On detection of alleged irregularity the appointment of the applicant was cancelled based upon the direction of the higher authorities. It is also admitted that the employment of the applicant in Borikina Sub Post Office was completely need based and therefore, the Respondents are not bound to continue with the employment of the applicant if they felt that such need has ceased. Considering the fact that the applicant was a daily wage worker who was being paid from contingent funds, and was discontinued from service when the authorities decided that there was no need for him or his employment was irregular, as the case may be, it would not be proper for this Tribunal to issue any direction to the Respondents to allow the applicant to continue to perform his duties. There are no terms and conditions laid down in the order at Annexure-A/1, the violation of which has been established in this case. Having said so, we cannot lose sight of the fact that there are two aspects which have been brought to our notice. The first aspect is that the applicant had made some representation to be

taken in against some vacant posts of GDS category and when his representation did not receive any attention from the authorities, he, therefore, approached this Tribunal in O.A.No.233/2009. The Tribunal in its order dated 4.6.2009 directed the Respondents to consider the pending representation. The Respondents, thereafter, communicated to the applicant that there was no vacancy to be filled up in the office at that point of time and therefore, his prayer could not be acceded to. However, in the said communication it was also indicated that in future if he applies for appointment in response to any notification, his case would be considered and disposed of in accordance with the departmental rules and instructions. Therefore, according to this communication, the Respondents have communicated to the applicant that his future representation would be considered favourably in case ^{of} any vacancy arises. The second aspect of the matter is regarding wages. The learned counsel for the applicant has acknowledged that the wages have been paid for the period in which the applicant has worked, but as alleged, from 20.6.2009 to 31.3.2010 wages have been paid at the reduced rate of Rs.10/- per day. This allegation should have been looked into by the Respondents since it stands to reason that ^{if} ^{he} was getting Rs.20/- per day as daily wages, he should have received the wages at the same rate for the period mentioned above if he has rendered his duties during that period. There appears to be no reason for releasing the wages at the reduced rate if it has been done so. Therefore, the wages as admissible to the applicant for his period of working should be paid fully so that the applicant does not have any grievance in this regard after ^{for} having worked for seven years in Borikina Sub Post Office



Conclusion:

6. Having discussed the necessary aspects of the matter as above, we evidently come to the conclusion that the prayer made by the applicant for direction to Respondents to allow him to continue does not have any merit and therefore, the same is dismissed. However, while dismissing this O.A., we would like to make an observation that the applicant must be paid his full wages for the period that he has worked in Borikina Sub Post Office and if in future there is any further need to utilize the services of this applicant, his case may be considered ^{as per rules} ^h in view of the fact that he has rendered service of seven years as contingent paid worker.

With the above observation and direction, this O.A. is dismissed with no order as to costs.

(R.C.MISRA) 
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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