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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.51 of 2012
Cuttack, this the 12th day of September, 2014

P.K. Sethi Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C. MISRA)
MEMBER(A)

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HON'BLE MR. R.C. MISRA, MEMBER (A)

Sri Prasanta Kumar Sethi,
aged about 40 years,
S/o. Bighneswar Sethi,
At-Bhaubasa, Via-Rairangpur,
Dist-Mayurbhanj,
Pin-757043. Applicant
(Advocates: M/s- P.K. Padhi, J. Mishra)

VERSUS

Union of India Represented through

1. The Director General of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. Chief Postmaster General,
Odisha Circle, Bhubaneswar,
Dist-Khurda-751001.
3. Sr. Superintendent of Post Offices,
Mayurbhanj Division,
At/Po.-Baripada, Dist.- Mayurbhanj, Odisha-757001.

(Advocate: Mr. P.R.J. Dash)

ORDER

R.C. MISRA, MEMBER (A)

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:-

“ To direct the Respondents to confer temporary status to applicant w.e.f. 29.11.1989 or any other appropriate date as deemed just and proper and regularize in Group-D post with all consequential service benefits.”



2. The brief facts of the case of the applicant is that he was appointed as Mail Escort in Baripada-Sarat Mail motors Service line (MMS) by the Respondent No.4 vide order dated 09.07.89 and has been continuing as such. Till date the applicant has already completed sincerely about 22 years of continuous service. In the meantime, the Government of India, in pursuance of the direction of the Hon'ble Apex Court has drawn up a scheme called "Casual laborers (Grant of Temporary Status and Regularization)" vide letter dated 12.04.1991. As per the said scheme temporary status would be conferred on the casual labourers in employment as on 29.11.89 and who has rendered 240 days service (206 days in case of offices observing five days week), which having been subjected to judicial scrutiny the cut off date (s) have been fixed to 01.09.93 and 12.04.91 instead of 29.11.89. As the applicant has been continuing since 1989, his case is coming within the purview of the scheme and is entitled to get the benefits of the scheme. The applicant had represented to the Respondent No.3 for the above scheme on 13.09.10 but the same was not considered. Hence the present O.A. with the relief as quoted above.

3. By filing counter the Respondents-Department have submitted that applicant is not entitled to any relief as it is the standing order of the Government of India that Public Mails are to be conveyed in buses, operated by the State and also in private buses operating in the routes with permission from the State Government on the responsibility of the bus conductor for the safe custody and delivery enroute and at the destination. Carriage of mails in OSRTC buses was being done in this manner upto

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1973. Since 1973 the bus conductors of OSRTC buses refused to carry mails on their responsibility. There was therefore, no other alternative for Respondent- Department to engage Mail Escorts in Mail Carrying OSRTC/Private buses at its costs^l purely as casual engagement for escorting the mail till the matter was sorted out and settled in consultation with the State Government. During the year 1984, there was a meeting between the Postmaster General of Orissa, Bhubaneswar and the Transport Authority and it was decided that the conductors of the OSRTC buses would take mail with effect from 10.10.84. But this order could not be implemented as the Transport Union opposed to this. Thereafter, in consultation with the Transport Authority, though the mails were conveyed by the State Transport buses, the Department had to engage Mail Escorts in each of the Mail Motor Buses. In some routes the private operators were previously conveying mails at their own risk. But consequent upon introduction of Banner Scheme, the Private operators also refused to take mails at their risk and responsibility. Accordingly, the mails were provided with escorts even in private buses. Since there was no post either Departmental or Extra-departmental, Mail peon and Mail escort and also there was ban on creation of posts, Mazdoors purely on daily rates basis were engaged as a temporary measure, in order to avoid dislocation of mails in some mail lines. Since then (1984) this system is continuing in some Private Mail Lines as there is no sanctioned cadre for any post and as such daily wage is being paid. The applicant was engaged purely on temporary basis like daily mazdoors to escort mails in Baripada-Udala line in Private buses on 10.07.1989. Since there

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was no sanctioned post of either departmental or extra-departmental mail escort, the applicant was engaged to escort mails. According to Respondents applicant was engaged as casual labour without being nominated through Employment Exchange. As per Department of Personnel and Training, Government of India O.M. dated 12.07.1994 (Annexure-R/2), it is mandatory to engage casual labour, through Employment Exchange and the appointment of Casual labour otherwise than through Employment Exchange is irregular. Hence, such casual labours cannot be bestowed with temporary status. Since the applicant was not engaged as casual labour through Employment Exchange, his engagement is irregular. It is the case of the Respondents that O.M. dated 08.04.1991 (Annexure-R/3) issued by Ministry of Personnel and Public Grievance and Pension (DOP & Trg) lays down the exemption from being sponsored by the Employment Exchange of casual labourers engaged prior to 07.06.1988. The applicant having been engaged in the year, 1989 can not avail^e of such exemption. Therefore, according to Respondents, the O.A. is liable to be dismissed.

4. Heard Mr. P.K. Padhi, Ld. Counsel appearing for the applicant and Mr. P.R.J. Dash, Ld. Addl. CGSC appearing for the Respondents and perused the materials placed on record.

5. It is the admitted position that the applicant has been working as Mail Escort since 10.07.1989. He was employed to escort mail in Baripada – Udla line in private buses, and since there was ^{no} sanctioned post for the purpose, the applicant was engaged on a casual basis, and was being paid daily wages. Therefore, since last 24 years his services are

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being utilized by the Respondent-Department. The claim of long, continuous service on casual basis is therefore, admitted. It, therefore, follows that, he has a prima facie claim to be considered under Casual Labours (Grant of Temporary Status and Regularization) Scheme formulated by the Government of India.

6. It is gathered from the counter affidavit filed by Respondents that some other mail escorts placed in similar situation had filed O.A. No.80/1997 in this Bench of the Tribunal. As per the direction dated 06.02.1997 of this Bench, the respondent No.2 examined the case, and came to a finding that the applicants were not nominated through Employment Exchange, and since Government of India order dated 12.07.1994 provided that to engage casual labour, nomination through Employment Exchange was mandatory, the engagement was irregular. On this basis, the respondent No.2 took a decision that such Casual Labour cannot be bestowed with temporary status. It has been further pointed out by Ld. Counsel for respondents that as per the instructions of Department of Personnel and Training, the condition of sponsorship through Employment Exchange for regularization of casual labour against Group-D post would not apply to cases of casual labour who were engaged prior to 07.06.1988, and who were in service on the date of issue of order i.e., 08.04.1991. The argument of the respondents' Counsel is that in the present O.A., the applicant was engaged on 10.07.1989, subsequent to the cut-off date of 07.06.1988. So he would not be eligible for getting the exemption as per the letter of Department of Personnel and Training.



7. The Ld. Counsel for the applicant in his written notes has cited the decision of the Principal Bench of this Tribunal in the case of Pradeep Kumar Vs. Ms. Geeta Sagar (2000 Vol.I ATJ 558, in which it was held that casual labour if otherwise satisfy the eligibility qualifications as per the scheme cannot be denied grant of temporary status on the ground that they were not sponsored by the employment exchange. With regard to maintainability of matters relating to regularization of casual labour, the learned counsel has submitted that the Hon'ble High Court of Odisha has held in the case of Hrusikesh Sethy and Others Vrs. State of Odisha and Others (2010 Supplementary Vol.-I, Page 1101 that Administrative Tribunal has the power and jurisdiction to decide such matters. Therefore, this Tribunal has the competence to decide this dispute.

8. I would first of all deal with the matter of maintainability. The Hon'ble High Court of Odisha in W.P (C) No.14340 of 2014 in their orders dated 02.09.2014 have held that in view of the decision of the Hon'ble Apex Court in the case of Union of India & Ors. Vrs. Deep Chand Pandey and another reported in AIR 1993 SC 382, the service disputes involving casual employees and daily wagers of Government Departments will be within the jurisdiction of the Administrative Tribunals to be decided. There is, therefore no doubt that the present O.A. is maintainable before this Tribunal.

9. The applicant has been engaged since long by the Department on casual basis as a Mail Escort, and has been rendering useful service. The respondents now submit that in the light of a Department of Personnel circular dated 12.07.1984 the engagement of the applicant is

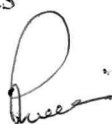


irregular because he was not nominated by the Employment Exchange.

This is an unjust approach. The respondents have utilized the services of the applicant continuously for long years, and they have had no complaints regarding the performance of the applicant. The respondents must not deprive the applicant of his benefits and prospects, when they have engaged the applicant, and continued to use his services without any interruption. Moreover, the Principal Bench of this Tribunal in their order mentioned above has decided similar matter, and held as follows:-


“ In the result with reference to Para 7 of respondents reply to the CP it is made clear to respondents that they cannot deny applicants the grant of temporary status and the consequential benefits ^{flowing} following from such status merely because the later were not engaged through Employment Exchange, if they otherwise satisfy the eligibility conditions prescribed in DOP&T OM dated 10.09.1993 also cannot be denied to them.”

10. The services of the applicant were continuously used and after his working for twenty four years, the respondents cannot deny to him his service benefits as he would be entitled to under the scheme of conferment of Temporary Status, merely on the ground that in the year 1989, when he was engaged as a casual Mail Escort, his name was not sponsored through the Employment Exchange, if he fulfills the other eligible criteria. The applicant is not to blame if he was engaged on casual basis even though he was not sponsored through Employment Exchange way back in 1989. Government is a model employer, and guidelines and instructions cannot be allowed to become an instrument of harassment of casual employee whose services are being utilized continuously for long years. Based upon these considerations, and keeping in view the decision of the Principal Bench of this Tribunal in similar matter, I dispose of this matter with direction to the respondents



to consider the case of the applicant under the scheme of conferment of Temporary Status, if he otherwise satisfies the other eligibility criterion as prescribed. The decision in the matter be conveyed to applicant within 90 days of receiving this order.

The Original Application is allowed to the extent indicated above.


(R.C. MISRA)
MEMBER (A)

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