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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 61 of 2013
Cuttack, this the 11th day of March, 2015

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)

Ambika Prasad Mansingh, 37 years
Son of Sri Rabindranath Mansingh
At/Asibeda, Post: Dhankikot, Koonjhar
Part-time Casual Labour under Resp.No.3 & 4
O/o HRO i.e. under the O/o SRM (K) Dn.,
At/PO/Dist: Jharouguda. Applicant

(Advocate: Mr.P.K.Padhi)

Versus

1. Union of India represented through
Its Secretary cum Director General of Posts
Dak Bhawan, Sansad Marg,
New Delhi-110 016.

2. Post Master General, Sambalpur Region
At/Post/Dist: Sambalpur, Odisha – 768 001.

3. Superintendent
Railway Mails Service (K)Division,
At/PO/Dist: Jharouguda-768 201.

4. Head Record Officer
O/o HRO Jharouguda, RMS (K) Dvn.
At/PO/Dist: Jharouguda. Respondents.

(Advocate: Mr.J.K.Khandayatray, ACGSC)

ORDER

As it appears from the record which are also not in dispute that the applicant earlier approached this Tribunal in OA No. 785 of 2012 alleging that the Respondents suddenly, without any order stopped the applicant from entering into the office to discharge his duty as part time casual labourer. The prayer of the

applicant in this OA is to quash the order dated 12.11.2012 (Annexure A/6) and to direct the Respondents to reinstate him in his post with all consequential benefits including back wages notwithstanding the fact that he was discharging such duty under Respondents 3 & 4 since 2000 and though he made several representations against such action, no heed was paid to such representations. As copy of such representation was not filed, on the oral prayer of the learned counsel appearing for the applicant in the said OA, this Tribunal disposed of the said OA on 17th October, 2012 by granting liberty to the applicant to make representation to Respondent No.3 within a period of seven days with direction to the Respondent No.3 to consider and dispose of the said representation within a stipulated period. Consequently, applicant submitted his representation on 19.10.2012 praying therein "**to direct the HRO to allow him to continue in service as usual and necessary steps may be taken to revise his allowance as per 6th CPC**", which was considered by the Respondent No.3 but rejected for the reason intimated to the applicant in letter dated 12.11.2012 (Annexure A/6).

2. Being aggrieved by the said order, the applicant filed the present OA with prayer to quash the said order of rejection dated 12.11.2012 with further prayer to direct the Respondents to reinstate him in his post with all consequential benefits including back wages. Before going to the points raised in support of the aforesaid relief, it is apt to quote the reason of rejection communicated to the applicant in letter dated 12.11.2012 which runs thus:

> *"The applicant was engaged to perform the duty of part time chowkidar of DO/HRO Jharsuguda. He was performing duty for a period of 5 hours per day. The applicant was not appointed through any process of recruitment mechanism and was engaged to perform the duty as mentioned above on part time basis. Remuneration was also paid to him from time to time."*

3. The applicant's contention is that he was engaged to perform "part time" duty for a period of five hours in a day in the Head Record Office with effect from 10th August, 2000. Though he was discharging duties for more than five hours in a day, he was paid the allowance only for five hours. He was discharging his duty with a hope/expectation to be regularised in future. Though he was discharging his duty to the utmost satisfaction of the authority, without any rhyme or reason he was disallowed to discharge his duty on such part time casual basis and on the other hand the work was being managed through outsiders which is against the law

that one casual hand cannot be replaced by another casual hand. As per Clause (iv) of General Terms and Conditions for employment of casual labour *"Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of pay at the minimum of the relevant pay scale plus dearness allowance for work of eight hours a day"* but by misinterpreting the said provision the respondents denied his actual remuneration to which he was entitled. Next contention of the applicant is that the rejection of his representation on the ground that no casual labourers shall be engaged in the offices of CO, RO and DO (Circle, Regional & Divisional Offices) is not applicable to the present case as the applicant was working as a part time casual labour under Respondent Nos. 3 & 4 which is not a RO, CO or DO.

4. The crux of contentions advanced by the Respondents in their counter is that the applicant was engaged as a part time worker to perform the duty of part time Chowkidar of DO/HRO RMS "K" Dn., Jharsuguda. He was engaged to perform the duty for five horus per day and accordingly he was paid the wages as applicable from time to time. Neither he was appointed against any sanctioned post nor was his engagement even on such part time casual basis through employment exchange. Since he was discharging his duty as a part time casual worker, he is not entitled to the benefit as claimed by him. In this connection, the Respondents have relied on the DGP&T letter No. 45-95/87-SPB-I, dated 12.04.1991. It has been stated that as per the letter No. EST/1-4/Rlg/86 dated 29.11.2010 no casual labour shall be engaged in the administrative offices like CO, RO and DO and the existing practice of engaging casual labour as Waterman, Gardener, Watch and Ward or any other miscellaneous category has been done away with. The Office of the Respondent No. 3 being an administrative office, as per the existing instruction, quoted above, the engagement of the applicant was dispensed with. The applicant had never expressed his desire to perform duty as outside mazdoor against the vacant MTS post in Mail offices. Had it been so, the Head Record Officer who is the Appointing Authority of MTS would have considered him to perform duty like any other outside mazdoor. The duty performed by the applicant as a part time casual labour is not similar to the work performed by regular MTS (erstwhile Group-D) staff and as such he is not entitled to the proportionate payment as claimed by him. In compliance of the order of this Tribunal in OA No. 785 of

2012, the representation of the applicant was duly considered but the same was rejected and communicated to the applicant in the impugned order.

5. Heard Mr. P.K.Padhi, Learned Counsel for the Applicant and Mr.J.K.Khandayatray, Learned Additional Central Government Standing Counsel appearing for the Respondents. After closure of the hearing, learned counsel for both sides have filed their respective written note of submission on the lines of the arguments advanced in course of the hearing. Having heard them at length, perused the records including the written note of submission filed by them.

6. Despite adequate opportunity granted on request, no material has been produced by the applicant in support of his stand that Office of the Respondent No.3 is not a RO, CO or DO.

7. Admitted facts of the matter are that the applicant was engaged as a part time Chowkidar for a period of five hours in a day and that such engagement of the applicant was neither after following due process of selection, or after calling names from employment exchange or against any sanctioned post. A part time casual labour even cannot be equated with a casual worker working full time of eight hours in a day. He is also not a civil post holder. No rule has been produced by the applicant that any right has been accrued on a part time casual worker to claim his continuance. His prayer in the representation was to allow him to continue "as usual" and to revise his allowance as per the recommendation of the 6th CPC whereas in the present OA he has prayed to quash the impugned order and direct the respondents to reinstate him in service with back wages. When admittedly the very engagement of the applicant was on part time casual basis, the question of reinstatement does not arise. It is noteworthy that 'reinstatement' comes into play only when a regular employee (civil post holder) is placed under suspension or terminated from service. The applicant has also not prayed for regularisation of his service. Similarly, no regular or executive instruction has been produced that even a part time casual labour is entitled to pro rata remuneration as per the recommendation of the 6th CPC. Nowhere in the said recommendation there is any such recommendation for payment of remuneration on pro rata basis to the part time casual labour as in the instant case. In view of the above, I find no substance in any of the points raised by the applicant in support of the relief claimed in the OA.

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8. However, I find that the Respondents have candidly stated in their counter that the applicant had never expressed his desire to perform duty as outside mazdoor against the vacant MTS post in Mail offices. Had it been so, the Head Record Officer who is the Appointing Authority of MTS would have considered him to perform duty like any other outside mazdoor. Keeping in mind the aforesaid stand of the Respondents vide order dated 13.12.2013 liberty was granted to the applicant to exercise his option/submit a representation/appeal stating therein to work as a mazdoor against MTS posts within a period of fifteen days and in the event such a representation/option, is made by the applicant the Respondent No.4 was directed to consider the case of the applicant as per rules and pass appropriate orders within a period of one month from the date of receipt of such representation/option. Any progress of the matter has not been canvassed by the learned counsel appearing for either of the side.

9. For the discussions made above, while rejecting the prayer made in this OA, the Respondent No.4 is hereby directed that if any such option/representation/appeal has been preferred in the meantime by the applicant and is still pending then the same may be considered as per Rules and communicate the decision to the applicant in a well reasoned order, within a period of 45 days from the date of receipt of a copy of this order.

10. In the result, this OA stands disposed of. There shall be no order as to costs.

(A.K.Patnaik)
Member (Judicial)

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