

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. 421/2006

[Patna, this 23rd the day of February, 2012]

HON'BLE SHRI AKHIL KUMAR JAIN [MEMBER[A]
HON'BLE SMT. BIDISHA BANERJEE [MEMBER[J]

1. Lalan Prasad, S/o Sri Sita Ram Vishwakarma, Resident of Mohalla- Chowk Shikarpur, P.S. -Chowk Patna City, District- Patna.

.....Applicants

By Advocate:1 Shri J.K. Karn.

VS

1. The Union of India, through the D.G. Cum Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services, O/o the Chief Postmaster General, Bihar Circle, Patna.
4. The Sr. Superintendent of Post Offices, Patna Division.
5. The Asstt. Superintendent of Post Offices, Patna East Sub Division.

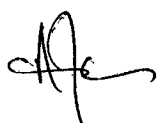
.....Respondents.

By Advocate : Shri S.K. Tiwari.

ORDER

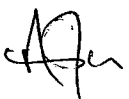
AKHIL KUMAR JAIN [MEMBER[A] Through this O.A. the applicant has sought for following reliefs :-

- (a) Letter No. PF-Lalan Prasad/TS Night Guard/06 dated at Patna the 16.05.2006, issued by the Asstt. Superintendent of Post Offices, Patna East Sub Division (Respondent n.-5), as contained in Annexure A/5, whereby Letter No. PF-Lalan Prasad/TS Night Guard/06 dated at Patna the 13.04.2006, placing the applicant under Suspension in contemplated disciplinary proceeding under Sub Rule (1) of Rule-10 of the CCS (CA) Rules, 1965, as contained in Annexure A/3, has been modified and the applicant has been ordered "Off duty" under the same Rule 10 (1) of CCS (CCA) Rules, 1965, with a sole motive to deny the applicant, his payment of Subsistence Allowance, may be quashed and set aside, with all consequential benefits.
- (b) The cost of litigation, incurred in filing the instant O.A., may



be awarded upon the respondents.

2. The facts of the case are not in dispute. The applicant was engaged as contingency paid night guard at Begumpur Sub Post Office District Patna in the year 1982. He was conferred temporary status w.e.f. 29/11/1989 vide memo dated 05/12/1991 issued by the Senior Superintendent of Post Offices Patna Division as contained in Annexure A/1. In the year 2006 the applicant was served with memo no. PF-Lalan Prasad/TS Night Guard/06 dated 13/04/2006 whereby in exercise of power under Sub Rule (1) of Rule 10 of CCS (CCA) Rule 1965, the applicant was placed under suspension with immediate effect on the ground that disciplinary proceeding was contemplated against him. Subsequently, vide memo dated 16/5/2006 a corrigendum was issued substituting word suspension by "Off duty" in the earlier memo of even no. dated 13/04/2006. It also appears from the record that the applicant was recalled to join duty as ASPO, Patna vide memo PF-Lalan Prasad/TS Night Guard/06 dated 13/7/2006 followed by ASPOs South Sub Division, Patna memo no. A-Masaurhi/07/L dated 09/05/2007 and the applicant is working at Masaurhi P.O. Patna on the post of T/C Night Guard.
3. The issue involved in the case is payment of Subsistences allowance during the period from the issue first memo till the time he was allowed to join duty.
4. Heard learned counsel of both parties.
5. Learned counsel for the applicant submitted that as per departmental rules/instruction contained in G.I., Dept. of Posts, Lr. No. 45-95/87-SPB- I, dated the 12th April 1991) read with clarification, issue vide G.I. Dept of Posts, Lr.No. 45-56/92, dated the 1st March, 1993, a casual labour after rendering 3 years of service continuously after conferment of temporary status was to be treated for at par with the temporary group D employees. Furthermore, in case of misconduct, services of temporary status casual labourers could be dispensed with only after giving due opportunity on the lines of those available to regular employees.
6. The learned counsel for the applicant further submitted that the applicant, who was granted temporary status long back, was serving against the post of night guard to the best of his ability and to entire satisfaction of administration. He never committed any



misconduct. As a disciplined employee and knowing well that mere suspension was not punishment and that the reasons for suspension were also not known to him, he had no option but to wait for the charge sheet. Since no payment of subsistence allowance was made to him, he submitted a representation to Assistant Superintendent of Posts Offices East Sub Division, Patna praying for payment of subsistence allowance. In response the applicant got the letter containing corrigendum whereby "suspension" was substituted by "off duty". The learned counsel for the applicant submitted that there was no provision for "off duty" under rules 10 of CCS CCA Rule, 1965; rather in the entire service of jurisprudence. Subsistence allowance had been declared as a fundamental right of an employee. The applicant had therefore, been subjected to illegality and arbitrariness leading to denial of fundamental right in the shape of denial of subsistence allowance as a result of which the applicant was facing serious financial crisis. Hence this OA.

7. The respondents in their written statement, have stated that on 10/4/2006 it came to light that a fraud had been committed at Begampur P.O. Patna for which a detailed enquiry was to be made. For the said purpose it was necessary to spare the applicant from duty of contingency paid Night Guard. Therefore, A.S.P.Os. East Sub-Division, Patna issued letter no. PF Lalan Prasad/TS Night Guard/06 letter dated 13/4/2006. As there is no provision in departmental rules for payment of subsistence allowance to contingency paid employee, the word suspension which was inadvertently mentioned in the said letter, was amended vide corrigendum dated 16/5/2006. It is further contention of the respondents that the word "off duty" did not mean that the service of contingency paid employee had been dispensed with. It only amounted to putting him "off duty" temporarily pending the enquiry. Learned counsel for the respondents submitted that corrigendum was issued before submission of representation by the applicant and there was no illegality and arbitrariness in the order passed by the authorities.

8. We have carefully perused the record and considered the submissions made by the parties.

9. From the circular dated 12/04/1991 cited by the applicant as contained in Annexure A/2, it is clear that the Department of Posts in compliance with the directions of the Hon'ble



Supreme Court formulated a "Scheme for Casual Labour for grant of Temporary Status and Regularization." The scheme stipulates that 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 case of officer observing five days week. The other provisions in the scheme, inter alia, include manner of fixation of wage to be paid at daily rates, leave entitlements, counting of 50% service under temporary status for the purpose of retirement benefits after regularization as a regular Group-D employee, entitlement of productivity linked bonus etc. It is also stipulated that after rendering 3 years of 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 GPF and they would also be eligible for grant of festival advance/food advance. Regarding dispensing with services, it is stipulated that temporary status does not debar dispensing with the service of a casual labourer after following the due procedure and that if a labourer with a temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services would be dispensed with. There is also provision for regularization of casual labourer subject to availability of vacancies. Subsequently, some clarifications were issued to G.I. Department, Patna, letter no. 45-56 vide letter dated G.I. 01/03/1993 in which it is reiterated that the service of temporary status casual labourer can be dispensed with in the case of misconduct after giving opportunity on the lines of those available to regular employees.


10. From the instructions it is quite clear that there is no categorical mention that ^{any} disciplinary and appeal rules shall be applicable in ^{any} ~~to~~. There is also no mention about suspension. The instructions only provide that services of the temporary status casual labour can be dispensed with after giving him due opportunity on the lines of those available to regular employees. Thus if services of a temporary status employee is to be dispensed with, he is required to be informed of charges against him and given due opportunity in an enquiry to defend him before passing final orders. Suspension or putting "off duty" are separate issues and instructions ^{any} ~~does~~ not debar putting a casual employee "off duty"

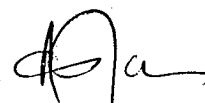


temporarily in case the authority considers it necessary in the interest of enquiry etc..

11. We have given our careful consideration to the issue involved in the case. The engagement of a casual employee is essentially based on the no work no pay principle. If in a serious matter of suspected fraud, the authorities consider it necessary that a casual worker is to be temporarily put off duty for bonafide reasons, the same can not be termed as illegal or arbitrary. There is no provision in the rules or instructions that if a casual worker is put "off duty", he is to be paid subsistence allowance. As such we are not inclined to agree with the plea that denial of subsistence allowance in instant case is in violation of fundamental right.

12. In view of foregoing discussion, the O.A. is dismissed. No order as to costs.


(Bidisha Banerjee)
M/J


(A.K. Jain)
M/A

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