

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH
KOLKATA

OA No. 350/1500/2014

Date of hearing: 26/07/2016

Date of Order : 16/08/2016

Present:

The Hon'ble Ms. Bidisha Banerjee, Judicial Member

The Hon'ble Ms. Jaya Das Gupta, Administrative Member

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1. Susanta Biswa, S/o. Sri Sankar Biswas, Village- Alipur Rajbagan, Post Office- Debipur Railway Station, Police Station-Memari, District-Burdwan (713146), West Bengal.
2. Ram Krishna Kundu, S/o. Sri Ranajit Kumar Kundu, Village-Alipur Rajbagan, Post Office- Debipur Railway Station, Police Station- Memari, District-Burdwan (713146), West Bengal.
3. Arup Nag, S/o. Sri Gour Chandra Nag, Village-Alipur Rajbagan, Post Office- Debipur Railway Station, Police Station - Memari, District- Burdwan (713146), West Bengal.
4. Dipankar Nandy, S/o. Sri Panchanan Nandy, Village - Balgona, Post Office - Hat Gobindapur, Police Station - Satgachia, District - Burdwan (713047).
5. Amit Karmakar, S/o. Late Gouranga Karmakar, Village - Vivekananda Nagar, Post Office- Panduah, Police Station Panduah, District - Hooghly (712149), West Bengal.
6. Babul Baidya, S/o. Subhas Baidya, Village - Alipur Rajbagan, Post Office - Debipur Railway Station, Police Station- Memari, District- Burdwan (713146), West Bengal.
7. Bappaditya Kumar, S/o. Late Purnachandra Kumar, Village - Alipur, Post Office- Debipur Railway Station, Police Station- Memari, District-Burdwan (713146), West Bengal.

.....Applicants

-Versus-

1. The Union of India service through the Secretary, Ministry of Communication, New Delhi-110001.
2. The Post Master General, West Bengal, Office of the P.M.G, Jyog Bhavan, C.R.Avenue, West Bengal, Kolkata-700 012.
3. The Senior Superintendent of Post Offices, Burdwan Division, Post Office- Burdwan, District- Burdwan (713101), West Bengal.
4. The Chief Supervisor, HSGI, SBCO, Burdwan Head Post Office, G.T.Road, District-Burdwan (713101), West Bengal.
5. The Senior Post Master (Gazetted), Burdwan Head Post Office, G.T.Road, District-Burdwan (713101), West Bengal.
6. The Assistant Post Master (SOSB), Sub Office Savings Bank, Burdwan Head Office, Post Office- Burdwan, District-Burdwan (713101), West Bengal.
7. The Senior Post Master, Burdwan Head Office, G.T. Road, Burdwan-713 101.

.....Respondents

For the Applicant : Mr. B.S.Ray, Counsel
 For the Respondents : Ms. M.Bhattacharyya, Counsel

O R D E R

MS. BIDISHA BANERJEE, JM:

This Original Application has been filed by the Applicants (seven in number) under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“(a) To allow this Original Application to be moved jointly for the cause of poverty due to the applicants are meagre wage earner under Rule 4 (5) (a) of the Administrative Tribunal Act, 1986;

(b)(i) As the Applicants are continuously working in the Burdwan Head Post Office for last 5 years and more so, a direction may kindly be passed by this Hon'ble Tribunal to the Respondent No.1 to

frame a Scheme for remunerations of similar type of daily wagers with that of the Applicants herein for the welfare of such workers in the State which should be held to be in consonance of Articles 38, 39 and 43 of the Constitution;

(a)(ii) In pursuance to the decision of the Hon'ble Supreme Court of India in 'District Collector/Chairman-V.T.Devender Pal Singh, as the Applicant's herein have completed five years of continuous service as there is existence of permanent nature of works so, this Hon'ble Tribunal should be kind enough to order the Applicants herein should be regularized in service subject to their past satisfactory works;

(b) Order the concerned respondents to pay each of the applicants against their each eight hours works and consistent with their academic as well as other experience in computer technology and such sums are to be paid which shall help the applicants to lead their life/lives with human dignity and to meet up all the aspects of life which go to make a meaningful life of complete and worth living and not to lead a life of animal existence which the applicants with their present lower pay are compelled to lead a life of animal existence at present;

(c) In view of the recommendations of the Fifth Central Commission, as are given in Para 4(j) above, the concerned respondents may be ordered to deny the Recommendations of the 5th Central Pay Commission in Paragraph 4(j) of this application clearly by stating in their Reply that the Burdwan Postal Authorities are not suffering from shortfall of staff strength and if the concerned respondents fail to satisfy this Hon'ble Court on this point, the Respondents shall be ordered to recruit "the right kind of persons to various jobs; who should be younger in age and more educated". And if such an order of recruitments is made by this Hon'ble Tribunal in that case in view of the past working experience with modern techniques of computerized works, the applicants herein must be given priority to such recruitment drives.

(d) Applicants humbly pray that Your Lordships may graciously be kind enough to pass an appropriate Interim Order of Injunction or an Order

of 'Status quo' by dispensing with requirements of Clauses (a) and (b) of Section 24 of the Administrative Tribunals Act, 1985 for a temporary period of fourteen days only as from the Information of the District Employment Exchange, being Annexure A-6'herein, that in under the Burdwan Postal Authorities there are seven posts of Postal Assistants are lying vacant otherwise the applicant shall suffer irreparable loss and injury. Applicants undertakes to serve the copies of this Original Application with its relevant annexures upon all the respondents meantime.

(e) Any other or further Order or Orders as Your Lordships may deem fit and proper;

(f) Costs."

(Extracted as such)

2. The facts which could be culled out from the pleadings of the parties are as under:

The Applicants are daily rated Mazdoor engaged for certain hours to pull up the arrears works after due assessment of overall work in the Sub Office Savings Bank Section of Burdwan Head Post Office; as the Branch was running in arrear, due to acute shortage of staff. There is no provision for maintenance of attendance register of such daily rated Mazdoors and they took the engagement with open eyes knowing fully well that there is no guarantee of their regularization or absorption. They were engaged without fulfilling the minimum educational qualifications. The Respondents have explicitly made it clear in their reply that the applicants were engaged as daily rated Mazdoor on payment of wages daily as per the rates fixed from time to time. The payment of such wages has got no relation

with the rate of wages paid under MGNREGS Scheme. It has further been averred that the applicants have no cause of action for filing the present OA and, accordingly, the Respondents have prayed for dismissal of this O.A.

3. The learned counsel for the applicants, on the other hand, submitted that the Applicants were engaged by auction process violating the provisions of Article 23 of the Constitution of India. As on date, they are still on roll being engaged long since, and had completed 9 years as Mazdoors.

Per contras, the learned counsel for the Respondents would argue that no appointment orders were ever issued to the Applicants and the job they are doing were practically outsourced by way of engagement of daily wagers.

4. During course of hearing, the learned counsel for the Applicants failed to bring on record any Rule, provision or Law which would demonstrate that the applicants have a right to be considered for their regularisation against the vacancies under the Respondents. It goes without saying that if they are otherwise eligible in accordance with law, they can participate in the process of recruitment whenever any such direct recruitment process is initiated by the Respondents.

5. Therefore, we dispose of this OA with direction that in case the Respondents desire to fill the post on regular basis

and the applicants submit application in pursuance of the advertisement to be issued for the purpose, the Respondents shall also consider the case of the applicants along with others provided they fulfil the terms and conditions of the advertisement so issued.

6. It is further directed that if the applicants are still in engagement and the Respondents are in need of the job which the applicants are discharging then they shall not be disengaged except with a reasoned and speaking order.

7. There shall be no order as to costs.

(Jaya Das Gupta)
Administrative Member

(Bidisha Banerjee)
Judicial Member