

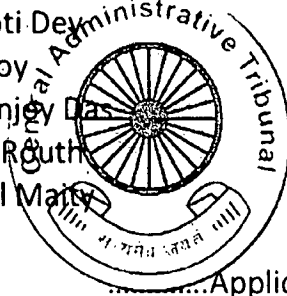
CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /350/1737/2016

Date of order : 14.08.2018

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

1. Soumen Basu
2. Munmun Sen
3. Shampa Biswas
4. Uttam Mazumder
5. Mita Dey
6. Raja Malakar
7. Prasanta Dutta Banik
8. Asish Saha
9. Sujit Maity
10. Lakshmi Das
11. Sujata Dasgupta
12. Satyajoti Dey
13. Arijit Roy
14. Mrityunjey Das
15. Abhijit Roy
16. Parimal Maity



.....Applicants

- Versus -

1. Union of India,
service through the Secretary,
Ministry of Communication,
Department of Posts, Dak Bhavan,
New Delhi – 110 001;
2. The Chief Postmaster General,
West Bengal Circle, Yogayog Bhawan,
Kolkata -700 012;
3. The Assistant Director of Postal Services(Court),
Office of the Chief Postmaster General, West Bengal,
Yogayog Bhawan, Kolkata -700 012;
4. The Senior Superintendent of Post Offices,
Kolkata R.M.S. Division, Department of Posts,
25 R.N. Mukherjee Road, Kolkata-700 001

.....Respondents

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For the applicant : Mr. P. Bajpayee, counsel

For the respondents : Mr. B.B. Chatterjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been filed by 16 applicants jointly in order to seek the following reliefs:-

"8.(a) To issue mandate upon the respondents and each of them in particular the respondent No.2 to implement the office Memorandum No. 2-53/2011-PCC dated 22.01.2015 being Annexure 'A1' to the instant application forthwith and arrange payment of the benefit of the said office Memorandum to the applicants as full-time casual labourers;

(b) To issue mandate upon the respondents and each of them in particular the respondent No.2 to pay all the arrear benefits in terms of the office Memorandum being No. 2-53/2011-PCC dated 22.01.2015 upto the date of payment;

(c) To issue mandate upon the respondents and each of them to implement the office Memorandum being No. 2-53/2011-PCC dated 22.01.2015 being Annexure 'A1' in its entirety forthwith to the applicants.

(d) To issue mandate upon the respondents and each of them in particular the respondent No. 2 to transmit all the relevant documents relating to the case before this Hon'ble Tribunal so that on perusal of the same, this Hon'ble Tribunal can do conscionable justice to the applicants by directing the authority to extend the benefit of the office Memorandum dated 22.01.2015 forthwith along with arrear payments;

(e) And/or pass such other order or orders as to this Hon'ble Tribunal may deem fit and proper.

(f) Leave may be granted to file this application jointly under Rule 4(5)(a) of CAT Procedure Rules 1987."

2. The order that applicants besought implementation, is extracted verbatim hereinbelow for clarity:-

"No. 2-53/2011-PCC
Government of India
Ministry of Communication & IT
Department of Posts

Dak Bhavan, Sansad Marg,
New Delhi-110001

Dated: 22 Jan 2015

OFFICE MEMORANDUM

Sub:- Remuneration payable to Full Time Casual Labour (Other than Temporary Status)/Part Time Casual Labour/Workers engaged on contingency basis.

The issue of remuneration payable to Full Time Casual Labourers (Other than Temporary Status) and Part Time Casual Labourers has been under consideration of the Department for quite some time. The matter has been examined in consultation with the Nodal Ministries/Departments and it has been decided, that the remuneration payable to casual labourers would be as under:-

- (i) The wages of Full Time Casual Labourers (Other than Temporary Status) would be calculated at the minimum of Pay Band-1 (Rs. 5200-20200) i.e. Rs. 5200 plus a Grade Pay of Rs. 1300/- and Dearness Allowance as admissible from time to time. In addition, the benefit of merger of 50% of dearness allowance would also be admissible in terms of DoPT OM No. 49014/5/2004-Estt (C) dated 31.05.2004.
- (ii) So far as Part Time Casual Labourers are concerned, their wages would be calculated on pro-rata basis, in terms of hours of duty put in, with respect to the minimum of Pay Band-1 (Rs. 5200-20200) i.e. Rs. 5200 plus a Grade Pay of Rs. 1300/- and Dearness Allowance as admissible from time to time. In addition, the benefit of merger of 50% of dearness allowance would also be admissible in terms of DoPT OM No. 49014/5/2004-Estt (C) dated 31.05.2004.

2. The revision as aforesaid in sub paras (i) to (ii) will take effect from 01.01.2006.

3. For the Full Time Casual Labourers covered by Para 1(v) of DoPT OM No.49014/2/86 Estt. (C) dated 07.06.1988 i.e. the full time casual labourers, who are engaged to perform work different from the work performed by regular employee, will continue to be remunerated based on the minimum wages prescribed by Central or State Government, whichever is higher.

4. This issues with concurrence of Integrated Finance Wing vide Diary No. 343/FA/2015/CS dated 22.01.2015.

(Surender Kumar)
Asstt. Director General(GDS/PCC)"

3. Ld. counsel for the applicants in course of hearing would submit that the Department of Posts had issued a circular on 17.05.1989 whereby and whereunder it was clarified that all the daily wagers working in the post offices or in RMS offices, administrative offices etc. under different designations like

Majdoor, Casual Labourer, Contingent Paid Staff, Daily Wager, Daily Rated Majdoor and even outsiders would be treated as Casual Labourers and, therefore, the applicants who were serving the department since long on daily wages would be entitled to be regarded as Casual Labourers and as such remunerated in accordance with O.M. dated 22.01.2015 whereas the present applicants were being paid much less. The circular dated 17.05.1989 is extracted hereinbelow for ready reference:-

"GOVT. OF INDIA
MINISTRY OF COMMUNICATIONS
DEPARTMENT OF POSTS
SPB-I SECTION

Dak Bhawan,
Parliament Street
New Delhi - 110 001

No.09-24/88-SPB-I

Dated : 17.05.89

Sub:- Casual labourers and Part-time casual labourers - clarification regarding.

Sir,



I am directed to say that reference have been received seeking clarification as to which class of workers should be treated as full time or part-time casual labourers.

2. It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSD's/ MMS under different designations (mazdoor, casual labourer, contingent paid staff, daily wager, daily rated mazdoor, outsider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of 8 hours a day should be described as full time casual labourers. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.

3. Substitutes engaged against absentees should not be designated casual labourer. For purposes of rectt. to group 'D' posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed:-

- (i) NTC Group 'D' officials.
- (ii) EDAs of the same Division.
- (iii) Casual/ labourers (full time or part-time for purpose of computation of eligible service, half of the service rendered a part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be completed one year of service as full-time casual labourer.)
- (iv) EDAs of other divisions in the same Region.
- (v) Substitutes (not working in Metropolitan cities)

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- (vi) Direct recruits through employment exchange.

Note:- Substitutes working in Metropolitan Cities will, however rank above no. (iv) in the list.

4. Please acknowledge receipt immediately.

Sd/-

(D. H. SARKAR)

ASSTT. DIRECTOR GENERAL (SPN)"

4. On an earlier occasion we had directed the Id. counsel for the respondents to furnish substantiation of the exact amount being tendered to the applicants, records of their engagement and pay vouchers in support of the daily wages paid to them.

5. Today at hearing Id. counsel furnished a communication on the following:-

"(1) As per latest order of Joint Labour Commissioner, Govt. of West Bengal circulated vide O/o the Chief Postmaster General, West Bengal Circle memo no:EST/B/Z-89/82/Daily Wages/Tisca Workers dated 28.03.2018, the wages given to the DRM is Rs.380/- per (eight) hours i.e. Rs.41.75/- per hours.

(2) The approximate date of engagement cannot be furnished as:

(a) The DRM are being engaged not in a regular manner.

(b) The DRM are not being engaged for a particulars work/unit.

(c) As and when required they are being engaged for that particulars hours."

6. Id. counsel in response to a query from the Bench, failed to point out in what manner the present applicants stood on a different footing vis-a-vis full time or part time Casual Labourers under the respondents.

7. At hearing Id. counsel would harp on para 3 of O.M. dated 22.01.2015 in order to contend that the applicants were engaged to perform work different from the work performed by regular employee and, therefore, they were remunerated differently which implied admission of their engagement. Upon

query of the Bench, Id. counsel very fairly admitted that the applicants functioned as full time Casual Labourers, engaged to perform work different from the work performed by regular employee and were thus being remunerated on a higher side.

8. We noted that in an identical matter this Tribunal had directed the respondents to implement the O.M. dated 22.01.2015 but from a later date which order has been sought to be reviewed so that the effect of implementation was allowed from 01.01.2006 i.e. the date of effect of the said office order.

9. Id. counsel for the applicants would admit at hearing that seeking benefit of the O.M. dated 22.01.2015 the applicants had never represented to the authorities save the reference made by the Union and a legal notice. Id. counsel, therefore, agreed that his clients would prefer representation seeking benefit of the O.M. to be considered by the authorities in a time bound manner.

Id. counsel for the respondents did not object to such consideration.

10. Accordingly we dispose of the present O.A. with liberty to the applicants to prefer comprehensive representations seeking the benefit of the O.M. dated 22.01.2015 w.e.f. 01.01.2006 within 4 weeks from the date of receipt of a copy of this order. In the event such representations are preferred, the respondent authorities shall consider the case of each and every applicant and pass appropriate orders in the light of the O.M. dated 22.01.2015 for grant of the minimum Pay Band i.e. Pay Band-1(Rs.5200)+G.P. of Rs.1300/- and Dearness Allowance as admissible from time to time keeping in mind the fact that the respondents have themselves admitted in their reply that upon imposition of a ban on recruitment of Casual Labourers in the Department of Posts since

29.11.1989 and for the sake of pulling up of occasional work "outsiders" were engaged on daily rates and in terms of the O.M. dated 17.05.2009 as contained in Annexure A/2 of the O.A., such "outsiders" were also to be considered as Casual Labourers and, therefore, the present applicants even as "outsiders" would be entitled to the benefits of O.M. dated 22.01.2015.

11. On the aforesaid terms, the O.A. stands disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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