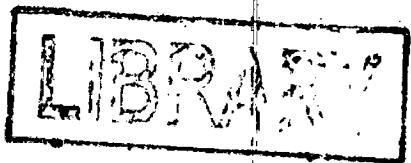


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA
REGN. NO. OA/350/00130/2016



Reserved on - 29.01.2018

Date of Order - 9.2.18

C O R A M

HON'BLE MRS. BIDISHA BANERJEE, MEMBER (JUDL.)

HON'BLE MRS. JAYA DAS GUPTA, MEMBER (ADMN.)

1. Goutam Kundagrami, Son of Late Chittaranjan Kundagrami, aged about 49 years, residing at 6H/6, Kalimuddin Sarkar Lane, Kolkata-700 010.
2. Ganesh Hari, Son of Late Sahan Hari, aged about 42 years, residing at 27/3, Narkeldanga Main Road, Kolkata-700 054.
3. Sadhan Paul, son of Porimal Paul, aged about 30 years residing at Barsat, Kalikapur, Puipukar Road, Kolkata-700 124.
4. Subhas Bose, son of Late Binod Bose, aged about 58 years, residing at 37/B, Dr. Suresh Sircar Road, Kolkata-700 014.
5. Smt. Susama Ghosh, D/o Late Nitai Chandra Ghosh, aged about 59 years, residing at 115 No., Duttabad Road, Kolkata-700 054.
6. Dulal Das, son of Late Dinesh Das, aged about 41 years, residing at 6 no. Prabartak Palli, Belgharia, Kolkata-700 056.
7. Arun Ghosh, son of Late Niranjan Ghosh, aged about 42 years, residing at Uttar Jogendra Nagar, PO-Jugberia, Sodepur, Kolkata-700 010.
8. Jagga Nath Das, son of Subal Chandra Das, aged about 47 years, residing at Katwa, Kachari Para, Dist. Burdwan.
9. Tarak Nath Hela, son of Sudar Ram Hela, aged about 41 years, residing at 57, Beleghata Main Road, Kolkata-700 010.
10. Sanjoy Routh, son of Pradip Routh, aged about 38 years, residing at 8 No. Beleghata Main Road, Kolkata-700 085.
11. Shambhu Hela, son of Bachhu Hela, aged about 45 years, residing at 11 no. Sadhaha Ausadalay Road, South Dum Dum, Kolkata-700 048.
12. Sabita Hela, D/o Md. Ismail, aged about 35 years, residing at 11 No. Dadhaha Ausadalay Road, South Dum Dum, Kolkata-700 048.
13. Sukumar Mondal, son of Late Tarani Mondal, aged about 49 years, residing at 68/41 Jassore Road, Kolkata-700 074.
14. Gouranga Barik, son of Monu Bark, aged about 49 years, residing at 737 Green Park Block A, Kolkata-700 055.
15. Ranjit Mallick, son of Mahindar Mallick, aged about 32 years, residing at 67 Sadhaha Ausadalay Road, Kolkata-700 048.

16. Mahindar Mallick, son of late Jyoti Mallick, aged about 58 years, residing at 67 Sadhaha Ausadalay Road, Kolkata-700 048.
 17. Aditya Jha, son of Lakshnath Jha, aged about 39 years, residing at 24/1A, Biswas Nursari Lane, Kolkata-700 085.
 18. Mangal Routh, son of Late Sonalal Routh, aged about 32 years, residing at 41/C/D/8, Jahnagar Road, Kolkata-700 017.
 19. Tarakeswar Ram, son of Dobbhusan Ram aged about 41 years, residing at 138, A.J.C.Bose Road, N.R.S.Hospital, Block A, Room No. 15, Kolkata-700 014.
 20. Ratan Sengupta, son of Late Sudhir Sengupta, aged about 46 years, residing at 6 No., BagmariRoad, Kolkata-700 054.
 21. Naresh Hari, son of Late Sohan Hari, aged about 42 years, residing at 25/3, Narkendanga Main Road, Kolkata-700 054.
 22. Ponnalal Das, son of Late Shivnath Das, aged about 45 years, residing at 143A, Narkeldanga Main Road, Kolkata-700 011.
 23. Umakanta Lal Karna, son of Late Satyadeo Lal Karna, aged about 57 years, residing at 277, Shyam Nagar Road, Kolkata-700 055.
 24. Subhash Santra, son of Asitranjan Santra, aged about 26 years, residing at Shivpur, Sonapara, Baneshwarpur, 2 Shyampur, Howrah-711 314.
 25. Jyotish Hari, son of Late Sahan Hari, aged about 40 years, residing at 25/3, Narkeldanga Main Road, Kolkata-700 054.
 26. Avijit Bhowmik, son of Mahin Chandra Bhowmik, aged about 46 years, residing at T/4B, Chaul Patty Road, PO-K.G.Bose Sarani, Kolkata-700 085.
 27. Tagori Dolui, son of Panchu Dolui, aged about 42 years, residing at 17A, South Tangra Road, Kolkata-700 046.
 28. Gunadhar Sardar, son of Late Radhakanta Sardar, aged about 40 years, residing at 38B, Tangra Road, Kolkata-700 015.
 29. Subrata Karmakar, son of Late Netai Hari Karmakar, aged about 47 years residing at 153, R.G.Road, PO-Hindmotor, Sist.Hooghly-712 233.
 30. Pinaki Makal, son of Pravat Makal, aged about 28 years, residing at 140 Shyam Nagar Road, Kolkata-700 055.
 31. Debananda Kar, son of Late Nemao Chandra Kar, aged about 40 years residing at 107/2, Jaupur Road, Dum dum, Kolkata-700 074.
 32. Mahesh Paswan, son of Late Ruplal Paswan, aged about 35 years, residing at 10 no. Belbheria Road, Kolkata-700 027.
 33. Swarup Mukherjee, son of Late Anadi Nath Mukherjee, aged about 51 years, residing at PO-Big Boro Purulia, PS-Ketugram, Katwa, Bardwan-713 130.
-All are working as part-time contingent paid staff under Sr. Superintendent of Post Offices, East Kolkata Division, Kolkata-700 014.

.....Applicants.

By Advocate:- Mr. A.Chakraborty.

Vs.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi-1.
2. The Chief Post Master General, Yogayog Bhawan, C.R.Avenue, Kolkata-700 012.
3. The Senior Superintendent of Post Offices, East Kolkata Division, Kolkata-700 014.

.....Respondents.

By Advocate:- Mr. R.Roychowdhury.

O R D E R

Per Bidisha Banerjee, Member [Judl.] :- This is the third journey of the applicants to this Tribunal.

2. Assailing a speaking order dated 19.12.2015 issued by the Senior Superintendent of Post Offices (herein after referred to as SSPO), East Kolkata Division, which was issued pursuant to the direction of this Tribunal in OA No. 1624 of 2015, disposed of on 16.10.2015, the applicants have preferred this OA seeking quashing of the said speaking order.
3. The said OA 1624 of 2015 was filed assailing the previous speaking order dated 16.07.2015 issued by the SSPO which was found to be not speaking on applicability of the circular dated 22.01.2015 and, therefore, quashing the speaking order issued earlier on 16.07.2015, this Tribunal had remanded the matter back to the Senior Superintendent of Post Offices to issue a speaking order afresh in terms of the order passed in an earlier OA No. 393 of 2015. Hence, the instant speaking order dated 19.12.2015 was issued.

4. It was argued that the speaking order under challenge in the present OA is almost a replica of the earlier speaking order, inasmuch as, it does not disclose the reason why the applicants would not be eligible to seek wages in terms of the Postal Department OM dated 22.01.2015, as contained in Annexure-A/4 to the present OA. The relevant extract of the said OM is as under:-

"(iii) 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 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".

5. Learned counsel for the applicants would strenuously urge that the applicants had never asked for regularization or absorption or permanency in the department. Yet the respondents have repeatedly harped on the same plea that being not sponsored by the Employment Exchange, and being not appointed in terms of the relevant rules or in adherence of Articles 14 & 16, they were not eligible to be made permanent as such. Learned counsel would argue that the applicants had prayed for benefit of the circular dated 22.01.2015 which conferred upon Part Time Casual Labourers a right to seek wages as stipulated therein, extracted supra.

6. Learned counsel would further submit that till date the applicants are being employed by the respondents who are utilizing

their services without paying them wages as they would be entitled in accordance with law.

In support of the contention that the applicants are still employed, receipts showing payment tendered to the applicants by the respondents, have been used.

7. Learned counsel, further drawing our attention to a Govt. of India, Department of Posts letter dated 17.05.1989 would submit that the applicants who were contingent paid staff, as evident from the receipts in Annexure-A/10 series and the emphatic admission of the Senior Superintendent of Post Offices in the speaking order dated 01.12.2015 that – “They work with wages on daily rated basis” would be treated as casual labourers. The relevant extract whereof would run thus:-

“IN THE DEPARTMENT OF POSTS

1. **Part-time and Full-time Casual Labourers** – It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSDs/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 not less than 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.”

8. Learned counsel for the respondents, on the other hand, submitted that being not engaged in accordance with law i.e. not being sponsored by the Employment Exchange and being engaged by Sub-Postmaster who had no authority to engage such daily wagers,

the applicants were not entitled to the benefit of the circular dated 22.01.2015.

9. The learned counsels were heard and materials on record were perused.

10. We noted that in view of the earlier direction it was imperative for the respondents to confine the speaking order to the eligibility of the applicants to receive wages in accordance with the circular dated 22.01.2015, instead much has been said on their rights to claim regularization/absorption, which the applicants had never prayed. In view of the emphatic admission on the part of the respondents that the applicants "worked with wages on daily rated basis" and the receipts that have been issued as would be evident from Annexures-A/10 series in proof of the payment received by the applicants from the authorities, indubitably and irrefutably indicate the applicants were engaged by the respondents on daily rate basis.

11. In terms of the Department of Posts Circular dated 17.05.1989 (supra), the applicants were entitled to be considered as casual labourers under the respondents.

12. Since, the circular dated 22.01.2015 (Annexure-A/4), benefit whereof has been sought for, does not differentiate between a regularly appointed casual labourer or contingent paid staff and the one engaged through Employment Exchange, we are of the considered opinion that the present applicants would be entitled to benefit of the said circular for wages to be calculated on pro-rata

basis in terms of hours of duty put in, with respect to the minimum of PB-1 (Rs.5200-20200) i.e. Rs.5200 + Grade Pay of Rs.1300 and Dearness Allowance as admissible from time to time, along with benefit of merger of 50% of Dearness Allowance, in terms of DOPT OM dated 31.05.2004.

13. Accordingly, we direct the respondents to examine the claim of each of the applicant in the light of the circular dated 22.01.2015 and release wages accordingly.

14. Since the Part Time/Full Time Casual Labourers have been bestowed with such rights only from 22.01.2015, we restrict the arrears to be paid from that date.

15. O.A is, accordingly, allowed. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Bidisha Banerjee)
Member (Judl.)

Skj