

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 805 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Khirod Chandra Bhoi, aged about 48 years, S/o Late Panu Bhoi, At/PO – Chhagaon, PS – Gurudijhatia, Dist. – Cuttack, now working as Casual Mail Motor Driver in Mail Motor Vehicle in RMS-'N' Division, Cuttack under the Administrative Control of Senior Superintendent, ERMS-'N' Division, and under the operative head, HRO, RMS-N Division, Cuttack, At – Nuapatna, PO – Cantonment Road, Via – Cuttack GPO, PS – Mangalabag, Dist. – Cuttack.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist. – Khurda, Pin – 751001.
3. Senior Superintendent, RMS- N Division, Cuttack, Nuapatna, Dist. – Cuttack, Pin – 753001.
4. HRO, RMS-N Division, Cuttack, Nuapatna, Dist. – Cuttack, Pin – 753001.

.....Respondents.

For the applicant : Mr.T.K.Mishra, counsel

For the respondents: Mr.M.R.Mohanty, counsel

Heard & reserved on : 18.3.2019

Order on : 16.4.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The present OA is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(i) This Hon'ble Tribunal be pleased to quash the order dt. 22.9.2015 under Annexure A/12.
- (ii) And to direct the respondent to treat the applicant as a Full time Casual Labourer.
- (iii) Direct the respondents to confirm the temporary status and regularise the applicant in the post of Mail Motor Driver.
And any relief/reliefs be passed in favour of the applicant as this Hon'ble Court deem fit and proper.”

2. The applicant was engaged as Mail Motor Driver (in short MMD) w.e.f. 21.4.1999 by the respondents. He is continuing as such on casual basis. For his regularisation, he had submitted a representation dated 11.2.2002

(Annexure A/3) followed by another representation dated 11.2.2015. He filed OA 188/2015 which was disposed of directing the respondents to consider the applicant's representation dated 11.2.2002. In compliance of this direction the respondents have considered the representation dated 11.2.2002 and rejected the same vide impugned order dated 22.9.2015 (Annexure A/12). Being aggrieved, the applicant has filed this OA on the main ground that in a similar case the Tribunal had directed for regularisation of the petitioner in OA 227/2011 which has been confirmed by Hon'ble High Court. It is also submitted that the applicant fulfilled all required eligibility conditions for being appointed as full time casual labourer with temporary status followed by regularisation against the post of MMD.

3. The respondents in their counter have not disputed the facts and have stated that the representation of the applicant was considered by the competent authority as per the extant regulations and he was not found eligible for regularisation vide order dated 22.9.2015 (Annexure A/12). It is stated that in the DG Posts' circular dated 30.6.2014 (Annexure A/16) it is stated that the regularisation of casual labourers with work experience of more than 10 years as on the date of judgment dated 10.4.2006 of Hon'ble Apex Court in the case of Secretary, State of Karnataka & Ors. -vs- Uma Devi and Others [(2006) 4 SCC 1] would be considered for regularisation of their services. Since the applicant has not worked for 10 years as on the cut off date 10.4.2006, he is not eligible for regularisation. Regarding order of the Tribunal in OA 227/2011, it is stated that the judgment is limited to the applicants in that OA and it does not have application in the present case. It is stated that although the applicant is working on a full time basis for 8 hours per day, he is not eligible to be confirmed as full time casual labourer as he was not engaged prior to 1.9.1993 the date specified by the existing policy circular. It was further stated that since his engagement was w.e.f. 21.4.1999, there was no recruitment of MMD by the respondents.

4. The applicant has filed a rejoinder stating that he has prayed for a declaration as full time casual labourer as he is doing 8 hours duty daily since

21.4.1999. it is also stated that he has not been given the wages as per the 6th CPC recommendation as per the order of DG Posts dated 22.1.2015. he has also referred to the order of the Tribunal in OA 769/2013 by Ernakulam Bench of the Tribunal and OA 229/2019 of this Bench in the case of Sudarshan Behera –vs- Union of India & Ors.

5. At the time of consideration of the OA for admission the following order dated 6.1.2016 was passed by this Tribunal :

“So far as interim prayer is concerned, the applicant has prayed for a direction to the respondents not to disengage the applicant from the post of Mail Motor Driver pending disposal of the Original Application. As no counter has been filed and the factual position is not known, we make it clear that the status quo as on date so far as the continuance of the applicant is concerned will be maintained until further orders.”

6. We have heard learned counsels for the applicant and the respondents. Applicant’s counsel cited the following judgments and has also filed a written notes of submission to strengthen the applicant’s case :

- (i) Secretary, State of Karnataka & Ors. –vs- Umadevi & Ors. [(2006)4 SCC 1]
- (ii) Narendra Kumar Tiwary & Ors. –vs- State of Jharkhand & Ors. – Civil Appeal Nos. 7423-7429 of 2018
- (iii) Union of India & Ors. –vs- Bijay Kumar Rout - WP(C) No. 8782 of 2005 of Hon’ble High Court of Orissa
- (iv) Union of India & Ors. –vs- Narendra Kumar Parida & Ors. – WP(C) 20506/2012 of Hon’ble High Court of Orissa.
- (v) The Post Master General & Ors. –vs- Pampana Appalaraju & Ors. – WP No. 17048/2000 of Hon’ble High Court of Judicature, Andhra Pradesh.

Learned counsel for the respondents has cited the judgment of Hon’ble Apex Court in the case of Surendra Prasad Tewari –vs- Uttar Pradesh Rashya Krishi Utpadan Mandi Parishad in the Appeal (Civil) No. 3981/2006 was appointed on contractual basis for three months and then he was engaged for further three months on 6.12.1989. His services were extended with fresh terms till 1.9.1992 when it was terminated orally. The appeal filed by the Surendra Prasad Tewari was dismissed on the ground that as per the ratio of the judgment in Uma Devi’s case, “the Courts cannot countenance appointments to public office which have been made against the constitutional scheme.” In the cited case, the applicant’s service was on contractual terms from time to time from 1989 till 1992 when it was terminated. But in the present OA, the applicant was appointed as a casual employee against a

vacancy which is required continuously. Hence the cited case is factually distinguishable. In this OA, the applicant had been engaged as a casual labourer for more than 15 years working for eight hours daily since 21.4.1999.

7. The respondents have cited the following reasons in the impugned order dated 22.2.2015 (Annexure A/12) while rejecting the representation of the applicant :

"The applicant was engaged as a casual driver to run MMS vehicle in a vacancy that existed w.e.f. 21.4.1999 and he is being paid wages as per the extant rules in force. But the applicant does not fulfil the condition laid down by the Hon'ble Apex Court which stipulates that for consideration of regularization of services of the casual labourers, the person should have 10 years of engagement as on 10.4.2006.

There is clear ban against further engagement of casual labourers on or after 1.9.1993. As the applicant was not engaged prior to 1.9.1993 the request of the applicant is not tenable in the eyes of law.

Further, the applicant cited the case of 15 mazdoors who have been engaged as part time casual labourer as per direction of the Hon'ble Cat, Cuttack Bench vide order dated 8.5.2012 in OA No. 227/2011, confirmed by the Hon'ble Odisha High Court order dated 5.5.2014 in WP(C) No. 20506/2012 and WP(C) No. 12177/2013 with approval from the competent authority communicated vide CO letter No. LC/70-25/2013 dated 5.4.2014. The benefit of the judgment is restricted to the applicants only i.e. 15 Mazdoors of Bhubaneswar R<S and not applicable to the applicants of this OA."

8. In the circular dated 30.6.2014 of the DG Posts (Annexure A/16) the judgment of Hon'ble Supreme Court in Uma Devi (supra) has been mentioned and it was provided that those casual labourers who have been engaged for 10 years or more as on 10.4.2006 (excluding those continuing by stay order of Courts/Tribunal) be considered for regularisation. It is seen from the circular that the other part of the judgment in Uma Devi case that the posts which are regularly required for the Government, should be filled up on a regular basis and not through casual labourers. It is seen that a circular dated 11.12.2006 (Annexure A/14) has been issued by the respondents with the following stipulations :

"The undersigned is directed to say that the instructions for engagement of casual workers enunciated in this Department's OM No. 49014/2/86 Estt.(C) dated 7th June, 1988 as amplified from time to time, inter-alia provided that casual workers and persons on daily wages should not be recruited for work of regular nature. They could be engaged only for work of casual or seasonal or intermittent nature, or for work which is not of full time nature for which regular post can not be created. Attention is also invited to this Department's OM No. 28036/1/2001- Estt. (D) dated 23 rd July, 2001 wherein it was provided that no appointment shall be made on ad hoc basis by direct recruitment from open market."

9. In spite of above instructions, the applicant has been appointed on casual basis against the post of a driver which is required on regular basis and this action to engage the applicant on casual basis is in violation of the Department's order dated 7.6.1988 which has been referred in the circular dated 11.12.2006. It is not explained by the respondents in their counter as to the reason for which the applicant was appointed on casual basis against a post of MMD which is required on a regular manner. If there is no regular post available the action taken by the department to create the regular post has not been mentioned in the light of the circular dated 11.12.2006 (Annexure A/14) of the respondents by appointing the applicant on casual basis against a post which is of regular nature.

10. Since the respondents have violated their own policy circular dated 7.6.1988 and 11.12.2006 by engaging the applicant as a casual labourer, the applicant should not be made to suffer for lapses of the authorities who have violated the departmental guidelines for which no explanation or clarification has been furnished, the case deserves consideration in the similar way as the case of the employee in OA 227/2011 which was allowed by the Tribunal and was upheld by the Hon'ble High Court vide WP(C) No. 20506/2012. In that case, the applicants were continuing as part time casual labourer from 1994 without regularisation. In the judgment of the Hon'ble High Court the following direction was given :

"In view of the above, the bar above applies only to 'no engagement of fresh Casual Labourers' and does not in any manner bar the regularization of 'existing Casual Labourers'. Hence, we are of the considered view that the aforesaid circular causes no impediment whatsoever for the Department of Posts in regularizing the applicant-opposite parties as full time casual labourers who works five hours or more. Therefore, we have no hesitation in dismissing the present writ application."

It is seen that in the circular dated 30.6.2014 has been relied on by the respondents for rejecting the representation of the applicant does not say anything about debarring the cases with that of the applicant. The respondents were at liberty after issue of the circular dated 30.6.2014 to terminate the services of the applicant, but it was not done which implies that the respondents needed the applicant's service as MMD. No document has been

produced by the respondents to show that the regularisation of applicant's service as a full time casual labourer has been specifically debarred. It is clear that the applicant is continuing to be engaged in violation of the circular dated 30.6.2014 of the respondents and for such lapses of the respondents, the applicant should not be made to suffer.

11. In view of the above facts and circumstances, we are of the considered view that the ratio of the judgment dated 5.5.2014 of the Hon'ble High Court in WP(C) No. 20506/2012 will be applicable in this case. Accordingly, the impugned order dated 22.9.2015 rejecting the representation of the applicant is set aside and quashed and the respondents are directed to consider regularisation of the applicant as full time casual labourer with consequential benefits as per the provisions of the rules and communicate their decision through a speaking order to the applicant within a period of four months from the date of receipt of a copy of this order.

12. The OA is allowed to the extent as mentioned in paragraph 11 above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath