

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

R.A.No.260/8/2019
(Arising out of O.A.No.260/00521/2015)

Date of Reserve: 12.03.2019

Date of Order: 11.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Subhashree Ranjan Behera, aged about 35 years, S/o. Mana Ranjan Behera, At-pareswar Sahi, PO-College Square, Dist-Cuttack.
2. Laxmikanta Nayak, aged about 38 years, S/o. Gour Ch.Nayak, At-Ranihat, Malisahi, Dist-Cuttack.
3. Gouranga Charan Sahoo, aged about 39 years, S/o.Duryodhan Sahoo, At-Balabhadrapur, PO-Mahan, Via-Rameswar, Dist-Cuttack.
4. Akshaya Kumar Suta, aged about 43 years, S/o.Basudev Sutar, At-Chauliaganj (Matha Sahi), Dist-Cuttack.
5. Sk.Abtan Uddin, aged about 46 years, S/o.Sk.Amin Uddin, At-Satabatia, PO-Madhyakachha, Dist-Cuttack.
6. Benudhar Behera, aged about 41 years, S/IBabaji behera, At-Imman Nagar, PO-Bhairpur, Dist-Cuttack.
7. Himansu Sekhar Mallick, aged about 43 years, S/o. Golekha Bihari Mallick, At/PO-Barisinghpur, Via-Kanakpur, Dist-Jagatsinghpur.
8. Sangram Keshari Sill, aged about 37 years, S/o.Dhirendra Kumar Sill, At-Khatabin Sahi, PO-Tulasipur, Dist-Cuttack.
9. Saroj Kumar Rout, aged about 28 years, S/o. Jatadhari Rout, At-Itanaga, PO-Begunia, Dist-Jagatsinghpur.
10. Subrat Kumar Sarangi, aged about 30 years, S/o. Sarat Ch.Sarangi, At-Purbakachha, PO-Madhyakachha, Dist-Cuttack.
11. Dipti Kanta Biswal, aged about 33 years, S/o.Dhirendranath Biswal, At-Anandapur, PO-Chasakhanda, Dist-Cuttack.
12. Gouri Shankar Nanda, aged about 30 years, S/o.Susil Kumar nanda, At-Dadapur, PO-Kadapada, Dist-Jagatsinghpur.
13. Bijaya Kumar das, aged about 25 years, S/o.Bhramabar Das, At-Balabhadrapur, PO-Mohan, Via-Rameswar, Dist-Cuttack.

14. Malaya Kumar Rout, aged about 34 years, S/o.Benudhar Rout, At-Bitimira, PO-Biridi Road, Dist-Jagatsinghpur.
15. Lokanath Behera, aged about 28 years, S/o.Chitta Ranjan Behera, At-Pareswar Sahi (Jobra) PO-College Square, Dist-Cuttack.
16. Abhisek Jena, aged about 25 years, S/o.Antaryami jena, At-Poparada, PO-Nayabazar, Dist-Cuttack.
17. Biswambar Nath Parida, aged about 25 year, S/o.Bijaya Parida, At-Rajagagicha, Sarbodayapur, PO-Telengabazar, PS-Badambadi, Dist-Cuttack.
18. Santosh Kumar Parida, aged about 22 years, S/o. Late Sudhakar Parida, At-Kulakalapada, Via-bentakar, Dist-Cuttack.
19. Dipti Ranjan Biswal, aged about 33 years, S/o.Gurubari Biswal, At-Purusottampur, PO-Sisua, Dist-Cuttack

All are working as Substitutes under Senior Superintendent, RMS 'N' Division, Cuttack

...Applicants

By the Advocate(s)-Mr.B.S.Tripathy-I

-VERSUS-

1. Union of India represented through Director General of Posts, Dak Bhawan, New Delhi-110 001.
2. Chief Post Master General, Orissa Circle, Bhubabneswar-751 001, Dist-Khurda.
3. Senior Superintendent, RMS 'N' Division, Cuttack-753 001.
4. Shiba Charan Adhikari, Head Record Officer, R.M.S. 'N' Division, Cuttack-753 001.

...Respondents

By the Advocate(s)-Mr.P.K.Mohanty

ORDER

PER MR. SWARUP KUMAR MISHRA, MEMBER(J):

This Review Application has been filed by the applicants seeking review of the order dated 3.1.2019 whereby this Tribunal has dismissed the O.A.No. 260/00521/2015 being devoid of merit.

2. The grounds on which review of the aforesaid order has been sought are that while deciding the matter, this Tribunal did not take into

consideration the Memorandum dated 12.02.2017 read with Annexure-11 filed to the written notes of submission and erroneously held that the fact in O.A.No.227 of 2011 being different and distinct from the facts of the present O.A., the ratio decided therein cannot be applied whereas according to applicants, it was not their case that they were ever engaged as Part Time/Full Time Casual Labourers or Mazdoors or Contingent Paid Staff, Daily Wager, Daily Rated Mazdoor etc. On the contrary, it was their specific case that despite they having continued in service for a considerable period as Substitutes, their cases have not been considered for regularization as Full Time Casual Labourer with Temporary Group-D status in terms of the instructions/circulars issued by the Department of Posts letter dated 17.05.1989 read with Office Memorandum dated 16.10.2014 issued by the Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training. Amongst other points, the applicants have urged the following points in the R.A.

- i) They are continuing as Substitutes against the posts of regular ED Agents/DGS since 1998 and were paid wages as applicable to ED Agents/DGS on month to month without any interruption as those regular ED Agents/DGS have been continuing in their higher posts of MTS(Group-D).
- ii) They are continuing for more than 10 years of service without intervention of any order from any Court or Tribunal and having completed 10 years of service, they are entitled to be regularized in their services as one time measure as per direction of the Apex Court in the case of Umadevi-3.
- iii) The factual aspect regarding continuance of the applicants since 1998 have not been denied and/or disputed and/or controverted by the respondents in their counter nor in the impugned order dated 28.-9.2015.
- iv) The applicants also rely upon the decision of the Apex Court in the case of regularization in the case of Sheo Narain Nagar vs. State of UP in Para-8 of which it was held that employees cannot be held in exploitative terms and such employees working on contractual

basis and/or ad hoc basis and/or daily wage basis are entitled to regularization on the basis of Article-14, 16 read with 34(1)(D) of the Constitution of India as well as the law laid down by the Apex Court in the case of D.S.Nakara vs. Union of India reported in AIR 1983 SC 130.

- iv) The applicants also rely upon the decision of the Apex Court in the case of State of Haryana vs. Piara Singh reported in AIR 1992 SC 2130 (para-25) and Amar Kant Ray vs. State of Bihar reported in (2015) 8 SCC 265.
- v) They are allowed to continue for such long spell of time against vacant post of GDS, those who were allowed in officiating in higher post of GDS and allowed to continue in MTS post due to officiating arrangement.

3. The applicants have further pointed out that this Tribunal has ignored the decision of Hon'ble High Court of Orissa in WP(C) No.20506/2012 and misinterpreted circular dated 17.05.1989 and wrongly held that the circular dated 17.05.1989 is only a circular to the extent that all daily wagers working in Post Offices or in RMS Office or in Administrative Offices or PSDs/MMS under different designations (Mazdoors, casual labourers, contingent paid staff, daily wager, daily-rated mazdoors, outsiders are to be treated as casual labourers. Further, this Tribunal also ignored the fact that even Substitutes are being paid wages on daily wage basis and therefore, they should have been treated as daily wager and as such entitled to the judgment of the Apex Court in the case of Sheo Narain Nagar vs. State of UP.

3. We have heard the learned counsels for both the sides and perused the records as well as the order sought to be reviewed. We would like to note that while deciding the O.A., this Tribunal took note of the fact that the applicants have been engaged as Substitutes GDS which is at the risk and responsibility of the incumbents proceeding on leave for personal reasons or to work on higher post in the Department of Posts and to this effect, there is a provision prescribed in Rule-7 of GDS (Conduct & Engagement) Rules, 2011.

4. There is no doubt that the applicants have been working as Substitutes uninterruptedly since long, but the fact remains that their source of engagement as Substitutes is not the same as that of Part Time or Full Time casual labour, as the case may be, so as to make them entitled to the benefits of conferment of temporary status and consequent regularization. The information received by the applicant vide Annexure-11 relates to those 15 Mazdoors of Bhubaneswar RMS declared as Part Time Casual Labourers who have been assisting the existing MTS, GDS for mail exchange work in mail carrying train. This apart, within the approved period of time, they assist the existing MTS, GDS for facing of ordinary letter mails etc and after declaration of PTCL status they are doing the same work. By this the applicants have put emphasis on their discharging the same nature of duties having worked against GDSMM posts, assisting MTS official in exchange of mails and facing of letter mail etc. and pleaded that they should be treated at par with the those Part Time Casual Labourers and the benefits which they are receiving should also be made available to them. At the cost of repetition, we would like to mention that the source of engagement of Full Time or Part Time Casual Labourers is not the same as that of engagement of Substitute GDS and as mentioned above, their engagement as Substitutes is guided by Rule-7 of GDS (Conduct & Engagement) Rules, 2011, in which it has been stipulated that a GDS official is entitled to provide a substitute to work in his place on the sole responsibility of the former as per FG bond executed by him, if the original GDS proceeds on leave for personal reasons or to take leave to work in a higher post in the Department of Posts. Therefore, merely on the basis of discharge of the same nature of works, it would not be improper on the part of the Tribunal to rush to a conclusion to hold that the conditions of service of

Substitute GDS employees are at a par with Full Time or Part Time Casual Labourers and as such, they should be extended the benefits to which the Full Time or Part Time Casual Labourers are entitled to.

5. In a catena of judgments, the Hon'ble Apex Court has held that the scope of review is very limited. The merits of the case cannot be reopened in a review application and it cannot be re-adjudicated.

6. In M/s.Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh [AIR 1964 SC 1372], the Hon'ble Supreme Court has held that -

"A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

7. In Meera Bhanja Vs. Smt.Nirmala Kumari Choudhury [AIR 1995 SC 455], the Hon'ble Supreme Court has held as under:-

"Error apparent on face of record, means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions."

8. In the case of Subhash Vs. State of Maharashtra and Anr., AIR 2002 SC 2537, it has been emphasized that court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits that the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be the scope of review. The above view has also been reiterated by the Hon'ble Supreme Court in the case of Rajendra Kumar

Vs. Rambhal [AIR 2003 SC 2095] holding that the limitations on exercise of the power of review are well settled.

9. Further, the Hon'ble Supreme Court has laid down detailed guidelines for review in its judgment reported in (2008) 2 SCC (L&S) 735 in the matter of State of West Bengal and others Vs. Kamal Sengupta and another. In the said judgment, the Hon'ble Supreme Court has held as under:

"Power of an Administrative Tribunal to review its decision under Section 2(3)(f) of the Administrative Tribunal Act, 1985 can be summarized in the following points: The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC. (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise. (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds. (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f). (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review".

10. In consideration of the order sought to be reviewed, the points raised in the R.A. as well as the settled principles of law in the matter of review as quoted above, we are of the opinion that there is no apparent error in the face of the order which requires to be reviewed. In the result, the R.A. is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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