

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 203 of 2017

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

1. Rajendra Narayan Malla, aged about 26 years, S/o Late Purendra Malla, working as Daily wage worker, R/o At – Netapur, PO-Khorad, Via-Kadua Pada, Dist-Jagatsinghpur.
2. Urmila Barik, aged about 33 years, D/o Bhagaban Barik, working as Daily Wage worker in Bhubaneswar GPOP, R/o At/PO-Deuli, Via-Pickukuli, PS – Begunia, Dist- Khordha.
3. Reena Swain, aged about 24 years, D/o Sadananda Swain, working as Daily Wage worker in Bhubaneswar GPO, R/o – Jharpada, Bazarang Nagar, Plot No.658/3319, PO-Budheswari, Bhubaneswar, Dist-Khorda.
4. Chittaranjan Rout, aged about 42 years, S/o Late Harish Chandra Rout, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Kantapada, PO – Narangacha, Via-Ahiyas, Dist-Jajpur.
5. Sarat Chandra Nauyak, aged about 48 years, S/o Sankar Nayak, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Adalbad, PO-Mukundadaspur, Via-Pipili, Dist-Puri.
6. Iqbal Khan, aged about 27 years, S/o Hekayat Khan, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Purbakhanda (Part), PO/PS-Niali, Dist-Cuttack.
7. Gangadhar Sethi aged about 38 years, S/o Late Dhurba Sethi, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Satakabad, PO-Biswanathpur, Via-Balipatna, Dist-Khordha.
8. Pravat Kumar kar, aged about 43 years, S/o Late Duryadhan Kar, working as Daily Wage worker in Bhubaneswar GPO, R/o Nasikeswar, PO-Sisua, Via-Astaranga, Dist- Puri.
9. Purna Chandra Rout aged about 45 years, S/o Late Babaji Rout, working as Daily Wage worker in Bhubaneswar GPO, R/o Muraripur, PO-Benagadia, PS/Via-Khandapada, Dist-Nayagarh.
10. Mohan Nayak aged about 31 years, S/o Arata Nayak, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Ramachandi, via-Narangarh, Dist-Khurda.
11. Debiprasad Mohapatra aged about 32 years, S/o gopal Krishna Mohapatra, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Biraramachandrapur, Via- Satyabadi, Dist- Puri.
12. Ramesh Chandra Dash aged about 46 years, S/o Late Gobinda Chandra Dash, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Barimund, Via-PhulInkhara, Dist-Khurda.
13. Ranjubala Behera aged about 27 years, D/o Anata Charan Behera, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Kantapada, PO-Sankhamari, Via-Baramba, Dist-Cuttack.
14. Jepuon Pradhan aged about 42 years, S/o Philman Pradhan, working as Daily Wage worker in Bhubaneswar GPO, R/o Badenajo, PO-Mallikapadi, Via-G.Udayagiri, Dist-Khandhamal.

15. Swarnalata Pradhan aged about 34 years. D/o Naran Pradhan, working as Daily Wage worker in Bhubaneswar GPO, R/o Banapur, PO-Sukal, Via-Satyabadi, Dist-Puri.
16. Golabun Begam aged about 29 years, D/o Hakim Alli Sah, working as Daily Wage worker in Bhubaneswar GPO, R/o Benapanjari, PO-Tirimal, Via-Jatni, Dist-Khordha.
17. Chandra Sekhar Behera aged about 42 years, S/o Late Damburdhar Behera, working as Daily Wage worker in Bhubaneswar GPO, R/o Daradagram, PO-Sidheswarpur, Dist-Jagatsinghpur.
18. Babita Panda aged about 32 years, D/o Hrusikesh panda, working as Daily Wage worker in Bhubaneswar GPO, R/o Batanda, PO-Kuha, Dist-Khordha.
19. Sanjukta Pradhan, aged about 33 years, D/o Shyamsunder Pradhan, working as Daily Wage worker in Bhubaneswar GPO, R/o Anugrahapur, PO/PS-Pipili, Dist.-Puri.
20. Smita Ojha aged about 21 years, D/o Balaram Ojha, working as Daily Wage worker in Bhubaneswar GPO, R/o B.P.Colony, Unit-8, Gopabandhu Nagar, Near Santoshi Maa Temple, Nayapalli, Dist-Khurda.
21. Sanatan Das, aged about 34 years, C/o Narayan Das, working as Daily Wage worker in Bhubaneswar GPO, R/o Unit-6, Bhimpur Mouza, Plot-751, Aerodrome Area, Bhubaneswar, Dist.- Khurda.
22. Abhinash Sethi aged about 21 years, C/o Dukhishyam Sethi, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Binayakpur, Dist-Puri.
23. Brajakishore Jena aged about 22 years, S/o Profulla Kumar Jena, working as Daily Wage worker in Bhubaneswar GPO, R/o Naragoda, PO-Tamando, Dist-Khurda.
24. Santosh Kumar Maharana aged about 37 years, S/o Gobinda Maharana, working as Daily Wage worker in Bhubaneswar GPO, R/o Banpur (Kansari Sahi), PO-Sakhigopal, Dist. – Puri.
25. Shaikh Bardul Arefin aged about 24 years, S/o Shaikh Sakrulah, working as Daily Wage worker in Bhubaneswar GPO, R/o Jadupur, Dist-Khordha.
26. Sunil Kumar Pradhan aged about 25 years, C/o Dinabandhu Pradhan, working as Daily Wage worker in Bhubaneswar GPO, R/o Pamasara, PO-Kairi, Dist.-Puri.
27. Subash Nayak aged about 39 years, S/o Purnachandra Nayak, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Athantar, Dist-Khordha.
28. Dilip Kumar Jena aged about 29 years, S/o Gopal Charan Jena, working as Daily Wage worker in Bhubaneswar GPO, R/o Naragada, PO/PS-Tamando, Dist.-Khordha.
29. Biranchi Narayan Das aged about 31 years, S/o Harihar Das, working as Daily Wage worker in Bhubaneswar GPO, R/o Lingipur, PO-Sisupalgarh, Dist-Khordha.
30. Amarendra Nath Sharma aged about 27 years, S/o Keshab Chandra Nath, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Rajnagar, Dist-Kendrapara.
31. Laxmidhar Dutta aged about 35 years, S/o Purnachandra Dutta, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Bishnupur, Dist-Puri.

32. Ramachandra Mohanty aged about 28 years, S/o Akadari Mohanty, working as Daily Wage worker in Bhubaneswar GPO, R/o Or. No.81, Block No.-9, Type-III, Postal Colony, Unit-4, Bhubaneswar, Dist-Khurda.
33. Jinat Biswal aged about 24 years, S/o Pramod Kumar Biswal, working as Daily Wage worker in Bhubaneswar GPO, R/o Pamitira, PO-Osakana, Via-Machagaon, Dist- Jagatsinghpur.
34. Bidyadhar Nayak, aged about 40 years, S/o Maguni Nayak, working as Daily Wage worker in Bhubaneswar GPO, R/o Bidharpur, PO-Bhusandpur, Dist-Khurda.
35. Laxmidhar Panda aged about 37 years, S/o Basanta Kumar panda, working as Daily Wage worker in Bhubaneswar GPO, At/PO-Khuntabandha, Via-Mandhatapur, Dist-Nayagarh.
36. Anil Kumar Mohapatra aged about 36 years, S/o Gagan Chandra Mohapatra, working as Daily Wage worker in Bhubaneswar GPO, R/o Old Town, Badu Sahi, Bhubaneswar, Dist- Khurda.
37. Rakesh Kumar Mohanty aged about 30 years, S/o Pratap Kumar Mohanty, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Birtunga, Dist.-Puri.
38. Rabindra Sahoo, aged about 38 years, C/o Premananda Sahoo, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Rathijema, PO/Via-Balakati, Dist-Khurda.
39. Sunil Kumar Pujapanda, aged about 25 years, S/o Chandrasekhar Pujapanda, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Old Town, Tala Bazar, Dist-Khurda.
40. Hrusikesh Baral aged about 34 years, S/o Mahendra Baral, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Taraboi, Via-Jatni, Dist-Khurda.
41. Srikanta Dalai aged about 29 years, S/o Damburdhar Dalai, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Gada Motari, Via-Delanga, Dist-Puri.
42. Rabindra Roula, aged about 35 years, S/o Kishore roula, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Tangrapali, Via-Butakumrada, Dist-Ganjam.
43. Basudev Mohanty, aged about 49 years, S/o Madhusudan Mohanty, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Paikeswar, PO-Ohal, Via-Bamnal, Dist-Puri.
44. Pramod Rout, aged about 36 years, S/o Adhikari Rout, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Taraboi, Via-Jatni, Dist-Khurda.
45. Dinabandhu Pradhan, aged about 30 years, S/o Pranakrushna Pradhan, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Khandapara, Dist-Nayagarh.
46. Ramesh Chandra Sethi, aged about 30 years, S/o Shyam Sethi, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Kainfulia, Via-Bhapur, dist-Nayagarh.
47. Trinath Behera, aged about 35 years, S/o Harekrushna Behera, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Jatni, Dist.-Khurda.
48. Bansidhar Mangaraj, aged about 54 years, S/o Shyamsundar Mukhi, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Sundarpada, Bhubaneswar, Dist-Khurda.

49. Swadhin Kumar Nayak, aged about 27 years, S/o Raj Kishore Nayak, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Similia, Dist-Jajpur.
50. Alok Kumar Das, aged about 30 years, S/o Netrananda Das, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Kharibil, PO-Eranicha, Dist-Cuttack.
51. Kartika Chandra Behera, aged about 30 years, S/o Pramod Behera, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Mendhasala, via-Jatni, Dist-Khurda.
52. Sarmistha Rath, aged about 24 years, D/o Sarat Kumar Rath, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Dakhina Radas, Via-Rench, Dist-Puri.
53. Sanket Kumar Bhoi aged about 30 years, S/o Kanhucharan Bhoi, working as Daily Wage worker in Bhubaneswar GPO, R/o Qr. No.-3, Type-II, Block-1, Unit-4, Postal Colony, Bhubaneswar, Khurda.
54. Sanjaya Sahoo aged about 26 yers, S/o Raghunath Sahoo, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Ranganisahi, PO-Balakati, Dist.- Khurda.
55. Dinabandhu Behera, aged about 41 years, S/o Late Arjuna Behera, working as Daily Wage worker in Bhubaneswar GPO, R/o At-Tikarpada, PO-Kalyanpur Sasan, Dist-Khurda.
56. Bapi Prasad Sethi, aged about 26 years, S/o Govinda Chandra Sethi, working as Daily Wage worker in Bhubaneswar GPO, R/o At/PO-Rangamatia (Talasahi), PO-Mancheswar, Bhubaneswar, Dist-Khurda.

.....Applicants.

VERSUS

1. Union of India, represented through Director General, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda.
3. Director Postal Services (BD & Mails), O/o Chief Postmaster General, Odisha Circle, Bhubaneswar, Dist-Khurda-751001.
4. Senior Post Master, Bhubaneswar GPO, Bhubaneswar, Dist-Khurda.
5. Senior Superintendent, RMS (N.Division), Cuttack-753001.

.....Respondents.

For the applicant : Mr.S.Patra-1, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 16.8.2019

Order on : 22.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed by 56 number of the applicants who claim that they are working as casual worker under Bhubaneswar GPO, after being duly selected. It is stated in the OA that they attend to the duty for 8 hours daily, which includes picking up mail from the residence of the customers. They

claim that they are working as full time casual worker as per the circular dated 17.5.1989 and a copy of the salary slip for one month has been enclosed at Annexure-A/1 in support of the claim. It is stated that in spite of the circulars of the respondents (copy at Annexure A/4 and A/3 series) to pay the casual workers at the rate of minimum of the basic pay of the regular staffs, they are being paid at a less rate of Rs. 249/- per day. Hence, they submitted a representation dated 16.7.2016 (Annexure-A/5) and when no action was taken, the applicants filed the OA No. 930/2016 which was disposed of with direction to the respondents to dispose of the representation. In compliance of the direction of the Tribunal, the respondent no. 2 passed the order dated 10.3.2017 (Annexure-A/7) rejecting the representation dated 16.7.2016 and this order has been impugned in this OA.

2. It is further stated in the OA that after rejecting their representation, the respondents have passed the order dated 15.3.2017 (Annexure-A/8) by which it has been decided that the workers are to be outsourced to manage the work through an agency. The applicants are also aggrieved by this order dated 15.3.2017. Hence, this OA has been filed with the prayer for following reliefs:-

- “(a) The Original Application be allowed with Cost.
- (b) The Orders dtd. 10.3.2017 and 15.3.2017 under Annexures A/7 & A/8 be quashed after declaring those are illegal.
- (c) Respondents be directed to treat the applicants as full time casual labourer and to give all benefits including regularisation of services w.e.f. completion of 240 days.
- (d) Respondents be directed to pay the proper wage to the applicants in view of Notification under Annexure A/2 series and Annexure A/3 series and under Principle of equal pay for equal work along with arrears within a stipulated time.
- (e) Pass any other order/orders may be passed giving complete relief to the applicants in the interest of justice and equity.”

3. Counter has been filed by the respondents stating that no casual worker has been engaged since 29.11.1989 as such engagement has been banned by the DG in his circular dated 1.3.1993. In order to manage the work, some outsiders are being engaged through the outsourcing agency on payment of Rs. 437/- per 8 hours of work as per the rules of the Ministry of Labour and they are engaged as and when the department has extra work load. The wages paid were Rs. 240/- till 9.3.2017 and thereafter, it is being paid at the rate of Rs. 437/- per day. It is also stated that no recruitment process was followed while engaging them. It is further averred that they cannot be treated as casual workers of the department. Regarding the copy of salary slip at Annexure-A/1, it is stated that its source is not known to the respondents and the salary slip is issued to only the regular employees. The circulars referred at Annexure-

A/3 and A/4 are applicable for the casual labourers with temporary status and these are not applicable to the applicants. As per the circular dated 29.11.1989 (Annexure-R/2), there is a complete ban on engagement of casual labourers. The department has decided to get the additional work done through the agencies to be selected through tender process vide order at Annexure-R/3 dated 8.6.2017.

4. Rejoinder has been filed by the applicants enclosing the OM dated 7.6.1988 of the DOPT which states that if the work entrusted to the casual workers is same as the work entrusted to regular employees, then they should be paid wages at the rate of 1/30th of pay at the minimum of the pay scale applicable for regular employees. The applicants claim to be doing the same work as the regular employees. It is stated that as stated in the Counter, for the additional work, the department needs additional manpower and it is admitted that the applicants have been engaged as daily wagers. If there is a ban on appointment of casual worker, how the applicants have been engaged is not explained. It is stated that as per the Directorate letter dated 17.5.1989, the applicants are entitled to be declared as full time casual workers. It is also stated that the applicants have worked more than 240 days of work in a year. It is stated that although the Annexure-A/1 does not have any signature of the official, it has the signature of the applicants and it is a proof of their engagement. It is also stated that the issue of Tender notice to engage outsiders through an agency to be selected through tender, is arbitrary since the intention of the respondents is to oust the the applicants, who are qualified persons and there is no justification to oust them, particularly when many of the applicants have become age barred. It is also stated that the judgment in the case of State of Karnataka vs. Uma Devi cited in the Counter is not applicable to the present case.

5. Learned counsel for the applicant was heard in the matter. He also filed a written note of submission. It is stated that the applicants were engaged by the SPM Bhubaneswar GPO from 1999 onwards on daily wage basis and they are getting the wages through their account opened in the GPO. It is further stated that the nature of work is like that of the post office and RMS office and they are working for years together on daily wage basis and their grievance is that although they are being engaged for more than 8 hours they are not being declared as full time casual workers. They are also aggrieved by the decision to outsource the work through an agency to be selected through tender, which will imply stoppage of work for the applicants. It is stated that the work of the applicants is perennial in nature. It is stated in a similar case in OA No. 805/2015, the Tribunal has allowed the OA as per the order dated 16.4.2019, copy of which is attached at Flag 'C' of the written note.

6. Learned counsel for the respondents was heard and a written note was filed by him also, stating that the applicants were not working against any sanctioned posts and wages paid to them are from wages head. In order to cope up with the work, outsiders were engaged intermittently keeping in view of the work load in hand. Regarding the OA No. 805/2015, it is stated that the present OA is different from OA No. 805/2015 and the order in that OA is not applicable to this OA. The work was shifted to the Sr. Supt of RMS to do the work and he is getting the work done through his surplus staff and the applicants are not being engaged since 13.12.2018.

7. I have perused the record as well as the written submissions by both the parties. It is surprising to see how the respondent authorities have engaged the applicants for intermittent work load on daily wage basis when there were surplus staffs available under RMS as mentioned in the written note filed by the respondent s' counsel. In spite of ban on engagement of any casual workers vide the circular dated 29.11.1989 as stated in the letter dated 1.3.1993 (Annexure-R/2), the respondents have engaged the applicants for intermittent work, although the respondents are not saying that they were casual workers. There is nothing on record to show that the applicants were being engaged through any agency or contractor. From the pleadings on record, it would appear that the wages were being paid to the applicants directly by the authorities for intermittent work.

8. It is noted that the respondents are presently managing the extra works through surplus employees without engaging any outsiders. The respondents need to examine why such practice was not adopted before engaging the applicants and take stringent action against the officials who had engaged the applicants initially on the pretext of extra work load, in gross violation of the policy of the Government not to engage any casual workers.

9. The order dated 16.4.2009 passed in the OA No. 805/2015 cited by the applicants' counsel is not applicable to the present OA, since in that case the applicant was engaged as a casual employee against a vacancy and he was engaged continuously as a casual driver. In this OA, the applicants were engaged intermittently and there is no evidence that they were engaged against any vacancy without a break. But the contention of the respondents that the applicants were not engaged on casual basis is not acceptable, since as per the averments in the Counter, they had been engaged intermittently on daily wage basis by the respondents to manage extra work load. There was no averment in the counter that they were engaged through any agency on contractual basis. It is also noted that as mentioned in the written note of the respondents, the applicants were not being engaged since 13.12.2018 as the work is being

managed through the surplus departmental employees and engagement of no outsider is necessary for the extra work load.

10. In the circumstances, the claim of the applicants to be declared as full time casual workers is not acceptable, since it is not established that they were being engaged as per the policy guidelines of the Government. In fact the present policy does not allow any engagement of casual worker in view of the circular dated 29.11.1989, as stated in the letter dated 1.3.1993 of the DG, Posts (Annexure-R/2). It is clear that the applicants were engaged by some officers of the respondents in violation of the policy of not engaging any casual employee.

11. In view of the above, the OA is disposed of with a direction to the respondents to engage the applicants, if services of any outsider are required in future and in that case the applicants will be entitled for the wages as per the circular dated 7.6.1988 of the DOPT (Annexure-A/10 to the Rejoinder), if the applicants are entrusted with the same work which are being discharged by the regular employees. The respondent no. 1 and 2 are at liberty to take appropriate action in the matter as discussed in para 8 of the order.

12. The OA is disposed of accordingly with no order as to cost. Registry is to send a copy of this order by post to the respondent No. 1 for follow up action as deemed appropriate.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath