

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA No. 301 of 2017

Date of Reserve: 26.04.2019

Date of Order: 10.05.2019

CORAM:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER(A)

Sri Lochan Sahoo, aged about 47 years, S/o. Late Dhobei Sahoo, AT-Budhipada, PO-Sisilo, P.S.-Baliana, Dist-Khurda, At present working as a casual worker at Science Branch, Office of the Superintending Chemist, Archaeological Survey of India, Puratatwa Bhawan, AT/PO-Samantrapur, Bhubaneswar, Dist-Khurda, Odisha.

...Applicant

By the Advocate (s)-Miss. K. Mohanty

-VERSUS-

1. Union of India represented through the Secretary to Government of India, Ministry of Culture, Shastri Bhawan, New Delhi-110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi-110011.
3. Superintending Chemist, Archaeological Survey of India, Puratatwa Bhawan, AT/PO-Samantrapur, Bhubaneswar, Dist-Khurda, Odisha.
4. Jaina Barik, Casual Worker awarded with 1/30th status, in the office of the Superintending Chemist, ASI, Puratatwa Bhawan, AT/PO-Samantrapur, Bhubaneswar, Dist-Khurda, Odisha.
5. Kelu Charan Sethy, Casual worker awarded with 1/30th Status, in the office of the Superintending Chemist, ASI, Puratatwa Bhawan, AT/PO-Samantrapur, Bhubaneswar, Dist-Khurda, Odisha.
6. Brajabandhu Nayak, Casual worker awarded with 1/30th status in the office of the Superintending Chemist, ASI, At/PO- Samantrapur, Bhubaneswar, Dist-Khurda, Odisha.

.....Respondents

By the Advocate(s)-Mr. S. Behera

O R D E R

PER MR. GOKUL CHANDRA PATI, MEMBER(A) :-

The applicant in this O.A. claims 1/30th status as he is performing duty against a vacant post of watchman and since other similarly situated persons, stated to be juniors to the applicant, have been allowed such benefit by the respondents.

2. The applicant claims that he is being engaged on daily wage basis from 1992 without any interruption and has served more than 240 days in a year. It is stated in the O.A. that as per the DOPT OM dated 07.06.1988 (Annexure-A/1), the casual worker discharging the duty like a regular worker, should be paid as daily wage at the rate of 1/30th of the pay at the minimum pay scale of Group D employee. Accordingly, the applicant had represented to the respondents, but no decision has yet been taken. Applicant had also filed the O.A. No.36/2015, which was disposed of by the order dated 12.04.2015 (Annexure-A/2) directing the respondents to consider the applicant's pending representation.

3. In pursuance to the direction of the Tribunal, the respondents have passed the order dated 6.3.2017 (Annexure-A/3), rejecting the applicant's claim on the ground that the applicant has not been entrusted the duty for work of regular nature or against any regular vacant post. It is stated in the Impugned order that the applicant is being engaged for work of intermittent nature. The applicant contradicts the version of the respondents and claims that he is performing the work of a choukidar against a vacant post. The applicant in the OA has also cited the judgment of Hon'ble Apex Court in the case of Director of Posts and Others Vs. K. Chandrasekhar Rao reported in (2013) 3 SCC 310, in which it has been held that the policy/guidelines issued by the Govt. is binding on all.

Respondents have filed the preliminary counter. It is stated that in pursuance to the direction of the Tribunal, the applicant's representation has been disposed of vide order dated 18.06.2015 (Annexure-R/1). It is stated that the applicant is engaged on muster roll for work of intermittent nature and he is not engaged on work of regular nature. He is being the daily wage at the minimum rate in addition to EPF and ESI. Hence, the claim for payment of wage on the basis of 1/30th of minimum pay scale applicable for Group D post has been rejected.

5. The applicant filed the Rejoinder, stating that other similarly situated casual workers have been allowed 1/30th status, as shown at Annexure-A/4. It is stated in the rejoinder that the order dated 18.06.2015 (Annexure-R/1) stated that the applicant's case was under consideration in consultation with DOPT. However, the claim was finally rejected by the respondents vide order dated 06.03.2017 (Annexure-A/3).

6. Heard Learned counsels for both the sides. The applicant's counsel at the time of hearing submitted a copy of the order dated 23.06.2017 of this Tribunal in O.A. No.23 and 24 of 2015 to argue that the applicant is similarly situated as the applicant in the cited O.As. and is entitled for similar relief.

7. The question to be decided in this case is whether the applicant is entitled for the benefit of 1/30th status in accordance with the DOPT OM dated 07.06.1998 (Annexure-A/1). The OM dated 07.06.1998 stated as under:-

“i) Persons on daily wages should not be recruited for work of regular nature.

ii) Recruitment or daily wagers may be made only for work which is on casual or seasonal or intermittent or for work which is not of full time nature for which regular posts cannot be created.

iii) The work presently being done by regular staff should be reassessed by the administrative Departments concerned for output and productivity so that the work being done by the casual workers could be entrusted to the regular employees. The Departments may also review the norms of staff for regular work and take steps to get them revised, if considered necessary.

(iv) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 3 hours a day.

All the administrative Ministries/Departments should undertake a review of appointment of casual workers in the offices under their control on a time bound basis so that at

the end of the prescribed period, the following targets are achieved:

- (a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.
- (b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
- (c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

2. The following time limit for completing the review has been prescribed in respect of the various-Ministries/Departments:-

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|---|------------|
| (a) Ministry of Railways | 2 years |
| (b) Department of Posts, Department of Telecommunication and Department of Defence production | 1 Years |
| (c) All other Ministries/Departments/Offices | 6 months.” |

8. From the above it is clear that if the work entrusted to the casual worker is same as the regular employee, then 1/30th status has to be allowed to the casual labourer. It is also stipulated in the said O.M. that the departments are to take action in a time bound manner to adjust the eligible casual workers against regular posts depending on availability of such posts and only those casual workers whose engagement is essential, would continue to be engaged. It is not known if this exercise has been completed by the respondents. Since the applicant continues to be engaged after 6 months from the date of the OM dated 7.6.1988, it implies that retaining the applicant is absolutely essential as stated in the OM dated 07.06.1988.

9. Perusal of the order dated 23.06.2017 reveals that in that case the respondents were directed to reconsider the issue of grant of 1/30th status to the applicant and that the respondents do not have any policy guidelines for selecting the casual labourers who will be entrusted the same work as regular employee so that he can be allowed 1/30th status. The applicant has not stated whether as a casual worker his date of initial engagement is prior to that of the private respondent No.4 to 6 to strengthen his case.

10. The applicant has not produced any evidence in support of his averment that he is discharging the duty of a Choukidar or Watchman against the existing vacancy.

The respondents have denied it but they have not derived the fact that the applicant is being

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engaged from the year 1992, though it is stated to be for intermittent work. But no evidence or document has been furnished by the respondents to show that the applicant is not being engaged throughout a year or a month except weekly off days and holidays by producing the extract of the muster roll for some period on some other documents. Hence, the respondents' contention that the applicant is engaged intermittently and not entrusted with the same work as that of a regular employee, is a bland contention without any document to corroborate such contention. It is also not the case of the respondents that they follow same principle like seniority in terms of date of first engagement of a casual employee for extending 1/30th status depending on the requirement of work.

11. In view of the above circumstances and following the order dated 23.06.2017, the impugned order dated 6.3.2017 (Annexure-A/3) is quashed and the matter is remitted to the respondent No.2 (i.e., D.G., Archaeological Survey of India) to reconsider the case of the applicant in vis--a-vis other casual workers, who have been allowed 1/30th status while keeping in view the OM dated 7.6.1988 of the DOPT on the subject. The respondents on reconsideration of the case of the applicant as above, are directed to communicate their decision to the applicant through a speaking order within four months from the date of receipt of a copy of this order.

12. The O.A. is allowed to the extent as mentioned above. There will be no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER(Admn.)

K.B.