

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 627 of 2017

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

1. Biranchi Prasad Pani, aged about 47 years, S/o Late Basudev Pani, At-Bira Rama Chandrapur, PO-Satyabadi, Dist-Puri.
2. Trilochan Biswal, aged about 45 years, S/o late Nakul Biswal, At-Utarhana, PO-Basudvpur, PS- Chandanpur, Dist-Puri.
3. Debaraj Parida, aged about 33 years, S/o Aparti Parida, At/Po-Baselisahi Mangalaghat, PS-Baselisahi, Dist.-Ouri.
4. Netra Mohan Mohapatra, aged about 33 years, S/o govinda Chandra Mohapatra, At-Bijipur, PO-OParakana, PS-Satyabadi, Dist-Puri.
5. Amit Kumar Pattanaik, aged about 39 years, S/o Lokanath Pattanaik, At-Rengal, PO-Godipur Matia Pada, PS-Delang, Dist.-Puri.
6. Bishnu Charan Das, aged about 26 years, S/o Ananda Swain, At-Bira Rama Chandrapur, PO-Satyabadi, Dist.-Puri.
7. Tapan Swain, aged about 30 years, S/o Alekh Das, At/PO-Podakera, PS-Chandanpur, Dist-Puri.

All are presently working as Casual worker under Puri Unit, O/o Senior Conservation Assistant, Archaeological Survey of India, Puri Sub Circle, Puri.

.....Applicants.

VERSUS

1. Union of India, represented through its Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi-110001.
2. The Director General of India, Archaeological Survey of India, Janpath, New Delhi-110001.
3. The Superintending Archaeologist, Archaeological Survey of India, Toshali Plaza, Block-VI, 1st Floor, Satya Nagar, Bhubaneswar-7.
4. The Conservation Assistant, Archaeological Survey of India, Sub-Circle, Cuttack.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 12.9.2019

Order on : 17.10.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The facts in brief as per the OA are that the applicant claims that he is being engaged as a casual labourer under the respondents since 1986, 2002, 2004, 2007 and 2008 till date and at present he is working in the category of Group D under respondent No.4. His grievance is that although he is entitled for 1/30th of the minimum pay of a Group D staff as per the DOP&T OM dated 7.6.1988 (Annexure A/2 of the OA) his case is not being considered and other similarly placed persons have been allowed such benefit on pick and choose method. It is stated that it is a discrimination and violation of Article 14 & 16 of the Constitution of India. It is stated that he also fulfils the requirements as per the memorandum of settlement dated 29.8.2008 between the Union and the Management (Annexure A/4). Other grievance of the applicant is that vide order dated 10.8.2017 (Annexure A/7) and 6.10.2017 (Annexure A/8) respondents have decided to engage the manpower required for their work through a outsourcing agency. In this background the following reliefs have been sought for in this OA. :-

- “(i) To quash the office order dt. 10.8.2017 & dt. 6.10.2017 under annexure A/7 & A/8;
- (ii) To direct the respondents to grant 1/30th status to the applicants with all other benefits as extended to other similarly placed persons to which they are entitled at an early date keeping in mind under Annexure A/2 and A/3;
- (iii) To pass any other order/order's as deem fit and proper.”

2. The respondents in their counter have opposed the OA and stated that the applicant has never attended the duty of a Group D post and he is being engaged as a casual labour against specific work and estimates and wages are being paid as fixed by the Labour Commissioner from time to time. It is further stated that a list dated 26.3.2013 (Annexure R/1 to the counter) has been prepared listing the casual labourers who have completed 240 days of work as on 2011-12 and have been engaged for different period of time as indicated in the list. It is further stated that types of work entrusted to the casual labourers

are not permanent in nature and after completion of a project or work the casual labourers are disengaged.

3. No rejoinder has been filed by the applicant.
4. Heard learned counsels for the applicant and the respondents. Applicant's counsel at the time of hearing submitted a written note enclosing a copy of the order dated 23.6.2017 of this Tribunal passed in OA Nos. 934/14, 935/14, 23/15 and 24/15. It was submitted that the case of the applicant is squarely covered by the order dated 23.6.2017.
5. We have considered the pleadings as well as submissions by both the parties. **It is seen from the order dated 23.6.2017 of this Tribunal that the applicants in those OAs covered in the said order had either claimed that their juniors were allowed 1/30th status while ignoring their cases or their names are there in the list dated 23.6.2013 prepared by the respondents listing the casual labourers who had completed 240 days of work.** Under such circumstances the Tribunal did not accept the respondents' plea that the applicants were not entrusted with the work of Group D post after observing that the respondents did not have any policy of entrusting work of Group D post to casual labourers.
6. In this OA, the main grounds advanced are as under :-
 - (i) Although the applicants are eligible for 1/30th status as per the DOPT OM dated 7.6.1988, their case is not being considered although it is allowed to similarly placed persons on pick and choose method.
 - (ii) The authority should have applied his mind and taken a decision in the matter on impartial and fair manner.
 - (iii) Decision to engage manpower through outsourcing is against the law settled in the judgment in the case of Staty of Haryana -vs- Piara Singh [Air 1992 SC 2130] and Dilip Kumar Baral -vs- BPUT [2013 (II) OLR 210] that one casual hand cannot be substituted by another casual hand.
7. Although in this OA, no ground is taken by the applicants that any of their juniors have been allowed 1/30th status on their names are there in the list dated 26.3.2013 (Annexure A/1 series), but a perusal of the list dated 26.3.2013, copy of which has also been enclosed by the respondents with their counter at Annexure R/1 that the name of all the applicants are included in the said list of casual workers who have completed 240 days of work. The applicants Nos. 1,2,3,4, 6 and 7 are at Sl. No.4 for 2008-09, Sl. No. 16 for 2008-09, Sl.No. 1 for 2009-10, Sl.No. 15 for 2007-08, Sl.No. 1 for 2008-09, Sl.No.5 for 2007-08 and Sl.No. 15 for 2008-09 respectively. Hence, factually

the cases of the applicants in this OA are similar to the OA Nos. 935/14 and 24/15 which are disposed of by this Tribunal vide order dated 23.6.2017 as cited by the applicant's counsel in his written submissions and the order dated 23.6.2017 squarely covers the case of the applicants in this OA.

8. In the order dated 23.6.2017, the contention of the respondents that the applicants in these OAs had not been entrusted with the duty of Group D post was considered and it was held by this Tribunal as under :-

"6.The respondents have not mentioned on which criterion this decision has been taken. It is abundantly clear that it is a conscious decision of the Respondents authorities to allow a casual worker to perform duties of a regular nature. Thereafter, as a consequence in the same order the casual labour is allowed to be paid at the rate of 1/30th of pay. Therefore, the argument of the Respondents that the prayer of the applicants in this OA cannot be allowed because they have not performed the duty of regular Group 'D' is quite clearly fallacious. From the order dated 12.4.2013 it has been made clear that it is the Respondents authorities who decided whom they will allow to perform regular duty of Group 'D' and thereafter 1/30th status followed as a consequence. The applicants in the OAs working under the Archaeological Survey of India organization have not been allowed to perform the duty of a regular nature by the Respondents. Therefore, the Respondents contention that the applicants have not performed the duties of regular of nature is unfair and unsustainable because such decision can be taken only by the respondents authorities. If some casual workers were allowed to perform duties of regular nature why the present casual workers who approached the Tribunal will not be allowed to do so is an issue which the respondents have not addressed in their reply. The Respondents organization should have a policy for considering such prayer as per the DOP&T OM dated 7.6.1988 as mentioned above. The settlement under Section 12(3) of the ID Act 1947 which has been brought to the notice of the Tribunal by the applicant reflects that the cases of casual workers who have completed 240 days of work shall be taken for consideration of 1/30th status. In the above circumstances the reasons assigned in the impugned order cannot be supported. The Respondents organisation could of course have their own policy for consideration of such cases in a transparent manner. But as per policy, case of casual workers should be considered and on the ground that the applicants were never entrusted to discharge the work of a regular employee no employee can be ousted from consideration. This is because as articulated in the order the decision to allow a casual worker to perform duties of a regular Group 'D' has been taken by the Respondents themselves. The Ld. ACGSC while replying to the allegations of discrimination has submitted that negative equity cannot be claimed.

However, making such a submission would amount to indirect admission that the facility of 1/30th status to the other casual workers was extended in an irregular manner. It is not clear from the submission of the respondents what

are the criteria they have followed in allowing case of workers to do work of regular nature, same as that of a Group 'D. One' thing is clear that the claim of the applicants cannot be summarily thrown out. The respondents need to keep their cases under consideration under suitable criteria for conferring 1/30th status by following the guidelines of the Government as laid down by the DOP&T in their OM dated 7.6.1988. it is also very important to ensure that discrimination and arbitrariness should be completely avoided in the matters of such consideration."

9. The issue of the decision to outsource the manpower requirement of the respondents was not considered in the order dated 23.6.2017 of this Tribunal. It is seen from the impugned orders dated 10.8.2017 (Annexure A/7) and dated 6.10.2017 (Annexure A/8) that there is nothing in the said orders to show that the respondents are replacing the applicants by another set of casual labourers through these impugned orders. Hence, the judgments referred in para 5.8 of the OA, laying down the principle that one casual hand cannot be replaced by another casual hand, has not been violated. In case the respondents take such a decision as a consequence to the impugned orders, the applicants will be at liberty to challenge the said decision as per the provisions of law. No rule or policy guidelines have been furnished by the applicants to show that the respondents cannot take such a decision. Hence, the relief prayed for at para 8(i) of the OA to quash the above impugned orders cannot be allowed.

10. In view of the discussions above, the case of the applicants deserves to be reconsidered if any of their junior was granted 1/30th status while ignoring the applicants' case. Accordingly, we dispose of this OA with liberty to the applicants to inform the respondents the details of his juniors, if any, who were granted 1/30th status ignoring the applicants' case, and if such information is furnished by the applicants within fifteen (15) days from the date of receipt of a copy of this order, the respondents will reconsider the case of the applicants for grant of 1/30th status as per the provisions of law from the date their junior was allowed such benefit with all consequential benefits as per the rules and the decision of the respondents after such reconsideration, will be communicated to the applicants through a speaking order within three months from the date of receipt of a copy of this order.

11. The OA is disposed of accordingly without any order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

