

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

DA No. 250/1989

DATE OF DECISION 20/7/92

Shartiya Dak Tar Mazdoor Manch      Applicant

VERSUS

U.O.I. & Ors.

Respondents.

CORAM

Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman(J)

Hon'ble Mr. I.P. Gupta, Member (A)

For the Applicant

MS Sheela Goel, Counsel

For the Respondent

Sh. P.P. Khurana, Counsel

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes.

JUDGEMENT

(Delivered by Hon'ble Sh. I.P. Gupta, Member(A))

This is an application filed under Section 19 of the Administrative Tribunal Act, 1985. The applicants have requested for setting aside para 5 of the letter dated 5-10-1988 of Department of Tele-Communication, Ministry of Communication (Annexure-A) and for directing the respondents to pay bonus to Casual labourers equivalent to 44 days ~~actual~~ average emoluments as in the case of other staff.

2. Para 5 of the impugned order reads as follows:-

In respect of casual labourers the ex-gratia payment has to be worked out on the assumed wages of Rs 300/- per month. No payment will be admissible to part-time employees and RTP staff.

3. The learned counsel for the applicant contended that —

(i) Petitioner No.1 is a registered Union under the Trade Union Act of Casual labour working in the P&T department and applicant's No. 2 &3 are employed as casual labourers since July, 1982 and Aug., 1979, respectively. The applicant union had filed writ petition in Supreme Court which was decided on 27-10-1987 (Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch V/s Union of India and others - AIR 1987 SC 2342) wherein it was held that the casual labourer could not be subjected to hostile discrimination and denial of regular pay scale and the Government Memorandum dated 7-6-1988 directed that casual worker may be paid @ 1/30th of pay at the minimum of pay scale + DA for work of 8-hours a day. Therefore, fixation of assumed wages of Rs 300 permonth was arbitrary and discriminatory because in case of other staff, the bonus allowed by the impugned order was average emoluments X 44-days.

(ii) The classification between casual labour and other employees has no nexus with the objective in view, while paying bonus for a homogenous class of employees who had worked together during the relevant period.

(iii) The department has also directed that those who did not complete 240-days in each of past 3-years would not be paid any bonus. This is opposed to recommendation of Inter-Ministerial Committee for the P&T department, appointed in 1985.

4. The learned counsel for the respondents contended that -

- (i) the applicant union is not a Union recognised by the department.
- (ii) The casual labourer are not par with full time regular employees, and the classification of casual labourer in the matter of giving ex-gratia payment is therefore, based on intelligible differentia and is not violative of provisions of Constitution.
- (iii). The condition of 240-days in regard to casual labour is not only applicable to the department of Posts and Department of Tele-communication but also to other Central Govt. Departments also.
- (iv) the scheme of productivity linked scheme bonus was introduced from 1-4-79 and the casual labour were allowed ex-gratia payment computed on notional monthly wages of Rs 150/-irrespective of the actual monthly basis. This is laid down in the letter of Director General (Posts and Telegraphs) dated 17-3-80 (Annexure-2 of the written statement). Vide order dated 5-10-88 the assumed wages were increased from Rs 150 to Rs 300/-per month.
- (v) The judgement cited by the applicants' counsel does not relate to payment of bonus to casual labourer at par with other employees.
- (vi) The condition of working at least 240-days for each year for 3-years or more was not imposed for the first time. Vide order dated 17-3-80 (Annexure-A-2 of the counter) such a clause existed in the past also. Further the contention of the applicant that the condition is opposed to the recommendations of inter-ministerial-committee has been denied in the counter.

5. We have considered the contentions of both the counsels. At the outset we reproduce an extract from the observation of Hon'ble Supreme Court in the case of Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch V/s Union of India and others (Supra) :-

" The allegation made in the petitions to the effect that the petitioners are being paid wages far less than the minimum pay payable under the pay scales applicable to the regular employees belonging to corresponding cadres is more or less admitted by the respondents. The respondents, however, contend that since the petitioners belong to the category of casual labour and are not being regularly employed, they are not entitled to the same privileges which the regular employees are enjoying. It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the Department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work. Clause(2) of Article 38 of the Constitution of India which contains one of the Directive Principles of State Policy provides that" the State shall ,in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." Even though the above Directive Principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the Petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour."

6. Therefore, the Hon'ble Supreme Court directed the respondents in the above case to pay at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. What was thus directed to be paid was the minimum pay in the pay scales of regularly employed workmen. By extension it cannot be concluded that all benefits should be extended. While the State has to strive to minimise inequalities no direction can be issued by the Bench ~~to pay bonus~~, since the directive principles are not enforceable as such. While in case of other employees, the respondents allowed bonus on a certain calculation, in case of casual labour they only allowed some exgratia payment. Notwithstanding our sympathy or consideration for casual workers who are co-partners in increasing productivity, the requirement of law would hardly permit the bench to be swayed by sympathy or benevolence, when it is for the Executive to consider the adequacy or inadequacy of the ex-gratia payment, taking the totality of factors into consideration, including the constraints of resources and the need for minimising inequalities.

7. In view of the above, the application is dismissed with no order as to costs.

*I.P.Gupta*  
(I.P.GUPTA) 20/7/92  
MEMBER(A)

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE CHAIRMAN (J)