

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA-1252/93

MA-1689/93

Sh.N.V. Krishnan, Vice-Chairman (A)

Sh. C.J. Roy, Member (J)

New Delhi, dated this the 8th of August, 1994

1. Shri Krishna Bahadur Subha
S/o Shri Budh Raj Subha
R/o Durga Park, Gali No.4
Sagarpur
Delhi Cantt. 110 010.
2. Shri Shatu Ram Dash
S/o Shri Remtu Ram Dash
R/o House No.8, Beg Place,
Delhi Cantt.
New Delhi 110 010.
3. Shri Shiv Chander Shahani,
S/o Shri Ram Krisan Shahani,
R/o RZ 9/92, Gali No.2,
West Sagarpur,
New Delhi 110 010.
4. Shri Ratul Dash
S/o Shri Rannat Dash,
R/o Durga Park, Gali No.4,
West Sagarpur, New Delhi 110 010.
5. Shri Ganesh Bahadur Chetry,
S/o Shri Nar Bahadur Chetry,
R/o Durga Park, Gali No.4,
Sagarpur, Delhi Cantt.
New Delhi 110 010.
6. Shri Dhan Bahadur Tamangu,
S/o Shri Chander Bahadur,
R/o RZ 9/9, Gali No.4,
West Sagarpur, Delhi Cantt.110 010.
7. Shri Ahed Ali,
S/o Shri Ahomod Ali,
R/o Durga Park, Gali No.4,
Sagarpur, Delhi Cantt.110 010.
8. Shri Pikap Chinte,
S/o Shri Dewaram Chinte,
R/o RZ 9/92, Gali No.4,
West Sagarpur, Delhi 110 010.
9. Shri Paul Dash,
S/o Shri Dumbba Dash,
R/o RZ 9/92, Gali No.4,
West Sagarpur, Delhi 110 010.
10. Shri Hem Chander,
S/o Shri Nathu Guwala,
R/o House No.5, Gali No.80,
West Sagarpur, Delhi 110 010.

13.7.87. The respondents shall give effect to the provisions of the model standing orders within a reasonable time which should not exceed six months from today."

2. The order of the Gauhati High Court in Civil (Annexure-II) Rule No.789/84 dated 13.7.87, /referred to therein, reads as follows:-

"11. In view of all the above, we direct the respondents to start paying the petitioners wages equal to regular workers (Mazdoors) employed in other establishments of the respondents. This would be given effect from the month of July, 1987. The petitioners would also be regularised in service. This would be done by creating required number of posts within 3 months from today. In the alternative, the petitioners' could be absorbed in permanent vacancies in other establishment of the respondents. Along with the resultisation, other attending benefits like leave etc. shall be made available. The respondents would give effect to other provisions of the Model Standing Order also within a reasonable time which would not exceed six months from today."

3. The grievance of the applicants is that in so far as the wages are concerned, they have been given wages equal to regular workers only from the date of the judgement ie. 6.3.90 and nor from July 1987, as has been ordered in ^{the} earlier case in Civil Rule No.789/84, decided by the Gauhati High Court. In the circumstances, this OA has been filed praying for the following directions:-

"(a) Declare that non-grant of benefits and arrears to the applicants w.e.f. 1.7.87 is discriminatory and violative of Articles 14 & 16 of the Constitution of India.

(b) Direct the respondents to give all the benefits to the applicants as given to the set of petitioners in Civil Rule 789 of 1984 w.e.f 1.7.87."

4. The applicants have also filed MP.1689/93 for condoning the delay in filing the OA.

5. The respondents have filed a reply denying the claims made by the applicants. It has been stated that the application is delayed and that, therefore,

15

the application may be dismissed. A reply to the MP has however, not been filed. On merits, it is stated that in Annexure A-1 judgement of the Gauhati High Court there is no direction that the benefit regarding wages should be given from the month of July, 1987. In the circumstances, it is only proper that the applicants be given the benefit from the month, in which, the judgement was pronounced ie. March, 1990.

6. We have heard the learned counsel for the parties. In the view that we are taking, we condone the delay.

7. Before the merits of the case are gone into, we have a problem, namely, that both the judgements of the Gauhati High Court have been delivered in petitions, which, in the normal course, should have been transferred to this Tribunal for disposal under Section 29 of the Administrative Tribunal's Act, 1985. Yet, we are required to interpret those orders which appear to have been passed without jurisdiction. However, that issue has not been raised by any party. Therefore, we are not inclined to pursue that line further.

8. Therefore, the only issue before us is whether the respondents have correctly interpreted the Annexure-I order of the Gauhati High Court.

9. The learned counsel for the applicant submits that the emphasised portion of the judgement dated 6.3.90 of the High Court would imply that the operative portion of the order dated 13.7.87 reproduced in para-2 above should be read as part of the Annexure-I, as if, it was incorporated in extenso in this judgement. He stressed that the expression 'like order' could not mean anything else.

10. On the contrary, the learned counsel for the respondents submits that the expression 'like order' should only mean that contents of the order should be similar but the date from which the order be effective need not necessarily be the same because the judgement itself was delivered only on 6.3.90.

11. We have carefully considered this issue. We notice from the Annexure-2 judgement that the Civil Rule No.789 was filed in 1984 and the judgement was rendered on 13.7.87. It was made effective, in so far as wages are concerned, from the month of July 1987. Therefore, there is considerable merit in the contention of the respondents that 'like order' in so far as this issue is concerned, should be construed with reference to the month, in which, the judgement was delivered. That would mean that the direction regarding payment of wages should be implemented only from March 1990.

12. There are two other reasons why we think this interpretation should be preferred to what the learned counsel has pressed for acceptance. The applicants in whose favour the Annexure-I judgement was given are similarly situated as the 104 casual labourers in whose favour Annexure-2 judgement was delivered. However, there is a basic difference between them. The latter were more alert and vigilant and they filed Civil Rule 789 in 1984 itself. While the applicants herein filed their similar petition only in 1988. We are of the view, that the applicants cannot be given the same benefit as persons who have been more vigilant and who had agitated their rights in time. The ~~delay~~^{relief} sought by the applicants would, therefore, have to be moulded, taking note of the difference. That is the first reason. The second reason is there would

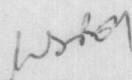
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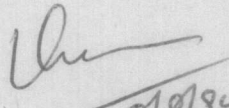
be an anacronism, if the plea of the learned counsel is accepted. In that case, the present applicants, who filed the writ as late as in 1988, would get the benefits from July 1987 ie. earlier to the date, on which, they filed the Civil Rule in the High Court. The more alert applicants in the first case, who filed their writ in 1984 have, however, been given the benefit only from 13.7.87 (ie. the date of the Annexure-2 judgement).

13. We are, therefore, of the view that the correct interpretation is that the benefits in regard to wages in the case of the applicants would accrue only from the date of the judgement ie. 6.3.90.

14. The learned counsel further pressed that this would mean that there would be discrimination between the employees, who are similarly situated. We are of the view that this plea ought to have been taken in the Civil Rule 666/88 and the applicant should have got a proper unambiguous direction that they should be given the benefits from 1987. That apart, we are of the view, for the reasons stated, that the applicants cannot compare themselves with their more vigilant colleagues, who got the Annexure-2 judgement.

15. In view of the above, we see no merit in the OA and dismiss it. No costs.


(C.J. ROY)
MEMBER(J)


8/8/94
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

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