

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.459/93

Date of Decision: 11. 09 .2000

Shri Bhikabhai Savshibhai Panara : Petitioner (s)

Mr.P.H.Pathak Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr.B.N.Doctor : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.V.Ramakrishnan : Vice Chairman

The Hon'ble Mr.P.C.Kannan : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? ~
2. To be referred to the Reporter or not? ~
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? ~

: 2 :

Bhikhabhai Savshibhai Panara,
At Village : Kotharia
Taluka Vadhvan,
District: Surendranagar.

: Applicant

Advocate: Mr. P.H.Pathak

Versus

1. Union of India
Notice to be served through:
Chief General Manager,
Gujarat Telecom Circle,
Khanpur, Ahmedabad-1.

2. Telecom District Engineer,
Surendranagar District,
Surendranagar.

3. S.D.O. (Phones)
Nr.Alankar Cinema,
Surendranagar.

: Respondents

Advocate: Mr.B.N.Doctor

ORAL ORDER
OA/459/93

Date: 11.9.2000

Per: Hon'ble Mr.V.Ramakrishnan

: Vice Chirman

We have heard Mr.Pathak for the applicant and Mr.Doctor for the respondents.

: 3:

2. The applicant has been engaged by the Telecom Department as a Casual Labour Mazdoor . He has approached this Tribunal seeking the following reliefs:-

"(A) The Hon'ble Tribunal be pleased to declare the impugned action on the part of the respondents to deny the applicant pay scale of Driver, as arbitrary, illegal, unconstitutional and further direct the respondents to pay the pay scale of driver with arrears to the applicant, with 18% interest since the date when he is working as driver.

(B) Be pleased to direct the respondents to regularise the service of the applicant as driver as he is performing the duty on the vacant post and further direct the respondents to consider the applicant's seniority etc. from March, 88 since when he is working as driver on vacant post and pay arrears etc. with 18% interest.

[C] Be pleased to declare the action of the respondents to deny the applicant the pay scale of Rs.950-1500 of driver from 1988 onwards, as unconstitutional and direct the respondents to pay the arrears of salary etc. with 18% interest.

(D) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

3. When the department engaged somebody else and sought to discontinue him from functioning as a Driver he has approached this Tribunal with the present O.A. He has also obtained the interim direction dated 26.8.93 where the respondents were directed to maintain status quo as regards the work taken from him as on that date. It is admitted that the applicant continues to work as Driver even at present.

4. Mr.Pathak states that even though the applicant was engaged as a casual labour mazdoor he was actually given the job of driving the motor vehicle as he has the requisite license and he has accordingly been driving a motor vehicle from March, 88

onwards. One junior to the applicant in the level of Mazdoor has been conferred with temporary status. As the applicant is working in a post carrying higher responsibilities, he is entitled to get the pay of Driver. He refers in this connection to the decision of the Supreme Court in the case of Selvaraj vs. Lt. Governor of Island, Port Blair & Others 1998 II LLJ 1191. He also draws our attention to the fact that in a similar case, this Tribunal had directed payment at the level of Driver of an employee belonging to the Postal Deptt. while disposing of the case of Bodawala vs. Union of India. The Tribunal had ordered payment of the salary of the higher post to the applicant therein and this has been confirmed by the Hon'ble High Court while disposing of the SCA No.10115 of 1998 decided on 28.2.2000. Mr.Pathak submits that the applicant should be paid the wages of Driver for the period when he had actually worked as a Driver.

As regards, the second prayer for grant of temporary status and regularisation. Mr.Pathak says that the applicant will be submitting a detailed representation drawing attention to the relevant scheme and instructions for appointment as Driver and seeks a direction to the respondents to dispose of such representation in accordance with the law.

5. Mr.Doctor counsel for the respondents states that the applicant no doubt was made to work as a Driver from 1988 onwards. However, with the subsequent steps taken for recruitment, he would have been discontinued as a Driver for the interim direction of the Tribunal. In this connection, he refers to

para 5 and 8 of the reply statement and says that there were vacancies for Drivers of which only one post is reserved for SC and the regular selection for the post of Driver was held ~~and~~ for the two posts which are available to be filled up by general category and two other persons were selected. One was selected keeping in view the fact that he had been working in the department as a casual labour earlier than the applicant and the other was selected against the 50% quota. Mr. Doctor says that at the relevant time the applicant did not have temporary status as a Mazdoor and in terms of the instructions, he was not eligible to be considered even though he possesses a driver's license. He says that the applicant has been retained in the post of motor driver after 1993 only in view of the status quo order granted by the Tribunal. As such, he is not entitled to be paid as a Driver much less to be regularised as a Motor Vehicle Driver.

6. We have considered the rival contentions. We find that the applicant's service has been utilised as a Motor vehicle Driver as it is clear from para -8 of the reply statement which reads as follows:-

" In reply to para-VI.2 of the application I say that the applicant who was engaged on Muster Roll as casual Mazdoor has been given work of driving the Government vehicle since March, 1988. However, the department is unable to extend the benefit of absorbing as regular motor driver since the applicant is not fulfilling the required eligibility criteria for recruitment of motor/jeep driver as per the department's notification (copy at Annexure-R-I hereto) having no temporary status as shown in page-2 col.5 (B)."

We also note the submission of Mr. Doctor that ~~as~~ the applicant has been retained as a Motor Driver only on account of interim direction of the Tribunal and as such he is not entitled to pay and allowance of such post. The respondents have sought to argue that the applicant has been continued as a Driver only on the basis of interim direction of the Tribunal. Mr. Pathak has resisted this contention and says that Ramsinh Pavara who is junior to the applicant has been engaged as a Driver. The Respondents have stated that Pavara has already been removed on appointment of two regular motor drivers as per para-15 of the written reply statement. Whatever may be the reason, the fact remains that the applicant has in fact performed the duties of Driver, and as such he cannot be denied the wages of a Driver. We find that the reliance of Mr. Pathak in the case of Selvaraj vs. Lt. Governor of Island is quite relevant for the purpose of this case. We may reproduce para-4 of this judgment(referred to supra).

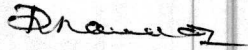
" The decision of the Central Administrative Tribunal rejecting the claim of the appellant to the aforesaid limited extent is therefore required to be set aside. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of Rs.1640-2900 during the period from January 29, 1992 to September, 19, 1995 during which time the appellant actually worked. It is made clear that the payment of the aforesaid difference amount of salary shall not be treated to amount to any promotion given to the appellant on the said post. It is only on the ground that he had actually worked. As such this relief is being given to him. The difference of salary as aforesaid shall be paid over to the appellant within eight weeks ."

7. In view of the above position, we direct that the applicant is entitled to be paid salaries and wages which he would have received, ^{if} he has been appointed as a Driver for the relevant period we direct that the respondents shall calculate the difference between that amount and the amount ~~for~~ he had actually received and pay to him the difference. This exercise shall be done within three months from the date of receipt of a copy of this order.

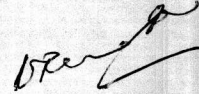
8. The respondents had taken the stand earlier that the applicant has not been conferred with a temporary status as a casual labour and he was not eligible to be considered for the post of driver and consequently the two posts which were available for general candidates were filled up by the dept. by selecting others. We however note the stand of the respondents as directed in our order dated 9.12.99 that the department has since conferred temporary status to the applicant presumably at the level of Mazdoor and the applicant may become eligible for consideration. Be that as it may, if the applicant submits a representation, drawing attention to all the relevant facts and also the need for continuing his service as a Driver, the department shall examine such representation in accordance with the rules and instructions and dispose of the same objectively on merits. We also record the submission of Mr. Pathak that even in the absence of posts, the applicant's services as driver are being used and persons who are junior to him namely; Ramsinh Pavara has been engaged as Driver and the applicant cannot be replaced by a provisional appointee who is junior to him.

: 8 :

9. With the above directions, the O.A. is finally disposed of. No costs.








(P.C. Kannan)
Member (J)



(V. Ramakrishnan)
Vice Chairman

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તારીખ Date	કાર્યાલય રિપોર્ટ Office Report	આદેશ Order
1.5.2001		<p>Heard Mr. Doctor on M.A. 360/2001. The order of the Tribunal was passed as early as 11.9.2000. In the circumstances, time extended upto 31st May, 2001 for implementation of the directions of the Tribunal. M.A. disposed of.</p> <p style="text-align: center;">  (A.S. Sanghavi) Member (J) </p> <p style="text-align: center;">  (V. Ramakrishnan) Vice Chairman </p> <p>vtc.</p>
15.6.2001		<p>A copy of M.A. 459/93 has been given to Mr. Pathak. He may file reply. Adjourned to 6.7.2001.</p> <p style="text-align: center;">  (V. Ramakrishnan) Vice Chairman </p> <p>vtc.</p>
6-7-01	<p>As the learned Member of the Bench is not available, the matter is adjourned to 12/7/01.....</p> <p style="text-align: center;">  </p>	

દિનાંક Date	કાર્યાલય ટિપ્પણી Office Report	આદેશ Order
12.7.2001		<p>Heard Mr. Pathak and Mr. Doctor on</p> <p>M.A. 446/01, Mr. Doctor submits that the</p> <p>instructions have been received by letter dtd.</p> <p>18.2.2001 from the concerned authority and the</p> <p>requisite sanction is expected to be issued</p> <p>without delay. I record the submission of</p> <p>Mr. Doctor and expect that the Tribunal's</p> <p>direction will be implemented without any further</p> <p>delay. In the circumstances time extended</p> <p>upto 31.7.2001.</p> <p>2. MA is finally disposed of.</p> <p style="text-align: right;">  (V. Ramakrishnan) Vice Chairman </p> <p>sm</p>

दिनांक
Date

कार्यालय टिप्पणी
Office Report

आदेश
Order

12.7.2001

Heard Mr. Pathak and Mr. Doctor on
M.A. 446/01, Mr. Doctor submits that the
instructions have been received by letter dtd.
18.2.2001 from the concerned authority and the
requisite sanction is expected to be issued
without delay. I record the submission of
Mr. Doctor and expect that the Tribunal's
direction will be implemented without any further
delay. In the circumstances time extended
upto 31.7.2001.

2. MA is finally disposed of.

(V. Ramakrishnan)
Vice Chairman

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

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MR B.S. Pangru

APPLICANT (s)

VERSUS

C.O.E. & Co.

RESPONDENT (s)

I N D E X - S H E E T

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Certified that the file is complete in all respects.

Signature of S.O.(J)

Signature of Dealing Hand.