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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

Date of Decision: 21-03-2002

OA 43/2001

1. Arid Zone Employees Union, Central Arid Zone Research Institute, Jodhpur, through its Secretary Shri A.W.Ansari s/c Shri Abdul Rehman r/o Mohalla Saudagaron, Jodhpur.
2. Chhatar Singh, regular Mazdoor, Central Arid Zone Research Institute, Jodhpur.

... Applicants

Versus

1. Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. Director, Central Arid Zone Research Institute, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicants

... Mr.Vijay Mehta

For the Respondents

... Mr.Hawa Singh, brief
for Mr.V.S.Gurjar

ORDER

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

This application has been filed by Arid Zone Employees Union and others. They are all claiming to be workmen who are entitled to the leave including Earned Leave, National Holidays and Casual Leave etc. They claim that they are entitled to a weekly rest. However, whenever any workman avails of any leave during the week, he is being denied weekly rest on the ground that the workman has



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not worked continuously for six days. The applicants seek a direction to the respondents to continue to give them paid weekly off even if they have availed of any leave during the week or have not worked for some days during the week.

2. The respondents, by filing a written reply to the OA, have defended their action of denying weekly rest. They have stated that in respect of these workers the department has adopted the "Casual Labour (Grant of Temporary Status and Regularisation) Scheme" ¹⁹⁹³ and 155 casual labourers have been conferred temporary status. All benefits admissible to such casual labourers with temporary status, such as minimum of the pay scale including DA, HRA, CCA etc., have been extended to them. Some of them have also been regularised as against Group-D posts as on date only 94 casual labourers with temporary status are working in the department. The department has sought clarification from the DOPT and they assert that it has been specifically clarified by the DOPT that where a casual employee remains on leave during the week and has not performed any work, cannot be entitled for paid weekly off. In other words, the facility of paid weekly off would be admissible only after six days of continuous work.



3. We have heard the learned counsel for the parties. Our attention has been drawn to Ann.A/5 dated 18.1.2000, which is a communication from Indian Council of Agricultural Research to Directors/Project Directors of the department. It makes reference to the clarification given by the DOPT under OM dated 7.6.88. The same is extracted below :

[Signature]

"As per para 1(vi) of this Deptts. OM dated 7.6.88, the casual worker may be given one paid weekly off after six days of continues work. Where a casual employee remains on leave during the week he has not performed any work so as to be entitled for paid weekly off. In other words, the facility of paid weekly off would be admissible only after six days of continuous work."

The above clarification does not in any way convey a meaning which the respondents have attempted to give. This only says that if a casual labour (including casual worker with temporary status) is not employed on any day whether on account of curfew/bandh etc., no wages can be paid for that day/days. By no stretch of imagination this can be construed to mean that even if casual worker with temporary status is availing of his Earned Leave or any other leave due to him, his weekly rest will get adjusted. (It will be useful to understand the context in which the said clarification dated 7.6.88 was given. For this purpose, we perused the Government of India, Department of Telecom's letter dated 20.8.91, where the above stated clarification has been given in response to the following query :

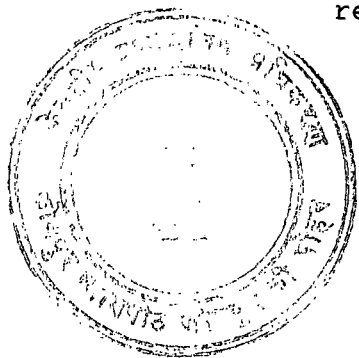
"(i) There are occasions when Casual Labourers do not attend to the work, on account of extraneous conditions like bandh, curfew, etc. The point of doubt is whether wages would be admissible to the Casual Labourers on such occasions.

(ii) If wages are not admissible to the Casual Labour for the day/days of non-employment discussed in (i) above, whether it would be admissible to shift the weekly off (normally granted to the Casual Labour), to such day/days of non-employment ?"

It is obvious from the above that this clarification applies only to non-employment of casual worker on account of extraneous condition like bandh/curfew etc. By no stretch of imagination, this can be connected with the leave duly earned & availed of by the workers during the week.




4. Having said that, we find that the reliance placed by the respondents to the clarification given by the Department of Personnel and Training against the circular of 1988 is a futile attempt to justify their action. By their own admission, the department has adopted the Scheme of 1993 in respect of these workers. Clarification against the Scheme of 1988 cannot be considered in the context of the scheme which came into force with effect from 01.09.1993, except to the extent that the guidelines contained in O.M. dated 07.06.88 have to be strictly followed in the matter of engagement of casual employees in Central Government offices. In so far as the leave entitlement to the workers in the Scheme of 1993 is concerned, the same is regulated by Para 5 (iii) of the Scheme, 1993. The same is reproduced below:-



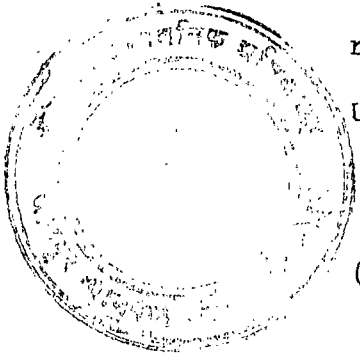
5.(iii) Leave entitlement will be on a pro-rata basis at the stage of one day for every ten days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service."

There is no indication whatsoever in this Scheme that the leave earned by the workers will be off against the weekly rest. The action of the respondents in denying the weekly rest of the workers who avail of the leave during the week, is totally indefensible.

5. We, therefore, allow this O.A. and direct the respondents to continue to permit the casual workers with temporary status their paid weekly off. The weekly rest shall in no case be adjusted against the leave availed of by such workers during the week. The

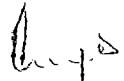
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respondents shall comply with this order forthwith.

Under the circumstances, no order as to costs.


(A.P. NAGRATH)
Adm. member


(JUSTICE O.P. GARG)
Vice Chairman

21.3.2002