IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

O.A No 388/2011

Date of decision: 31-10-2012

CORAM

HON'BLE G. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR B K SINHA, ADMINISTRATIVE MEMBR

Jai Singh Solanki S/o Ram Singh Solanki,
Aged 30 years, presently working as Computer Operator
Under Respondent No.4, R/o 71 Subash Colony,
Bhagt Ki Kothi, Jodhpur. .....Applicant

(By Advocate Mr. S.K.Mathur)

Vs.

1. Union of India through Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Chief Commissioner of Income Tax (CCA), Jaipur.
3. The Director General of Income Tax (investigation) N.C.R. Building, Statue Circle, Jaipur.
4. Additional Commissioner of Income Tax (Central 2nd) Jodhpur.
5. Joint Director of Income Tax, Jodhpur. ...Respondents

(By Advocate Mr. Ravi Bansali (rep) for R.1
By Advocate Mr. Varun Gupta for R 2 to 5)

ORDER

Per: B K Sinha, Administrative Member

This application is directed against the order No.CCIT/JPR/Addl.CIT (Hqrs) /2011-12/710 dated 31/5/2011, of the third respondent [A1] by which the daily wage of the applicant was reducd from Rs. 292 to 164 per day.

2. ***Reliefs sought for:***

"(i) The order daed 31.5.2011 may be quashed.

(ii) Respondents to pay salary to the applicant which is payale to a regularly appointd employee on the principal of equal pay for equal work.

(iii) Respondents be directed to consider the applicant for regularization

(iv) Costs of litigation may be allowed to the applicant."

Case of the applicant

3. The case of the applicant in brief is that on his applying pursuant to a notification for the post of Stenographer the applicant was selected and was initially engaged as daily wage casual worker in April, 2002 and allotted computer work. Necessary certificates were issued by the respondents in this regard. (A2.3&4] and he is continuing for the last nine years as such. The applicant submits that in order to take fresh hands, the respondents want the applicant to leave the job. For this purpose respondents introduced a transfer policy and reduction of applicant's daily wages. Vide order dated 8.10.2010, the Chief Commissioner of Income Tax passed order dated 18.10.2010 increasing the rate of daily wages to Rs. 292/- per day from 1.7.2008 on 'no work no pay' basis [A5]. However, without any notice and reason this order was withdrawn vide order dated 30.5.2011 reducing the wage of applicant from 292 per day to Rs. 164/- per day. [A1].

4. He sumits that there is no difference between the nature of work entrusted to him and that being performed by the regular employees which he has been discharing to the full satisfaction of the respondents. He further submits that where the nature of work entrusted to the casual workers and regular employees is the same the casual workers may be paid at the rate of $1/30^{th}$ of the pay of the minimum relevant pay scale plus dearness allowance for work of eight hours a day. Where the work being done by the casual workers is different from the work done by a regular employee the casual workers may be paid only the minimum

wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher as per the minimum wages Act, 1948.

5. The grievance of the applicant arises from the fact that the respondent No.3 issued an order vide his order dated 31.5.2011 [**A1**] that the recommendations of the 6th Pay Commission are applicable only to the Casual Labourers conferred with temporary status and are not applicable to the casual workers without temporary status. The same order withdraws the earlier orders and directs that the applicants be paid at the rate of Rs. 164/- per day where the nature of the work of casual workers is the same as that of regular employees. The applicant has come to this Tribunal against the afore order [A1]. The learned counsel for the applicant has argued that the applicant was doing the same work as the regular workers and continued to do so. The 6th Pay Commission Report does not exclude them specifically and had it been so it would have amounted to drawing distinction between the same categories of workers violative of Articles 14 and 21 of the Constitution.

Case of the respondents

6. The counsel for the respondents has fully contested the OA. The principal argument of the respondents is that DoPT OM dated 10.9.1993 [**A5**] was issued in pursuance of judgment of Principal Bench of CAT dated 16.2.1990 to grant temporary status and regularization to those casual labour who were employed at that point of time and had rendered one year of continuous service in Central Government offices other than in the Departments of Telecom, post and Railways. The DoPT had subsequently issued a clarification vide OM No.40011/6/2002-Estt© dated 6.6.2002 clarifying that *the scheme relating to the grant of temporary scheme as per order dated 10-09-1993* is not an ongoing scheme but rather *one* one time dispensation to those who had been given temporary status on completion of 240 days of work or 206 days in case of

offices having 5 days week. It was further clarified that those who had been granted temporary status would not be stripped of the same but the those who have joined the service on a subsequent date cannot seek to derive advantage of this order for grant of temporary status . The nature of work of these employees is different and as such they are being given wages at the highest of the minimum wages at Rs. 164/- per day. The OM dated 12.9.2008 has been misinterpreted by the applicans as it clearly provides that only the workers with temporary status will continue to receive their wages under the instant scheme on the basis of the scales of Group D employees as Pay Band and the corresponding Grade Pay recommended by the 6th Central Pay Commission. As such the applicant is not entitled to any relief.

Facts in issue:

7. After having gone through the pleadings of the parties and listen to their oral submissions the following facts in issue emerge:

(v) Whether the applicant has been performing the same nature of duties as the regular employees?

(vi) Whether the reduction of wages as has been ordered vide the impugned order [A1], violates Article 14 and 21?

(vii) What relief(s) if any could be granted to the applicant?

<u>Findings</u>

Whether the applicant was performing the same nature of duties as the regular employees?

8. The recruitment of casual workers and persons on daily wages was reviewed in the year 1998 on the basis of which the Department of Personnel and Training, Ministry of Personnel Public Grievances and Pensions, issued OM No. 49014/2/86-Estt© dated 7th June, 1988. This OM started by recognizing that persons on daily wages should not be recruited for work of regular nature but only for work which is casual, seasonal or intermittent by nature for which regular posts cannot be created. The OM further provides:

(iv) *Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.*

(v) *In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.*

(ix) *Where work of more than one type is to be performed through the year but each type of work does not justify a separate regular employees, a multifunctional post may be created for handling those items of work with the concurrence of the Ministry of Finance.*

9. In the year 1993 the Principal Bench of Central Administrative Tribunal delivered a judgment on 16.2.1990 in the case of ***Rajkamal and others Vs. Union of India and others (1990) 13 ATC 478*** therein it issued certain directions to the Govt. of India, as under:

"29. In the light of the foregoing, the application is disposed of with the following findings; orders and directions:

(viii) *We hold that the present practice and procedure followed by different ministries/departments and the offices under them in the matter of engagement, disengagement and regularization of casual labourers on the basis of their separate strength of staff results in inequalities and injustice. The Government of India, except the Ministry of Railways, should be treated as a single unit in the context of engagement and regularization of casual labourers;*

(ix) *The impugned orders dated 12th October, 1989 passed by the respondents, are set aside and quashed.*

(x) *The respondents are directed to continue the services of the applicants as casual laborers in the regular vacancies in the post of Group D arising in the Ministry of Food and Civil Supplies and its offices at Delhi and to consider their regularization in such vacancies;*

(xi) *In case, no vacancies exist in the Ministry of Food and Civil Supplies and its offices, they should be adjusted against the vacancies of Group D staff, in other ministries/departments/attached/subordinate offices for appointment in accordance with the scheme directed to be prepared as mentioned in paragraph 21 above;*

(xii) *The respondents are directed not to induct fresh recruits as casual labourers through Employment Exchange or otherwise, overlooking the preferential claims of the applicants; and*

(xiii) The emoluments to be given to the applicants till their regularization should be strictly in accordance with the orders and instructions issued by the Department of Personnel and Training. After their regularization, they shall be paid the same pay and allowances as regular employees belonging to the Group D category.

(xiv) The interim order passed on December 11 1989 and continued thereafter directing the respondents that the status quo as regard the continuance of all the four applicants as casual labourers, be maintained is made absolute.

10. Even after the issue of the afore said OM as it would appear from paragraph 2 that the recruitment of casual workers would continue as contained in OM dated 7.6.1988. On 31.5.2004 the DOPT issued a revised OM vide No 49014/5/2004-Estt© directing merger of 50% of the Dearness Allowance with basic pay for computation of daily rates of wages of casual labourer as under:

> *"The undersigned is directed to say that references have been received from various quarters seeking clarification whether 50% of Dearness Allowance merged with basic pay to Central Government employees w.e.f. 1.4.2004 vide Ministry of Finance, Department of Expenditure OM No.105/1/104-IC dated Ist March, 2004 would be admissible to casual labourers for the purpose of computation of their daily rates of wages.*
>
> *The matter has been considered in consultation with the Ministry of Finance and it has been decided that 50% of the Dearness Allowance merged with the basic pay will be admissible to casual labourers with temporary status and also to casual employees who are entitled to daily rate of wages with reference to the minimum of the pay scale for corresponding regular Group D official w.e.f Ist April, 2004 for the purpose of computation of their daily rates of wages. The casual labourers entitled to daily wages not linked to the minimum of the pay scale plus Dearness Allowance for corresponding Group D employees or casual workers/contingent employees engaged on part time basis shall not be entitled to the above benefit.*
>
> *This issues in concurrence with Department of Expenditure IC UO No.105/1/2004-IC dated 19th May, 2004."*

11. On the basis of the above circular the respondent No.5 issued OM dated 9.7.2007, the relevant part of which reads as follows:

> *"In accordance with the instruction laid down in the Department of Personnel & Training Om No.49014/2/86-Estt© dated 7.6.1988 read with DOPT Circular No.49014/5/2004 dated*

31/5/2004, sanction is hereby accorded to the payment of casual workers paid on daily wage basis, where nature of work is the same a that of the regular employees at the rate of 1/30th of the pay at the minimum of time scale of pay of the Group D staff plus Dearness Pay plus dearness allowances, ie., 1/30th of (Rs.2550/+ Rs. 1,275+ Rs. 1109.25/1338.75 ie., Rs. 164/- pr day for 8 hours of work a day.

2. Inc cases where the work done by casual work is different from the work done by regular employees, the daily wages payable will be Rs. 144/- per day in terms of Dy.Labour Welfare Commissioner (Central) communication Ref.No.Dy.LWC(C)/MWR/2005/4000 dated 30.9.2005."

12. The respondent organization acknowledged that the work being done by the applicant was the same as that of the regular employees and not casual workers on daily wages performing different set of casual duties. In recognition of this fact admittedly the wages being paid to the applicant were further revised vide Letter No.CC/JPR/2010-11/289 dated 18th October, 2010 [A5]. The later brought up the payment to be made to such employees to Rs. 292 per day on the basis of the above formulation. It is interesting to note that the work involves a much larger vista than what is ordinarily done by an average employee and which no regular employee would normally agree to do. It varies from maintenance of the records, photocopying, night and guard duty, driving vehicles, watering the plants to mention a few in addition they are also required to do date entry, typing of letters and return feeding and processing.

13. Admittedly, the Grant of Temporary Status to Casual Labourers Scheme of 1993 was a one time dispensation. This issue has been dealt with in a decided case by the Hon'ble Supreme Court ***Union of India Vs. Mohanlal and others, (2002) 4 SCC 573*** and held as under:

"6. Clause 4 of the Scheme is very clear that the conferment of 'temporary' status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get 'temporary' status. We

do not thing that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire 'temporary' status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does no appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union government to formulate any scheme as and when it is found necessary that the casual labourers are to be given temporary status and later they are to be absorbed in Group D posts.

8. The Division Bench of the Calcutta High Court in T.Rajakili V. Union of India WP(CT) NO.86 of 1999 (Cal)(DB) *held that clause 7 must be read in a manner in which it does not render it unconstitutional. The employers cannot at their whim dispense with the services of the casual labourers who have acquired "temporary' status. The entire object of the 1993 scheme was to regularize all casual workers. To allow such uncanalised power of termination would also defeat the object of he Scheme. Dispensing with the services of a casual labourer under clause 7 in our view, could be for misconduct etc.*

9. Having regard to the general scheme of 1993, we are also of the view that the casual labourers who acquire 'temporary' status cannot be removed merely on the whims and fancies of the employer. If there is sufficient work and other casual labourers are still to be employed by the employer for carrying out the work, the casual labourers who have acquired 'temporary' status shall not be removed from service as per clause 7 of the Scheme. If there is serious misconduct or violation of service rules, it would be open to the employer to dispense with the services of a casual labourer who had acquired the 'temporary' status."

14. Now we come to the question that what is the guiding principle whereby the payment of daily wage workers should be made. . The question was answered by the Hon'ble Apex Court in the case of ***Surinder Singh and another Vs. The Engineer-in-Chief, CPWD and others, AIR 1986 SC 584:***

"One would have though that the judgment in the Nehru Yuvak Kendra's case (supra) concluded further argument on the question. However, Shri V.C.Mahajan, learned counsel for the Central Govenemnt reiterated the same argument and also contended that the doctrine of 'equal pay for equal work' was a mere abstract doctrine and that it was not capable of being enforced in a court of law. He

referred us to the observations of this court in Kishori Mohanlal Bakshi Vs. Union of India, AIR 1962 SC 1139. We are not a little surprised that such an argument should be advanced on behalf of the Central Government 36 years after the passing of the Constitution and 11 years after the Forty Second Amendment proclaiming India as a Socialist republic,. The Central Government like all organism of the State is committed to the Directive Principles of State Policy and Art.39 enshrines the principle of equal pay for equal work. In Randhir Singh Vs. Union of India, (1982) 3 SCR 298 (AIR 1982 SC 879) this court ha occasion to explain the observations in Kishori Mohan Lal Bakshi V .Union of India (supra) and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted through the world particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out ha the decision in Randhir Singh's case has been followed in many number of cases by this Court and has been affirmed by a Constitution Bench of this Court in D.S.Nakara V.Union of India (1983) 2 SCR 165: AIR 1983 SC 130. The Central Government, the State Governments and likewise all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill-come from the mouths of the State and the State Undertakings. We allow both the writ petitions and direct the respondents, as in he Nehru Yuvak Kendra's case (supra) to pay to the petitioners and all other daily rated employees, the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed. The respondents will pay to each of the petitioners a sum of Rs. 1000/- towards their costs. We also record our regret that many employees are kept in service on a temporary daily-wage basis without their services being regularized. We hope that the Government will take appropriate action to regularize the services of all those who have been in continuous employment for more than six months."

15. On the basis of the aforesaid discussions we reached the conclusion – the payment of wages to the daily wage employees discharging the duties of a regular employee will continue to be governed by the provisions of OM dated 7.6.1988 despite the fact that the OM dated 10.9.1993 has been deemed to be a one time dispensation. Even in the case of ***Union of India Vs.***

Mohanlal and others (supra), the principle that once attained the status of a temporary it is well protected only violate to the condition that such employee is found guilty of misconduct when his services can be dispensed with altogether. Under other conditions the services are protected. The Hon'ble Supreme Court while holding so have not dispensed with this principle. The second conclusion is that it is more than clear that the applicants has been doing the same work as regular employees and even more. We cannot imagine that a regular UDC being asked to do the work of cleaning and watering the plants. In fact they are doing more. The nature of the duties being performed by the applicants has not undergone a change by virtue of the mere fact the impugned circular has been issued by the DoPT. It is well recognized that a circular from above does not changed the ground realities in effect. Where the applicants have been performing the duties of a regular employee or more and continue to do so is a fact their status cannot change overnight by the mere fact that a circular has been issued by a superior authority. The third conclusion is that by issue of the impugned OM dated 31.5.2011 [A1] the material facts are not altered by one stroke of pen. **What the applicants were doing earlier they continue to do so even after the issue of the impugned OM.** As already held that where the nature of work remains to be the same as the regular employees the payment will also continue to be the same.

Whether the reduction of wages as has been ordered vide the impugned order [A1] is violative of Article 14 and 21?

16. The doctrine of equal pay for equal work is well enshrined in our Constitution articulated through Article 14. This article for the sake of convenience needs to be reproduced.

> ***Article 14: Equality before law:- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.***"

and has been the corner stone for so many judgments /decisions of various courts more so of the Hon'ble Apex Court. It is also to be noted that it forms a part of the basic frame work of the constitution as enunciated in ***His Holiness Keshvanand Bharti Sripadagalvaru and others Vs. State of Kerala and another, AIR 1973 SC 1461***.Case.

17. Hence it has also to be considered that once a set of workers have been getting higher wages to reduce the same on the basis of directions from above does not alter the material facts or restrict the family requirements of such workers. It is trite that once one is used to a higher set of income it is difficult for him to curtail one's requirements to a lower income.

18. It is also significant to note that no show cause notice has been issued to the applicants before reducing their daily wages structure. While certainly the services of the applicants as decided in the case of ***Union of India Vs. Mohanlal and others, (supra)*** can be dispensed with one month's notice by means of a termination simplicitor. For reducing or altering the wage structure to their disadvantage will require prior show cause and giving them opportunity of being heard. The principle of *audi alteram partem* is inviolate in such cases. In any event, such a reduction is not justified in the cases in hand.

19. In a decided case O.A.531/2011 and connected cases this very Tribunal has held vide its order dated 14.8.2011 as under:-

> ***"19. Answer to the first two questions which go in favour of he applicants, obviously, persuade the Tribunal to answer this question too in their favour. In view of the discussions on the above issues we come to the conclusion that the unilateral action of the respondents in reducing the wages of the applicants without having given them an opportunity to show cause is violative of not only the constitutional provisions but also the principles of natural justice. It is hence bad under law. The following reliefs are, therefore, ordered:***
>
> ***(I) The impugned order dated 31.5.2011 [A1] is hereby quashed.***
> ***(II) The respondents are directed to continue making payment to the applicants @ 1/30th of the pay at the minimum of the time scale of the Group 'D' staff plus dearness allowance ie., Rs.***

(III) *No modification of the OM dated 12.9.2008 is warranted as the legality of the OM has not been in challenge nor would the same be necessary for granting the reliefs (i) and (ii).*

(IV) *No order as to the costs."*

What relief(s) if any could be granted to the applicants?

20. In view of the discussions on the above issues we come to the conclusion that the unilateral action of the respondents in reducing the wages of the applicant without having given them an opportunity to show cause is violative of not only the constitutional provisions but also the principles of natural justice. It is hence bad under law. The following reliefs are, therefore, ordered:

(I) *The impugned order dated 31.5.2011 [A1] is hereby quashed.*

The respondents are directed to continue making payment to the applicant @ 1/30th of the pay at the minimum of the time scale of the Group 'D' staff plus dearness allowance ie., Rs. 292 per days as basic pay w.e.f 1.7.2008 with all consequential benefits.

(III) *No order as to the costs.*

(B.K. SINHA)
ADMINISTRATIVE MEMBER

(G.GEORGE PARACKEN)
JUDICIAL MEMBER