

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 416/2005

MONDAY THIS THE 16th DAY OF APRIL, 2007.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S. RAJAN, JUDICIAL MEMBER**

M.N.Asokan
Lower Division Clerk
Naval Armament depot
Alwaye.

Applicant

By Advocate M/s Chandrasekharan & Chandrasekhara Menon

Vs

1 Administrative Officer (Civilians)
Office of the Flag Officer Commanding-in-Chief
Southern Naval Command,
Naval Base, Cochin

2 Flag Officer Commanding in Chief
Southern Naval Command,
Naval Base, Cochin.

3 Union of India represented by the
Secretary, Ministry of Defence,
New Delhi.

Respondents

By Mr.TPM Ibrahim Khan,SCSGSC.

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein was initially appointed as Unskilled labour on casual basis on 24.4.84 under the respondents. He continued as

such till he was regularised on 30.3.1985. Thereafter the applicant was appointed as a Lower Division Clerk. However there was a delay in regularizing his service, in the category of Lower Division Clerk. Therefore the applicant and other similarly persons had filed representations and thereby he was regularised on 6.2.97. The regularization was done after completing service of 7 years and 10 months on casual basis and therefore the applicant was found not entitled for the ACP benefit. The applicant states that during the period when he was serving as LDC, due to illness he was under treatment and took leave for 36 days. When his case for regularization was considered this period of break was omitted from the total period of service. Therefore he filed representations before the Department. When regularization in the post of LDC was done, the Group- D service from the date of initial service condoning the technical or artificial breaks was taken into consideration, for all the Group-D candidates appointed as LDCs except the applicant. However by order dated 24.11.97 issued by the 1st respondent, the applicant's request for regularization of initial service condoning the artificial/technical breaks in service was rejected (Annexure A2). In a judgement dated 27.7.2000 in O.P.No 11403/98, the Hon'ble High court of Kerala held in the matter of regularisation of casual service, that technical/artificial break in casual service of the applicants should be condoned and regularization from the date of initial appointment should be considered. By order dated 17.1.94 in OA 2179/93 and other connected cases, this Tribunal held that the

casual employees who are continuing in service for a long period are entitled to regularisation based upon their seniority after condoning the artificial break in service. Thereafter the Southern naval Command wrote to the Headquarters at New Delhi requesting to condone the breaks and finalise the seniority. The matter is still pending and no orders have been received. The applicant was absorbed only from 6.2.97 in the cadre of LDC. In doing so, the period of service rendered by him from 5.4.89 to 15.8.93 was ignored. Since no decision was taken by the respondents the applicant preferred an OA No 498/04 before the CAT. The order of the Tribunal directing the respondents to take a decision on his representation is at Annexure A-6. The applicant has submitted a further representation dated 14.8.04 and that is at Annexure A-7. The 2nd respondent has passed the impugned order rejecting the applicant's claims and hence this OA.

2 The following reliefs are prayed for:-

(i) To issue a writ of certiorari or any other writ, order or direction quashing Annexure A8 viz; Order no Cs 2695/43/1/1122 dated 6.4.2005 issued by the 2nd respondent herein the Flag officer commanding-in Chief, Southern Naval Command, Cochin,

(ii) To declare that the applicant is entitled for regularization of service from 5th April 1989 to 15th August 1993,

(iii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to grant all service benefits such as seniority, assured career progression (ACP) etc to the applicant taking into account the services rendered by him from 5th April 1989 in the post of Lower division clerk.

(iv) Award to the applicant the cost of these proceedings and

(v) Grant such other and further reliefs as are just, proper and necessary or may be prayed for

3 Per contra, the respondents have submitted that the averments are contrary to facts and misleading. The posts of LD Clerk and unskilled labour are distinct and different and are falling under Grs. C and D respectively. The service rendered by the applicant as casual labour was regularised from 24th April 1984 to 29th March 1985 vide order dated 26th June 1995. Subsequently in compliance of this Tribunal order in OA 2179/93 filed by the applicant, the period of service rendered in the post of LD Clerk on casual basis from 15th August 1993 to 5th February, 1997 has also been regularized. While doing so, the question of regularization of the casual service rendered by the applicant from 5th April 1989 was also considered, however it was found that the applicant was having a long break of 52 days from 25th June to 15th August 93 which could not be condoned due to the policy decision taken to limit the break period to 30 days for condonation purposes. He enjoys service benefits from the date of initial appointment i.e 24th April 1984 for all purposes except seniority and ACP benefits. They have also submitted that the Tribunal in the common order in OA 1100/95 dated 27th April 1998 and batch have upheld the administrative decision to condone only artificial/ technical breaks up to 30 days only.

4 The applicant has submitted in the rejoinder that other Gr.D employees who were also selected along with him during the year

1989 for the post of LD Clerk were regularized condoning the technical breaks from their initial appointment. There is a break of 52 days as contended by the respondents out of which 36 days he was on medical leave and the actual break would only be 16 days. The applicant was entitled to leave and he was not absent during this period. Now that he has completed 21 years of service with effect from 24.4.84 as unskilled labour, casual LDC and regular LDC, he is entitled to ACP benefits as granted to the similarly situated employees in OA2179/93. Such benefits of ACP taking into account casual service regularized have been granted in this Tribunal's order in OA755/2000 and the applicant should also be extended those benefits.

5 The respondents in their additional reply statement have admitted that breaks have been condoned for regularization of casual service but the applicant has a comparatively longer break of 52 days which has placed him behind his juniors. The judgement of the Hon'ble High Court in OP No. 11403/98 would not apply to the applicant as there is no move on the part of the department to take back any benefit granted to the applicant.

6 We heard the Learned counsel on both sides and perused the record. The regularization of casual labour has been the subject matter of several litigations before the various benches of the CAT. In one such judgement in OA 543/92 this Tribunal declared that the

petitioners were entitled to regularisation with due condonation of artificial breaks. The directions were implemented but later sought to be withdrawn on the ground that breaks exceeding 30 days cannot be considered as technical breaks. This decision was challenged in O.P Nos. 9639, 11518, 14300 & 14936 of 1998 and the Hon'ble High Court in its order in the batch of OPs dated 28th July 2000 observed as follows:-

" 4. It may be that Department was finding difficulty to pinpoint the actual length or duration of artificial/ technical breaks. And that may be the reason for the condonation of break in a wholesale manner. However on rethinking after implementation an adoption of a short cut method of prescription of a thirty days period as an upper limit for the benefit arising from the judgement, according to us leads us to come to the conclusion that the decision is hit by vice of arbitrariness. It violates the fundamental right envisaged under Article 14 of the constitution of India and interference is warranted."

7 Therefore it was directed that benefits already given on the basis of CAT orders shall not be demanded back from the petitioners. The contention of the respondents that the above High Court judgement has no relevance to the applicant's case as no benefit granted has been taken back, is too technical in as much as the Court in very strong words extracted above had condemned the shortcut method of prescription of a 30 days period as an upper limit as arbitrary and warranting interference.

8 This applicant himself had filed OA 2179/93 for regularization

of his services from the date of initial appointment in preference to juniors and this application along with a batch of similar cases was disposed off by a common order by this tribunal dated 17th January 1994. with the following direction:-

"In the light of the legal position and the earlier judgement of this Tribunal, the OA can be disposed off directing the Chief Staff officer (Personnel Branch), the 1st respondent to consider the claim of the applicants for regularization in accordance with their seniority and turn as undertaken by the respondents in the reply statement. This shall be done without any undue delay.. Following the Annex 5 judgement, we also make it clear that pending final decision the applicants shall be allowed to continue in their present assignment subject to the availability of work under the first respondent."

9 In purported compliance, the respondents regularized the period of service of the applicant rendered in th post of LD Clerk on casual basis from 16th August 1993 to 5th Feb 1997. It may be noted that in the above direction of the Tribunal there was no reference to any condition to be imposed in the regularization or imposing limits for condonation of breaks. The respondents did not consider the period of 25th June to 15th August, 1993 as according to them there was a break of 52 days in the service of the applicant which was in excess of the limit of 30 days prescribed by the respondents. The respondents have not produced any order conveying such a decision fixing a limit of 30 days for condonation of breaks. In any case, the applicant herein was already covered by an order of this Tribunal rendered in 1994 that he is entitled to regularization by condonation of breaks as given to similarly placed employees in OA 679/91 and

also by the observations of the Hon High court in their order extracted in para 5 supra that no benefits given by the orders of the CAT will be taken back by imposing the arbitrary limit of 30 days. We are therefore of the considered view that the applicant was eligible for regularization from the date of initial appointment as LDC (casual) after condonation of the technical breaks in the period of his casual service which was necessitated by the very nature of the employment and the exclusion of the period from 25th June to 15th August, 1993 was not warranted in his case.

10 We are also required to consider whether there was really any long break of 52 days in the service of the applicant as he has contended that out of the 52 days the applicant was on leave for 30 days and that leave was sanctioned by the controlling officer. To satisfy ourselves we called for the service record of the applicant and the respondents have produced the service documents in three volumes which comprise the leave account and two volumes of the service book and loose sheets containing the particulars of casual service verified and signed by the concerned officers. The Leave account clearly shows that the applicant was granted commuted leave for the period 1.7.93 to 31.7.93 for 31 days and on 1.8.93 to 5.8.93 for 5 days and that he was transferred to INS Venduruthy on appointment as LDC (casual) on 16.8.93. (vide entries on the last page of the leave account. Further there are 14 loose sheets containing the service particulars of the applicant from the initial

appointment in 1989 which also carry the stamp and signature of the officer who verified the service. The Entry at page 4 (written in pencil) is to the following effect. "Reported from CTW Cochin on appointment as LDC casual in INS Venduruthy on a pay of Rs 950/pm plus allowances as admissible from time to time for a period of 85 days from 01 april1993". The next entry is "Reported at Cochin on appointment from 16th August 1993 to 27th Sept. 1993. Hence it is clear that he had worked from 25th June to 31st July on expiry of the first spell of 85 days ending on 1st July 1993 he had taken medical leave and on expiry of leave he had reported again on 16th August from which date he has now been regularised. The Service Book Vol 1 at pages 10 to 13 also contains the very same entries but there are no entries regarding the leave availed by the applicant in the service book which record is kept separately as Leave Account. Had the respondents verified the leave account also and tallied the entries with the entries in the Service Book, this omission would not have occurred. Hence as borne out by the record, the applicant has a break of less than 30 days only, even assuming that the respondents could apply such a limit in his case.

11 In the result, we find that the applicant's case succeeds both on law and facts. We declare that the applicant is entitled to regularization of his service from 5th April 1989 to 15th August 1993 after condoning short technical breaks if any. The respondents are directed to issue necessary orders in this regard. The applicant is

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also entitled to all service benefits arising therefrom in accordance with extant rules and instructions. Annexure A-8 is quashed and the OA is allowed. No costs.

Dated 16 th April, 2007


DR. K. B. S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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