

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 421/2006

WEDNESDAY THIS THE 1st DAY OF NOVEMBER, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER

1 M.V. Mohanan S/o late Sri Velayudhan
M.T. Greaser, INS Garuda,
Southern Naval Command
Cochin-682004

2 V.P. Prakashan S/o Padmanabhan
M.T. Driver, INS Garuda,
Southern Naval Command
Cochin-682004

Applicants

By Advocate Mr. E. M. Joseph

Vs.

1 Union of India represented by the Secretary
Ministry of Defence
New Delhi-1

2 Commanding Officer- in-Chief
Southern Naval Command
Cochin-682004

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in this O.A. seek the following reliefs:

1. To call for the records leading upto Annexure A-3 order dated 22.7.2005 issued by the 2nd respondent and quash the same.

- 2 To direct the respondents to regularise the period of casual service of the applicants and count the same for pensionary benefits with grant of consequential benefits in accordance with law.
- 3 To grant such other and further reliefs as this Hon'ble Tribunal may deem fit to grant in the circumstances of the case.
- 4 Cost of the applicants

2 The first applicant was initially engaged as a MT Cleaner on casual basis from 2.4.1991 till 26.3.1996 on which date his temporary status was declared. Thereafter, he was regularised in the post on 16.12.1998 and was confirmed in the post of MT Cleaner w.e.f. 3.1.2000. The 2nd applicant was initially engaged as Tyreman (S.S) on casual basis from 18.10.1990 till 26.3.1996 on which date his temporary status was declared. Thereafter he was regularised on 5.4.2002 and was confirmed in the post of Tyreman (SS) w.e.f. 18.11.2003. Both the applicants are in Group-D posts and have now been promoted as MT Greaser and MT Driver respectively. Both the applicants had completed 240 days on each year during the period of casual service with artificial breaks. The applicants had been requesting the 2nd respondent to regularise the casual service rendered by them. They had also submitted representations before the 2nd respondent through proper channel. It is the contention of the applicants that persons similarly placed like them have been given the benefits of regularisation of the casual service rendered by them as per direction of the Tribunal in its order dated 30.11.2004 in O.A. 632/2002. The applicants are entitled to get their casual service

regularised w.e.f. the initial period of respective date of appointment.

They also relied on Annexure A-5 circular issued by the first respondent according to which they are entitled to have their casual labour service regularised.

3 In the reply statement the respondents have refuted the contentions of the applicants that they were regularised w.e.f. 16.12.1998 and 5.4.2002 respectively and have stated that they were only given appointment subject to satisfaction of the conditions prescribed in the Recruitment Rules for the post and not regularised automatically. It is also submitted that the averments regarding Annexure A-5 is a misrepresentation of the facts. The said sanction is not binding so as to be extended to all similarly situated eligible persons at that point of time for the fact that the said sanction was a one-time measure to regularise the casual service in respect of 4313 non-industrial employees of the Indian Navy. Since the posts of MT Greaser and Tyreman (SS) in which the applicants were initially appointed are industrial cadre and the case for regularisation of casual service in respect of the industrial cadre is pending for consideration before the competent authority their contention that they are entitled to the benefit of regularisation of casual service as per Annexure A-5 circular is untenable. The respondents state that they are not in a position to take a decision without any specific order either from the Court of law or the Government in each case. Hence they have contended that the impugned order has been made after

proper application of mind considering all aspects.

4 No rejoinder has been filed.

5 We have heard Shri EM Joseph appearing for the applicants and Mr. Rajeev representing the SCGSC for the respondents.

6 The only question is whether the applicants herein have been discriminated in the matter of regularisation as against their counterparts because they have not approached this Tribunal earlier. O.A. 632/2002 on which the applicants have relied on was filed by similar industrial employees in the Naval Store Depot, Naval Base, Cochin. The respondents had then taken the contention before the Tribunal that the benefit of regularisation in condoning the artificial break could not be extended to the applicants therein since the approval of the Ministry had not been obtained and certain cases were pending before the Mumbai Industrial Tribunal. More or less identical pleas are now taken in this O.A. also by the respondents even though four years have lapsed. The plea of the respondents was rejected by this Tribunal and it was held:

"4 We are of the opinion that there is no justification for the Ministry in not granting the approval and the respondents not extending the benefit to the applicants who are identically situated in all respects like the personnel who were petitioners in an earlier decision as it was the duty of the administration to extend the benefit to the similarly situated personnel without driving each one of them to court claiming the benefit. In paras 4(a) and (b) of the impugned order itself it has been admitted that in the case of those who are identically situated like

applicants in obedience to direction from the Tribunal their services have been regularised w.e.f. The dates of their initial engagement on casual basis condoning artificial breaks. It is worthwhile to reproduce paras 4(a) and (b) of the impugned order which reads:

4.(a)Provisions envisaged in Government letter CP(SC)/4834/Court Case/NHQ/1375/DO(P)/D(N-II) dated 26. Jun 95 is extended to non-petitioners of non-industrial category only.

(b) Casual services of industrial personnel, who have approached the Hon'ble Tribunal and obtained specific directions from the Court have been referred to Naval Headquarters/Ministry of Defence wherein their casual service has been regularised after approval from Ministry of Defence in each case."

7 It is seen from the reply statement that the respondents have implemented the above directions of this Tribunal. In fact, the averments of the respondents are contradictory in that in para 5 of the reply they concede that the applicants herein are similarly situated persons as that of various other OAs, but in para 8, they contend that in order to extend the benefit of regularisation, there has to be specific order either from the Court or the Government in each case. We find that the stand of the respondents is quite unreasonable and illegal. Their contention that Annexure A-5 is not relevant for the industrial cadre of employees is also not borne out by the reading of the above circular which does not make any distinction between industrial and non-industrial cadres. It is settled law that general benefits extended by Court judgments to a category of employees cannot be made applicable in a restricted manner to the applicants in these court cases alone. Such an action is

contrary to the judgment of the Full Bench of the CAT Bangalore Bench in the case of C.S. Elias Ahmed and Ors .Vs. UOI and Others and the same principle has been upheld by the Hon'ble Supreme Court in several other cases. The observations of the 5th CPC in para 126.5 reproduced below referring to the above position are also significant:

"Extending Judicial decisions in matters of a general nature to all similarly placed employees.

126.5 We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and Others Vs. UOI and Others (O.A. Nos. 451 and 541 of 1991) wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh Vs. UOI (1992) 19 ATC 94(SC) dated 20.7.1988, K.I. Shepherd Vs. UOI (JT 1987(3)SC 600) Abid Hussain Vs. UOI (JT 1987(1)SC 147) etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Govt. should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

8 In the light of the above discussions we are of the view that there is no justification for not extending the benefit granted in Annexure A-4 order of this Tribunal in O.A. 632/2002 to the applicants in this O.A. The impugned order at Annexure A-3 is

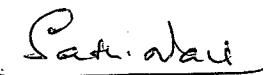
quashed and the respondents are directed to regularise the period of casual service of the applicants and count the same for pensionery benefits and other consequential benefits in accordance with law.

The O.A. is allowed. No costs.

Dated 1.11.2006



Dr.K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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