

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 466/2010

Thursday, this the 31st day of March, 2011

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. C.Sahadevan,
Office Assistant, Passport Office;
Trivandrum.
2. C.S.Beena,
Office Assistant, Passport Office,
Trivandrum.Applicants

(By Advocate Mr Shafik M.A)

v.

1. Union of India represented by
Secretary to Government of India,
Ministry of External Affairs,
New Delhi.
2. The Joint Secretary and Chief Passport Officer,
Ministry of External Affairs
New Delhi.
3. The Passport Officer,
Passport Office, Trivandrum.Respondents

(By Advocate Mr M.V.S.Nampoothiry, ACGSC)

This application having been finally heard on 31.3.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicants who are presently working as Office Assistants in the Passport Office, Trivandrum are aggrieved by the refusal on the part of the respondents in granting them Group 'C' scale of pay, despite having been employed them as such and extracted work from them.



2. The 1st applicant, an ex-serviceman, having been sponsored by the Employment Exchange was selected and engaged as a Casual Labourer with effect from 20.7.1992 and since then, he was discharging the duties attached to a Group'C' post. He was also paid wages accordingly. Having completed 206 days of casual service as on 1.9.1993, he became eligible for grant of temporary status with effect from that date, as per the relevant scheme. However, the respondents did not grant him temporary status on the ground that his services were utilised against a Group'C' and not against any Group'D' post. Later on, his services were disengaged with effect from 21.4.1998 but he was re-engaged on 5.7.1999. Thereafter, apprehending further termination from service, he has filed O.A.481/2000, which was allowed vide Annexure A-1 order dated 15.12.2000 directing the respondents to grant him temporary status with effect from 1.9.1993 with all consequential benefits as he had already completed 206 days of service and to allow him to continue as a casual labourer subject to availability of work and in preference to persons with lesser length of service. They were also directed that the applicant's request for regularisation against the Group'D' post shall be taken up in his turn.

3. The 2nd applicant also, having been sponsored by the Employment Exchange, was engaged against a Group'C' post with effect from 3.8.1992. She was also paid the wages attached to Group'C' post post. She was disengaged with effect from 5.8.1997 but re-engaged, intermittently. Apprehending further disengagement from service, she had also filed O.A.No.396/2000 which was allowed vide Annexure A-2 order dated 30.11.2000 directing the respondents to consider her for grant of temporary status with effect from 1.9.1993, and not to terminate her services so long as work was available and persons with lesser length of service than her as

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casual labourers were retained in service.

4. In compliance of the aforesaid Annexure A-1 and A-2 orders, both the applicants were granted temporary status with effect from 1.9.1993. In the Annexure A-3 Memorandum dated 26.2.2001 the respondents have ordered recovery of the difference in amount between the wages payable to them as casual labour against the Group'D' post and the wages already paid to him against the Group'C' post from 1.9.1993 to 4.8.1997. In respect of the 1st applicant the respondents have also ordered as under:

"Shri C Sahadevan, casual labour has drawn Group'C' wages (Pay + DA) with effect from 1.9.1993 to 4.8.97 which should be recovered/adjusted while making arrears of pay and allowance corresponding to wages of Group'D' employees."

5. According to the learned counsel for the applicants Shri Shafik M.A, the Annexure A-3 was issued on the basis of a fax message No.V-IV/441/28/2000 dated 14.2.2001 from the office of the 2nd respondent and similar order was also issued in respect of the second applicant. Accordingly, a substantial amount was recovered from the arrears of pay and allowances from both the applicants. However, they were performing the very same duties as they were performing prior to 5.8.1997.

6. The applicants made the Annexure A-5 and A-6 representations dated 19.10.2009 for refunding the aforesaid recovered amount. Since there was no response to their representations, they have jointly filed this O.A praying for the following reliefs:

- i) To call for the records relating to Annexure A-1 to A-6 and to declare that the applicants are entitled to the wages of a Group'C' post for the period which they worked as Group'C' Clerks discharging the duties of the Clerks till 4.8.1997.
- ii) To declare that the recovery made from the arrears of pay and allowances of the applicants consequent upon granting temporary status to them, is illegal and direct the respondents to refund the same forthwith.




7. It has been averred in this O.A. that after extracting work as Clerks and granting them temporary status on the directions of this Tribunal in O.A.481/2000(supra) and 396/2000(supra) respectively, the alleged recovery of over payment from their salary was highly arbitrary and against the principles of natural justice. In this regard, the applicant's counsel Shri Shafik M.A has relied upon a decision of the Hon'ble Apex Court in **Shyam Babu Verma and others v. Union of India and others** [(1994) 2 SCC 521] where it was held as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

Shri Shafik has also relied upon the judgment of the Supreme Court in **Bhagwan Shukla v. Union of India and others**[AIR 1994 SC 2480], wherein it was held as under:

"3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181 p.m. from Rs. 190 p.m. in 1991 retrospectively w.e.f. 1812.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not, even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."



Since, that was not done, the order (memorandum) dated 25.7.1991. which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.1993 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant From Rs. 190 to Rs. 181 w.e.f. 18.12.1970."

8. The respondents have submitted in their reply statement that consequent upon the grant of temporary status, both the applicants were given all the benefits as admissible applicable to Group'D' post and they were not entitled to the benefits which they were drawing against the Group'C' post and hence, the excess payment made to them was adjusted while giving the arrears of pay and allowances corresponding to the wages of Group'D'. They have also further submitted that as per their service records, both the applicants were engaged as Group'D' casual labourers as per DoPT orders according to which casual labourers could be engaged only against Group'D' post and were eligible for drawing pay corresponding to Group'D' staff, irrespective of the nature of work they have been performing.

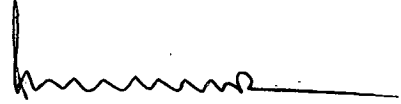
9. We have heard the learned counsel for both the parties and have gone through the records available. The applicants are seeking refund of the recovery of the amount of alleged over payment made to them in the year 2001 after granting them temporary status with retrospective effect from 1.9.1993 vide Annexure A-3 Memorandum dated 26.2.2001. Subsequently, they have been regularised in the Group'D' post also. They did not find fault with the respondents for the recovery, all these years. The present O.A has been filed only in May, 2010 i.e. after 9 years of recovery. There is no point in their present contention that the respondents have assigned them some work which was being performed by the Group'C' staff while they were



engaged as casual labourers. The claim of the applicants for refund of the amount recovered by them is highly belated and it is to be rejected on account of delay and laches. Accordingly, the O.A is dismissed. There shall be no order as to costs.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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