

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXX No.

527/1991

199

DATE OF DECISION 28.2.92

N.R.Ajaya Kumar _____ Applicant (s)

M.Girijavallabhan _____ Advocate for the Applicant (s)

Versus
The Chief of the Naval Staff,
Naval Headquarters, New Delhi and 2 others Respondent (s)

Mrs. K.B.Subhagamani, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 7.3.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as an Assistant Store Keeper in the Naval Armament Depot, Alwaye under the Southern Naval Command, Cochin has prayed that like the applicants in O.A. 434/89 he may also be declared to be entitled to get his casual service regularised from the date he entered service on 23.12.1985 as Assistant Store Keeper with all consequential benefits of leave, increment, fixation of pay etc. except seniority, duly condoning the intermittent artificial breaks. The applicant was initially appointed by the second respondent as Laboratory Assistant on a casual basis on 26th July 1983. He continued in that post till 31.3.1984 in three spells with intermittent breaks. He was re-appointed as an Assistant Store Keeper from 23.12.85 to 5.2.86. From 10.2.86 to 6.10.88 he continued as Assistant Store Keeper intermittently with short breaks ranging from one to seven days. He was appointed against a permanent vacancy of Assistant Store Keeper with effect from 20.9.88.

In accordance with the Ministry of Defence letter dated 24.11.67(Annexure A) casual non-industrial employees absorbed against regular posts are eligible for all benefits as for regular employees. ^{against their continuous casual service} In case there is break in casual service, the benefit will be admissible from the commencement of the last spell of the continuous casual service without break and ^{the} ^{casual} period of service earlier than the break would be ignored. By a subsequent order dated 27.5.80 (Annexure-B) the benefits of continuous casual service given under the 1967 order was not to cover the benefit of seniority, ^{probationary} ^{pensionary} period and grant of quasi-permanent status. Some Assistant Store Keepers under the Southern Naval Command approached this Tribunal in O.A 434/89 claiming that they should be regularised from their respective dates of first appointment on a casual basis ignoring the period of technical breaks with all consequential benefits in accordance with the aforesaid order at Annexure-A. Relying upon the various judgments of the Andhra Pradesh High Court and Calcutta and Hyderabad Benches of the Tribunal, this very Bench of the Tribunal allowed the application in part directing that the respondents shall ignore the artificial or technical breaks in the casual service and regularise them from the date of their initial appointment. The applicant before us claims the same benefit. The respondents have stated that since the benefits given by the Tribunal apply only to the applicants in that case, the applicant before us has no right to the same.

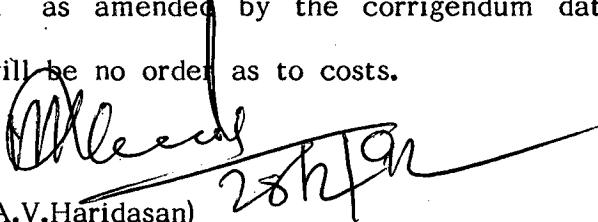
2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As stated above, the following extracts from the common judgment of this very Bench dated 20.8.1990 in O.A. 434/89 and O.A.604/89 will be relevant:-

" We see no reason to depart from the above decision in case of the applicants before us in these two cases and others similarly circumstanced. The stand taken by the respondents that the decision given by the High Court

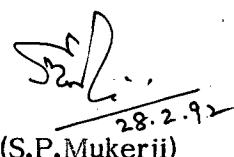
and the various Benches of the Tribunal should be applicable only to the applicants before them, cannot be accepted. Apart from the fact that a principle which is held good by the High Court of Andhra Pradesh and endorsed by the Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of the Tribunal cannot be dismissed as not applicable in case of the applicants who are similarly circumstanced as the applicants before those Benches. The applicants before us belong to the same cadre as the applicants in the aforesaid cases, and over and above that, they admittedly figure in the same all-India Seniority List, irrespective of the Naval Command to which they belong. The letter dated 3.11.86 of the Chief of Naval Staff (vide p.77 of the Paper Book) also extended the benefit of Andhra Pradesh High Court's judgment to all similarly circumstanced.

"14. In the above circumstances and in conformity with the various decisions of High Court of Andhra Pradesh, Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of this Tribunal, we allow this application in part with the direction that the respondents shall ignore the artificial or technical breaks in the casual services of the applicants and regularise them from the date of their initial appointment on a casual basis with all benefits due to them as per Ministry of Defence letter No.83482/EC-4/Org.4 (Civ)(d)13754/D(Civ.II) dated 24.11.67 as amended by corrigendum No.13051/OS-SC(ii)/2968/D(Civ-II) dated 27.5.80."

So far as the benefit of seniority is concerned which was excluded by the order dated 27.5.80, the matter was referred to a Larger Bench. Since the applicant before us is not claiming the benefit of seniority, adopting the dictum in the aforesaid judgment in O.A. 434/89, we allow this application with the direction that the respondents shall ignore the artificial or technical breaks in the casual service of the applicant and regularise his casual service as Assistant Store Keeper from the date of his initial appointment on a casual basis with all benefits due to him as per the Ministry of Defence letter dated 24.11.67 at Annexure-A as amended by the corrigendum dated 27.5.80 at Annexure-B. There will be no order as to costs.


(A.V.Haridasan)
Judicial Member

n.j.j


(S.P.Mukerji)
Vice Chairman
28.2.92