

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.536/2008

Friday, this the 8th day of January, 2010

CORAM

HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

1. E.I.Thilakan, working as unskilled labour
Naval Ship Repair Yard, Kochi,
Ethithara House,
Vallarpadam P.O.,
Cochin.31.
2. N.R.Sugunan, working as unskilled labour,
Naval Ship Repair Yard, Kochi
Namboorikandathil,
Edakochi,
Cochin.6.
3. M.M.Prasanthan, working as unskilled labour,
Mannalil House,
Kumbalangi,
Cochin.7.
4. A.K.Gopi, working as unskilled labour,
Naval Ship Repair Yard, Kochi,
Amanagattuthara,
Puthuvypin,
Cochin.
5. P.K.Bhanu Prakasan, working as unskilled labour,
Naval Ship Repair Yard, Kochi,
Puthenpurakkal,
Kumbalangi,
Cochin.7.

... Applicants

By Advocate :Sri C.S.G.Nair

vs.

1. The Flag Officer Commanding in Chief,
Southern Naval Command,
Cochin.4.
2. Union of India represented by its Secretary,
Ministry of Defence,

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South Block,
New Delhi-110001.

3. The Joint Controller of Defence Accounts(Navy),
Thevara, Kochi-15.

.. Respondents

By Advocate :Sri Sunil Jacob Jose, SCGSC

The application having been heard on 08.01.2010,the Tribunal on the same day
delivered the following:-

ORDER

HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):

The applicants have filed this O.A. praying for the following reliefs:-

- i. To direct the respondents to regularize the applicants' services from the date of their initial appointment on casual basis after condoning the artificial breaks in their services and grant all other consequential benefits flowing therefrom.
- ii. To direct the respondents to refix the pay of the applicants.
- iii. To grant such other relief or reliefs that may be urged at the time of hearing or that this Honourable Tribunal may deem fit to be just and proper.
- iv. To grant cost of this O.A.

2. The applicants are working as unskilled labourers in the Naval Ship Repair Yard ,Kochi. They joined service as casual labourers and were granted temporary status as shown below:-

	<u>Initial appointment</u>	<u>Date of Temporary Status</u>
1 st applicant	9.12.1978	11.5.2001
2 nd applicant	17.11.1979	18.5.2001
3 rd applicant	12.9.1985	26.4.2001
4 th applicant	16.11.1978	2.5.2001
5 th applicant	7.9.1979	18.5.2001

As per para 5(1) of the scheme Annexure A/3 they were regularized upon which their pay was fixed at the minimum of the scale. The applicants represented for fixing their pay by counting the increments earned during temporary status period. The request was rejected vide Annexure A/6 dated 25.3.08. Hence the O.A.

3 The applicants contend that this Tribunal had held in O.A. 606/2001 that the applicants therein who were similarly placed were entitled to count increments earned while they were in temporary status. The Department of Personnel & Training have issued Annexures A7 and A8 dated 9.5.08 and 14.5.08 respectively on the subject of fixing the pay of casual labourers on regularization. On the basis of Annexures A7 and A8 the applicants pay should be refixed. In O.A. No.421/2006 this Tribunal had directed the respondents to regularize the services from the date of initial appointment on casual basis after condoning artificial breaks in the services of the applicants and make available to them monetary benefits except seniority flowing therefrom.

4. The respondents contested the O.A. The applicants were not appointed but engaged as daily waged/nerrik rated unskilled labourers for carrying out casual nature of work on weekly basis till conferment of temporary status. Casual appointments are made for a specific period not exceeding 89 days on monthly remuneration basis. In the case of daily wagers minimum wages are paid on the days of work only and no wage is paid for Sundays, Holidays except National Holidays. They are not appointed against a post when vacancy arises unlike casual employees. The applicants herein are not similarly situated like the applicants in O.A. No.632/02 and O.A. No.416/2005 as the applicants in these O.As were originally appointed on casual basis with intermittent breaks and subsequently absorbed against regular posts. Though the benefit of fixation has been ordered vide DOP&T O.M. at Annexures A7 and A8 a separate directive is necessary to be issued by the Ministry of Defence to be made applicable in respect of eligible employees working in the units/departments under Navy, for which proposal is made vide letter No.CS 2695/43/1221 dated 8th July, 2008. Once the directive is received from the competent authority the benefit will be extended to the applicants herein.

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5. Arguments were heard and documents perused.
6. During the arguments the learned counsel for the applicants submitted that the applicants, some of them having retired, would be satisfied if arrears from the date of regularisation is paid to them immediately.
7. Annexure A/7 dated 9th May, 2008 is extracted as under:-

"No.49014/4/2007-Estt(C)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 9 May, 2008

OFFICE MEMORANDUM

Subject:- Fixation of pay of Casual Labourers(Temporary Status)on their regularisation.

The undersigned is directed to refer to this Ministry's OM No.51016/2/90-Estt.(C) dated 10.9.93 containing the scheme for grant of temporary status and regularisation of casual workers with temporary status against two out of every three vacancies arising in Group D cadre in respective offices where the casual workers have been working, to be filled up as per extant recruitment rules and in accordance with the instructions issued by this Department. These orders, inter alia, provided that benefits of increments at the same rate as applicable to a Group D employee could be taken into account for calculating pro rata wages for every one year of service subject to the other conditions in regard to performance of duties for the prescribed minimum number of days in a year. Subsequently, a clarification was issued in this Department's O.M.No.49014/4/97-Estt.(C) dated 29.1.1998 that the pay of casual workers with temporary status on regularization against Group D post may be fixed at the minimum of the pay scale of the relevant Group D post.

2. The Staff Side of the Standing Committee Meeting of the National Council (JCM) had taken up the issue of fixing the pay of such casual worker with temporary status on their regularization against Group D post at the same stage of basic pay based on which they were paid the wages when their services were utilized as casual worker with temporary status. The matter has been considered and it has been decided that in super session of this Department's aforesaid OM dated 29th January, 1998 the pay of casual workers with temporary status on their regularization

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against Group D posts in identical grades will be fixed after taking into account the increments already earned by them in the Group D pay scale which was taken into account for payment of wages while working as casual worker with temporary status.

3. Past cases may also be reviewed and the pay refixed in respect of casual workers with temporary status regularized in Group D post. Such counting of the past increments earned on regularization will be only for the purpose of pay fixation and will not entitle them to claim seniority or any other benefits like promotion etc. on the basis of such casual service.

4. All Ministries/Departments including attached/subordinate offices are requested to take necessary action to fix the pay of such of those casual labourers who have been regularized in terms of the above scheme accordingly and arrears of pay as admissible paid to them.

5. This issues with the concurrence of Ministry of Finance (Department of Expenditure) vide their ID No.7/7/2008-E.III(A) dated 08.05.2008.

(P.Prabhakaran)

Deputy Secretary to the Govt. of India

To,

All Ministries/Departments of the Government of India."

(emphasis supplied)

8. Annexure A/8 dated May 14,2008 followed:-

"No.49014/4/2007-Estt./(C)

Government of India

Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training)

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New Delhi, dated the May 14th,2008

OFFICE MEMORANDUM

Subject: Fixation of pay of Casual Labourer(Temporary Status)on their regularization.

The undersigned is directed to refer to DOP's OM of even number dated 9th May, 2008 (copy enclosed) on the above subject. As per Para 2 of this OM, the pay of casual workers with temporary status on their regularisation against Group 'D' posts in identical grades will be fixed after taking into account the increments already earned by them in the Group 'D' pay scale which was taken into account for payment of wages

while working as casual worker with temporary status.

2. There may, however, be instances where casual workers with temporary status working against the higher pay scales in Group 'D' and were regularized in lower pay scale of Group 'D', there being four Group 'D' pay scales currently in vogue viz; (S1) 2550-3200, (S2) 2610-3540, (S2A) 2610-4000 and (S3) 2650-4000. It is apprehended that in the Government of India, other than Ministry of Railways, in a number of Departments the casual labourer engaged seem to fall in unskilled, semi-skilled, skilled, highly skilled, master craftsmen etc. categories e.g. GOI Presses, Delhi Milk Scheme, EPF Organization, Air Force, AOC, EME, Defence Production establishments (Ordnance Factory), Telecommunications etc. All the Ministries/Departments are, therefore, requested to examine the issue and if such situation is prevailing in their Departments/Organizations where casual workers with temporary status were working against higher pay scales in Group 'D' posts and are regularized in lower pay scale of Group 'D', the same may be brought to the notice of DOPT with full details.

(A.K.Sharma)

Under Secretary to the Govt. of India

To

All the Ministries/Departments of the Govt. of India."

9. It is very clearly stated that pay of casual workers with temporary status on their regularisation should be fixed after taking into account the increments already earned. All Ministries and Departments including attached and subordinate offices were requested to fix the pay of regularized casual labourers in terms of the scheme and make payment of arrears.

10. It is not disputed that the applicants are covered by the scheme as at Annexures A7 and A8. What is required according to the respondents is a direction from the Ministry of Defence for implementing the scheme as at Annexures A7 and A8 for which they have already moved the Ministry of Defence vide letter dated 8th July, 2008. The Govt. of India had directed all Ministries to take necessary action in accordance with Annexure A7 as early as 9th May, 2008. It is normally expected that the Ministry of Defence should have advised its subordinate offices suitably well in time. It is quite surprising that in spite of taking up the matter vide letter dated 8th July, 2008, no instructions till now appear to have been issued to the respondent No.1. The delay in the matter is inexcusable. In the interest of justice, further delay should be

avoided in making payment of arrears on refixation of the pay of the applicants. As the applicants do not press for the remaining prayers, partially allowing the O.A, it is ordered as follows.

11. The respondents are directed to make payment of arrears from the date of regularization to the applicants in accordance with the directions of the Govt. of India as contained in Annexure A7 dated 9th May,2008 with a period of two months from the date of receipt of a copy of this order.

12. No order as to costs.



(K. GEORGE JOSEPH)
MEMBER(A)

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