

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 543 of 1992.

DATE OF DECISION 11.1.1993

N.A.Devassia and 4 others Applicant (s)

Mr. M. Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India rep.by Secretary Respondent (s)
Ministry of Defence and another

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

and

The Hon'ble Mr. **A.V.Haridasan, Judicial Member**

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri SP Mukerji, Vice Chairman)

In this application dated 2.4.92 under Section 19 of the Administrative Tribunals Act, the five applicants who are employed under the Flag Officer-Commanding-in-Chief, Southern Naval Command, Cochin as LDCs and Peons have prayed that the benefits of judgments of this Tribunal in similar applications O.A.Nos.434/89, 609/89, 967/90, 973/90, 30/91, 523/91 and 527/91 should be extended to them making them entitled to reckon their casual service prior to their date of regularisation for the purpose of pension, leave, increments etc., except seniority by condoning the artificial breaks.

2. In the reply affidavit the respondents have stated that the benefits of the aforesaid judgments were extended to the applicants therein in compliance of the directions in the judgment. Since there are no permanent posts available for regularisation of the applicants from the date of their initial appointment on casual basis, extending the benefits to the applicants before us will have wide repercussions. There are no government orders to provide benefits of earlier judgments to others who are similarly circumstanced.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The respondents have not contended that the applicants before us are not similarly circumstanced as the applicants in the aforesaid original applications. The main contention is that granting this application will have wide repercussions. Such a contention cannot be countenanced as this amounts to an argument 'in terrorem'. Casual employees are ⁱⁿ the lowest and poorest category of public servants and giving them their dues cannot be denied solely on the ground of the financial implications. In the judgment of this Tribunal dated 20.8.90 in O.A.434/89 where a similar relief was claimed by the Assistant Store Keepers in the Southern Naval Command, the question of regularisation and consequential benefits other than that of seniority was dealt with in the following terms:

"12. In so far as the first issue is concerned there is consensus of findings by the High Court of Andhra Pradesh and all the Benches of the Tribunal to the effect that, in accordance with the various orders of the

Ministry of Defence, the applicants are entitled to be converted into regular employees with effect from the date of their initial employment as casual employees and that if there have been some technical breaks during their entire period of casual employment, the same are to be condoned. The relevant portion of the order dated 24/24.8.89 of the New Bombay Bench of the Tribunal which typifies the findings in all cases is as follows:-

"Respondents shall give all benefits due to the applicants in both the cases as per the Ministry of Defence letter No.83482/EC-4/Org.4(Civ)(d)/13754/D(Civ-13051/OS-SC(ii) 2968/D(Civ-III) dated 27.5.80, from the dates on which the applicants were initially appointed on casual basis, by ignoring the artificial or technical breaks in their services."

"13. 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.

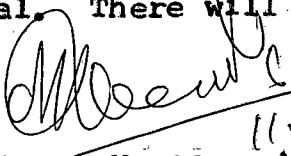
"14. In the above circumstances and in conformity with the various decisions of High Court of

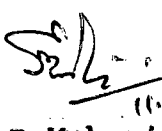
Andhra Pradesh, Hyderabad Bench of this Tribunal, Calcutta Bench, Madras Bench and New Bombay Bench, we allow this application in part with the direction that the respondents shall ignore the artificial or technical breaks in the casual services of the applicants and regularise them from the date of 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(11)/2968/D(Civ-II) dated 27.5.80."

4. Relying upon the aforesaid observations this very Bench of the Tribunal decided a similar application of Stenos, LDCs and Peons of the Naval Repair Yard and Naval Armament Inspectorate, Cochin under the Southern Naval Command, in its judgment dated 19.2.92 allowing the pre-dating of the dates of regularisation of the applicants therein with effect from the date of initial casual employment by condoning the break in service and allowing financial benefits flowing therefrom.

5. In the light of the aforesaid decisions, we allow this application, declaring that the applicants are entitled to the benefits of the computation of casual service prior to the dates of their regularisation with due condonation of artificial breaks, for the purposes of all benefits as "for regular employees viz., fixation of pay, grant of annual increments, calculation of leave, pension and gratuity, terminal benefits, three years limit of Children Education Allowance, re-imbursment of tuition fees, HRA, Medical Attendance, Medical re-imbursment etc., in accordance

with Ministry of Defence's Circular dated 24.11.67 at Annexure.A.1 excepting seniority." Payment of arrears in respect of financial benefits shall be confined to the period of three years immediately preceeding 6.4.92 when this O.A. was filed with the Tribunal. There will be no order as to costs.


11-1-93
(A.V. Haridasan)
Judicial Member


11-1-93
(S.P. Mukerji)
Vice Chairman

11-1-1993

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