

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 548 OF 2009

.....*Friday*....., this the 5th day of ~~February~~, 2010.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. M.P. Subramanian,
Electrical Fitter (HS),
Naval Ship Repairing Yard,
Kochi - 4.
2. John Mathew Kannat,
Painter (HS),
Naval Ship Repairing Yard,
Kochi - 4.
3. N.K. Alexander,
Tradesman Mate,
Naval Ship Repairing Yard,
Kochi - 4.
4. Cochin Naval Base Employees Union,
Rep. by its Secretary, V.P. Daniel,
Room No.6, Krishnaji Building,
Valanjambalam, Kochi - 16. ... Applicants

(By Advocate Mr. C.S.G. Nair)

versus

1. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Kochi - 4.
2. Commodore Superintendent,
Naval Ship Repairing Yard,
Kochi - 4.
3. Union of India represented by its
Secretary, Ministry of Defence,
South Block, New Delhi - 110 001. ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 22.01.2010, the Tribunal
on05-02-2010..... delivered the following:


ORDER**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

Applicants 1-3 are functioning as Industrial employees under Respondent No.2, while applicant No.4 is an Association represented by its Secretary. There are a number of employees who are members of the 4th applicant, Union who joined the service as Casual Workers and continued for a considerable period in that capacity, of course, with artificial breaks. According to the applicants, all such persons were later regularized but their casual services were not taken into consideration for the purpose of Annual Increments, ACP, etc.

2. The applicants are entitled to be considered for grant of 1st ACP after 12 years of service in accordance with Annexure A3 O.M. dated 09.08.1999. It is the case of the applicant that when the respondents refused to take into account the actual services preceding the regularization for the purpose of ACP, some of the employees functioning as Clerks approached this Tribunal along with All India Naval Clerk's Association in O.A. No.755/2000 which was decided on 20.09.2002 holding that such casual services should also be taken into account while reckoning the period of 12 years of service for the purpose of ACP (Para 11 to 13 of Annexure A4 refers).

3. Again, some Industrial workmen in the Naval Stores Depot approached this Tribunal in O.A. No.632/2002 with a like claim and their O.A. was also allowed vide Annexure A5 order. (Para 4-6 refers).

4. On the basis of the above said orders, the applicants also prayed for their casual services to be taken into account for the purpose of ACP,



condoning the artificial breaks (Annexure A6 - A8 refers). However, vide Annexure A9, respondent No.1 rejected their claim stating as under :-

(a) "It is stated that no provision exists to regularize the casual service rendered by industrial non-petitioners. Casual service of only petitioner's has been regularized based on the judgment of the Hon'ble Courts. A case had already been taken up with Integrated Headquarters for obtaining Government approval, which is, however pending decision at Government level. Regularization of casual service of the above individuals can be considered subject to its outcome".

5. It is against the above that the applicants have approached the Tribunal seeking the following reliefs :-

- (i) To declare that the casual services rendered by the applicants are entitled to be counted for all service benefits after condoning the artificial breaks.
- (ii) To direct the respondents to count the casual services rendered by the applicants after condoning the artificial breaks and grant all consequential benefits.
- (iii) To direct the respondents to grant financial upgradations under ACP Scheme pursuant to the regularization from the date of their initial engagement on casual basis.

6. Respondents have contested the O.A. In their reply, the facts contained in para 4.1 and 4.2 of the application have not been denied. It has been stated that the case for regularization of casual services in respect of Industrial employees which include the category of the applicants herein was taken up with the competent authority for consideration of the Government. However, Government was not in favour of considering the same and rejected the case. However, the ACP scheme provides grant of financial upgradation on completion of 12 years of regular service.

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7. Counsel for the applicant invited the attention of the Tribunal to Annexure A4 and Annexure A5 orders of this Tribunal and contended that the reason given in Annexure A9 that the benefit was made available only to the petitioners and the non-petitioners are not entitled to the benefit is untenable in view of various pronouncements of the Apex Court.

8. Counsel for the respondents submitted that the competent authority has extended the provisions only to the Industrial petitioners.

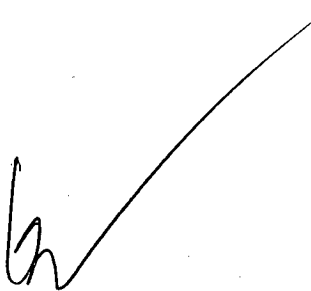
9. Arguments were heard and documents perused. It is well settled that if a law has been declared in any particular case, other similarly situated may well hope that the same would be applied in their cases as well. In this regard, following decisions are relevant :-

(1) ***In Inder Pal Yadav v. Union of India, (1985) 2 SCC 648***, the Apex Court has held as under:-

"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court"

(2) The Apex Court as early as in 1975 in the case of ***Amrit Lal Berry v. CCE, (1975) 4 SCC 714***, held as under:-


"We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court."



(3) The V Central Pay Commission in its recommendation, in regard to extension of benefit of Court judgment to similarly situated, held as under:-

"126.5 - Extending judicial decisions in matters of a general nature to all similarly placed employees. - 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 v. UOI & 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 v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147)], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government 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."

10. In view of the above, the O.A. is allowed. It is declared that all the applicants and other similarly situated Industrial Workers are entitled to reckon the casual services rendered prior to regularization for the purpose of working out the period of service for the purpose of ACP. If, after taking into account



such casual service, the applicant and other similarly situated are eligible for consideration, that cases shall be considered by the respondents and the benefit of ACP shall be made available to those who are found suitable for the same. This drill shall be performed within a period of three months from the date of communication of this order. No costs.

(Dated, the 5th February, 2010.)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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Dr.K.B.S.RAJAN
JUDICIAL MEMBER