

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 588/2006

WEDNESDAY THIS THE 10th DAY OF JANUARY, 2007

C O R A M

HON'BKLE MRS. SATHI NAIR, VICE CHAIRMAN

HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER

M Raveendran Nair S/o late P.A. Gopala Kurup
Group-D Watchman, Passport Office, Kozhikode
residing at Mepraveettil, Civil Station PO
Kozhikode-20

...Applicant

By Advocate Mr. Shafik M.A.

Vs.

1 Union of India represented by
Joint Secretary (CPV) &
The Chief Passport Officer,
Ministry of External Affairs,
Government of India, New Delhi.

2 The Deputy Secretary (PV)
Ministry of External Affairs
Government of India
New Delhi

3 The Passport Officer
Passport Office,
Kozhikode.

.. Respondents

By Advocate Mr. George Joseph, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein is aggrieved by the refusal of the respondents to protect the pay which he was drawing as a temporary status Casual Labourer, on his appointment as a regular Group-D Night Watchman in spite of various judgments of this Tribunal in favour of such consideration.

2 The applicant who is an Ex-Serviceman, joined the Passport Office, Kozhikode on daily wages and was granted temporary status in 1993 after performing duties of a Peon for many years. As a temporary status Casual Labourer he had been drawing salary in the pay scale of Rs. 2550-3200 at the stage of Rs 3020/- after getting 8 increments when he was appointed as a regular group-D Watchman by order dated 5.8.2002 of the third respondent (Annexure A-2). However, the pay of the applicant was fixed on his joining as a regular Group-D in the office of the third respondent only at Rs. 2550/- the minimum of the pay scale of Rs. 2550-3200. The applicant had submitted a number of representations, one such representation at Annexure A-6 was replied to stating that the implementation of Annexure A-4 order of the Tribunal in O.A. 606/2001 is subject to the orders in the SLP filed by the Department and he was advised to wait till the outcome of the SLP. It is further

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submitted by the applicant that the Hon'ble Supreme Court has dismissed the SLP in 2004 itself. But the request of the applicant was rejected after consideration by the Ministry stating that Annexure A-4 order of the Tribunal cannot be applied to the applicant. The respondents' action in not granting the benefit of the judgment to the applicant is per se illegal and unilateral as it is seen that similar officials though they were not parties to the order in Annexure A-4 have been granted the benefit. Further it has also been submitted that the respondents are rejecting on the basis of the order dated 29.1.1998 of the Department of Personnel which has already been quashed by the Hyderabad Bench of the Tribunal and similar stand has been taken by this Bench of the Tribunal in various orders as in O. A. 1373/1999 and 606/2001.

3 Though the O.A. was filed in August, 2006 and the respondents were given sufficient time, no reply statement has been filed. A last chance was given on 7.12. 2006 which was not availed of by the respondents, when the matter came up today, the counsel for the applicant has submitted that since the matter is already covered by various judgments of this Tribunal it is not necessary to grant further time to respondents.

4 We have gone through the records. The issue of protection of pay drawn by temporary status Casual Labourers has already been decided by this Tribunal in favour of the applicants in O.A. 606/2001

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filed by erstwhile colleagues of the applicant in the same Kozhikode Passport Office and also in the case of the applicants belonging to the Postal Department who were similarly placed in O.A. 1373/1999. The judgment in O.A. 606/2001 relating to the Passport office was following the ruling of the Hyderabad Bench in O.A. 1051/1998:

"The applicants have earned their increments because of their working as temporary status casual mazdoors. Their career as temporary mazdoors cannot be washed away when they were regular mazdoors by refixing their pay at the minimum pay scale. We see no justification to reject the case of fixation of pay of the applicants at the time of regularisation on the basis of last pay drawn by them as temporary status as per the guidelines given by them dated 22.12.1992.

In view of what is stated above, we set aside the impugned letters dated 17/18.6.1998 of R-3(A-1) and also the office memorandum dated 29.1.1998 of the Department of Personnel and directed the respondents to continue to pay the applicants in accordance with the pay fixation as was done initially before referring their case to the Postal Directorate."

5 It is obvious that the Hyderabad Bench had set aside the impugned OM dated 29.1.1998 of the Department of Personnel directing that the pay of casual labourers with temporary status, on their regular appointment should be fixed at the minimum of the pay scale. Following the above ruling it was ordered in O.A. 606/2001 to restore the pay of the applicant therein which was fixed taking into account the increment earned during the temporary status service and to refund the recovered amounts to the applicant. Same was upheld by the High Court of Kerala in its judgment dated 15.2.2002 in OP No. 4400/2002. In the impugned order at Annexure A-1, the respondents have admitted these facts but it is strange that they at

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the same time argue that the above judgment only sought to mitigate the hardships which would have been caused to the applicants if the excess amount paid to them had been recovered. This argument is totally without any basis as the judgment has clearly following the ruling of the Hyderabad Bench restored the fixation of pay taking into account the increment granted as the validity of the Government of India order had already been nullified by the Hyderabad Bench. Moreover in a similar order in O.A 1373/1999 (Annexure A-8) relating to the Postal Department, the respondents were directed to fix the pay of the applicants protecting the last pay drawn by them as temporary status casual labourers. The fact that the Telecom Department had also followed the policy of protection of pay in such matters was taken note by the Tribunal in that judgment. The Departments of Government of India have to follow uniform policies in the matter of fixation of pay, etc. and cannot adopt different norms. The Tribunal in various Benches have declared that the policy of fixation of pay of casual labourers with temporary status on their appointment to Group-D posts at the minimum without reckoning the increments drawn by them during their service is bad in law. In fact the Hon'ble High Court of Kerala in O.P. No. 13244 of 2001 against the judgment of this Tribunal in O.A. 1373/1999 observed that


"The stand taken by the writ petitioners that the increments earned by the employees as temporary status mazdoors cannot be reckoned while fixing their pay on

regularisation is plainly perverse. The Tribunal has rightly interfered with the impugned orders."

6 It is unfortunate that despite these clear rulings by the High Court, the respondents are not following the directions and driving the applicants and similarly placed others to approach this Tribunal again. It is also noted as pointed out by the applicant that by Annexure A-5 order the respondents have extended similar benefits to another employee in the Passport office who was not party to any of the above mentioned O.A.s. Such action by the respondents is clearly arbitrary.

7 In view of the settled position of law, we hold that the applicant is entitled to get his pay fixed on his regular appointment in the scale of pay of Rs. 2550-3200 after counting the increments earned by him during his service as temporary status Casual Labouers. Accordingly we direct the respondents to refix the pay of the applicant taking into account the increments drawn by him as temporary status Casual Labouerer and grant him consequential benefits within two months from the date of receipt of this order. The O.A. is allowed. No costs.

Dated 10.1.2007


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN