

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 590
T. A. No. 1990

DATE OF DECISION 26.4.1991

V. Devassy _____ Applicant (s)

Mr. O. V. Radhakrishnan _____ Advocate for the Applicant (s)

Versus
Postmaster, Office of the Postmaster,
Trichur HO and others _____ Respondent (s)

Mr. TPM Ibrahim Khan _____ Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. N. DHARMADAN, 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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant has been working as a Contingent Chowkidar under the S.B. Branch Head Post Office, Trichur since 19.6.1984 pursuant to Annexure A-1 appointment order. He has filed this application under section 19 of the Administrative Tribunals' Act, 1985 for getting wages for the full period during which he has worked under the respondents, with reference to the hours of work done by him.

2. The applicant's case is that though he had been engaged as part-time Contingent Chowkidar, the respondents compelled him to work continuously for twelve hours from 6 p.m. to 6 a.m. But he is not paid remuneration for the work with reference to the hours of work. Hence, according to the applicant, he is entitled to the

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the allowances admissible to a full time Mazdoor or at least he should have been paid wages on a pro rata basis. He further submits that in spite of his long service, he is not given regularisation in accordance with the scheme framed by the P & T Department as indicated in the decision of the Supreme Court reported in the case of Daily Rated Casual Mazdoors P & T Department Vs. Union of India, A.I.R. 1987 SC 2342. As per Annexure A-2 letter dated 10.2.1988, 'casual mazdoors' would cover full-time casual mazdoors, part-time casual mazdoors and workers inducted on contingent basis. "Part-time workers, casual or contingent workers will be paid on pro rata basis. For the purpose of payment no distinction should be made whether the casual labourers and contingent paid staff are being paid wages or from other contingencies." By Annexure A-3 memorandum dated 5.9.1988 a consolidated allowances of part-time contingent Chowkidars was paid under the orders of the Director of Postal Services, Northern Region as indicated below:

" From 19.6.84 to 31.7.84 @ Rs. 12/- for 8 hrs work p/day
From 1.8.84 to 31.3.85 @ Rs. 15/- -do-
From 1.4.85 to 4.2.86 @ Rs. 19/- -do-
From 5.2.86 onwards @ minimum pay scale of Group 'D' plus DA without any increment.

The allowance is restricted for a maximum duty period of 5 hours daily."

Annexure A-3 also incorporates a restriction of a maximum duty period of five hours per day. The applicant objected to the same by filing Annexure A-4 representation dated 5.12.89 which was not responded to by the respondents. Hence he filed Annexure A-6 representation on 8.6.90 requesting the Sr. Supdt. of Post Offices, Trichur to pay him at least eight hours pay from the date indicated in the Supreme Court's judgment. Annexure A-4 representation was disposed of by Annexure A-5 dated 22.12.85

stating that his appointment is purely on temporary basis and it is liable to be terminated without any notice. Hence he filed this application challenging Annexure A-2, A-3 and A-5 so far as they affect the applicant. He has also prayed for a direction to the respondents to treat him as full time Chowkidar and pay him allowances admissible to the regular Chowkidar w.e.f. 5.2.86 and regularise him in the service as group 'D' employee.

3. The respondents in the counter affidavit stated that he was appointed as part-time contingent Chowkidar on purely temporary basis w.e.f. 19.6.84 only to guard the building. The allowances payable to him was fixed at Rs. 179/- which is equal to the maximum allowance payable to an Extra Departmental Chowkidar upto August, 1988. Thereafter, on the basis of the revision of allowances, the applicant was paid arrears from 19.6.84 to 4.2.86 and from 5.2.86 to 31.8.88. They have also produced along with the counter affidavit Annexure R-2C O.M. dated 7.6.88 which contains the following clause:

"iv. Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minum of the relevant pay scale plus dearness allowance for work of 8 hours a day."

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All the administrative Ministries/Departments should take a review of appointment of casual workers in the offices under their control on a time bound basis so that at the end of the prescribed period, the following targets are achieved.

- a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.
- b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.
- c) The remaining casual workers not covered by (a) and (b) above are discharged from service.

4. It is an admitted fact that the applicant is being engaged continuously from 6 p.m. to 6 a.m. every day, but he is not paid either the wages payable to a full time casual mazdoor or on a pro rata basis taking into consideration the total hours of work rendered by him under the respondents. It is provided in Annexure R-2C that the part-time casual mazdoors and contingent employee shall be paid on a pro-rata basis and where the nature of the work entrusted to a casual worker and regular worker is the same he may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of eight hours a day." In the light of these provisions there is no justification for paying a lesser amount to the applicant when he is compelled to work from 6 p.m. to 6. a.m. every day. The respondents have stated that the applicant has been paid arrears of wages on the basis of the revision of emoluments under Annexure R-2B. The applicant was not satisfied with this payment. Hence he submitted Annexure A-4 representation which has not been disposed of. However, the applicant is entitled to be paid wages on a pro rata basis taking into consideration the actual hours of work done by him from 6 p.m. to 6 a.m. every day. He should have been paid wages at least from 5.12.89 the date of Annexure A-4 representation on a pro rata basis.

5. Having considered the matter in detail we are of the view that the applicant is entitled to wages on pro rata basis from 4.11.89 notwithstanding the proceedings challenged in this case and ignoring the fixation of maximum duty period of five hours a day having regard to the nature of the applicant's duty from 6 p.m. to 6 a.m. every day. This shall be done within a period of two months

from the date of receipt of a copy of the judgment. The application is allowed. There will be no orders as to costs.

N. Dharmadan
(N. DHARMADAN) 26.4.91

JUDICIAL MEMBER

S. P. Mukerji
(S. P. MUKERJI) 26.4.91

VICE CHAIRMAN

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