

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE 28-2-90

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 74/89

N. G. Thomas

Applicant

Vs.

Government of India, Ministry of
Agriculture (Deptt. of Agriculture
& Cooperation) Central Institute of
Fisheries, Nautical & Engineering
Training, Dewan's Road, Cochin-16

Respondents

Mr. K. M. Mohamed Ashraf

Counsel for the
applicant

Mr. P. S. Biju, ACGSC

Counsel for the
respondent

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Though the applicant approached this Tribunal for a direction to reinstate him in service with all consequential benefits challenging his oral termination with effect from 31.10.1988, he confined his relief at the time of hearing only for getting the salary and other financial benefits due to a regular Boat Building Carpenter who worked under the respondents regularly.

2. The applicant alleges that he was continuously employed by the respondents as Boat Building Carpenter from 10.7.1967 to 31.10.1988. According to him, the Administrative Officer orally terminated his service

on 31.10.1988. But he was agitating for regularising his service for more than a decade. Annexure A-3 is one of the representations filed by him on 11.2.1977 seeking the same relief. But the respondents did not consider it. So he also filed another representation Annexure A-4 in 1985. Since this was also not attended to by the respondent he filed Annexure A-5 representation through the local M.P. which was answered by Annexure A-6 informing him that the matter is being looked into by the concerned authorities. Later he sent reminders to his representations and filed this application.

3. The respondent admitted that the applicant was engaged as a Carpenter and he had worked under them from 10.7.1967 to 31.10.88. But they contended that he was only engaged on casual and daily wages basis and there were intermittent breaks in service. He was never appointed to a regular post and hence he was not eligible for the benefit such as leave salary, holidays wages, pensionary benefits, etc. which are available only to a regular employee. When his representation submitted through the local M.P. was considered by the concerned Ministry, it was found that there was no Group 'D' post vacant for appointing the applicant during the relevant period. In the letter No. 3-11/86-FY(Adm) dated 28.11.1986, the Ministry also enquired with the Fisheries Department whether there was any vacancy in the Carpenter

3

..

group 'C' post to accommodate the applicant. One 31.1.88 due to post of Carpenter was likely to become vacant from / retirement of the incumbent and a proposal was made for appointing the applicant in that vacancy in relaxation of the age restriction but it did not materialise as indicated in letter No. 3/11/86-Py(Admn) dated 31.10.87 (Annexure R-1(G)). The applicant also did not cooperate by furnishing correct date of birth. Hence his service was discontinued w.e.f. 1.11.1988.

4. We have heard the matter and carefully examined the documents. Admittedly the applicant has attained the age of superannuation and he does not want to press relief of reinstatement. But it is a fact that he worked under the respondents from 10.7.1967 to 31.10.1988. Even though the respondents stated in the counter affidavit that there were intermittent breaks in his service, they have not furnished any details regarding the break in service by filing either statements in this behalf or producing registers or other relevant documents.

5. It is surprising that person who was employed for about twenty one years was not even considered for regularisation in service at any point of time in spite of series representations both oral and written from 1977 onwards. He also submitted that even before submitting Annexure A-3 representation,

he made oral request for regularisation of his service but the respondents did not take any steps for the same. Hence he was forced to approach the higher authorities with the assistance of the local M.P. From the correspondence between the Ministry and the Director of Fisheries it is seen that enquiries of the availability of vacancy for accommodating the applicant in a regular vacancy started only after April, 1986 when the representation was routed through the local M.P. However, that also did not produce any result.

6. Having regard to the facts and circumstances of the case, the statement of the respondent that there was no post either in group 'D' or in group 'C' to accommodate the applicant for an unduly long period of 21 years is unbelievable. There was no fault or failure on the part of the applicant. He claims that he has a meritorious service throughout from 1967 onwards and it is only to be accepted in the light of the available facts and materials.

7. The learned counsel for the applicant relied on the decisions of the Supreme Court and contended that he is entitled to all benefits of a regular employee. The respondent on the other hand submitted that the applicant was overaged and that was also one of the reasons for not having appointed him in a regular post. According to us the applicant's claim for regularisation ought to have been duly considered by the respondents in the

light of his repeated requests. Because of the failure of the respondent to consider the same till the attainment of the age of his superannuation he is deprived of the benefits normally available to a regular employee.

8. The Supreme Court has taken the view in various decisions that a casual employee should also be given the same salary as are paid to regular and permanent employees. In *Surinder Singh and another Vs. The Engineer in Chief, CPWD and another*, 1986 (1) LLJ 403, the Supreme Court held as follows:


" The Central Government like all organs of the State is committed to the Directive Principles of State Policy and Art. 39 enshrines the principle of equal pay for equal work. In *Randhir Singh V. Union of India* (1982 1 LLJ 344) this Court has occasion to explain the observations in *Kishori Mohan Lal Bakshi v. Union of India* (supra) and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine accepted through out the world particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out that the decision in *Randhir Singh's case* (supra) has been followed in any number of cases by this Court and has been affirmed by a Constitution Bench of this Court in *D. S. Nakara v. Union of India* (1983-ILLJ 104). The Central Govt. the State Govt.s and likewise, all public sector undertakings are expected to function like model and enlightened employees and arguments such as those which are advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a Court law should ill-come from the mouths of the State and State Undertakings. We allow both the writ petitions and direct the respondents, as in the *Nehru Yuvak Kendras case* (supra) to pay to the petitioners and all other daily rated employees to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when they were respectively employed."

29


9. The respondents had admitted that the applicant was paid only wages for the days on which he actually worked. Since the applicant worked for about twenty one years, the respondents ought to have paid to the applicant the wages payable to a regular employee as indicated in the Supreme Court judgment. We feel that the applicant is also eligible for the wages and other financial benefits to be paid to a regular employee.

10. On a careful examination of the facts and circumstances of the case, we are fully satisfied that the applicant is entitled to be paid at the same rate as a regular employee, at least from 11.2.1977 i.e. the date of Annexure A-3 representation, for the actual period during which he worked, treating him as a regular employee for this limited purpose. Accordingly, we dispose of the application directing the respondents to pay wages to the applicant for the actual period as indicated above after deducting the wages already paid to him for the days as a casual worker. The respondents shall do this within a period of four months from the date of receipt of a copy of this judgment.

11. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

28.2.90


(N. V. Krishnan)
Administrative Member

NVK & ND

None for the applicant

Mr. K. Prabhakaran ACGSC for respondents by proxy

The learned counsel for the respondents submitted that in terms of the direction given in para 10 of the judgment which is the operative portion, necessary orders have been passed on 4.6.90 and 27.7.90 Ext. A-2 and A-3. We are satisfied from these documents that the direction given by this Tribunal has been complied with. Therefore, this CCP is dismissed.

8.10.91

21
A 9/10/91
Mr. B
issued
PCE. closed
TATW