

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.76/99

Monday, this the 1st day of January, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. P.K.Mandakini,
W/o Sankaran,
Veliparambu, Nettoor,
Maradu.P.O.
Ernakulam District.
2. P.K.Sumathy,
W/o C.K.Babu,
Processing Worker,
Integrated Fisheries Project,
Kochi-16.
3. N.T.Gopi,
S/o N.K.Thevan,
Processing Worker,
Integrated Fisheries Project,
Kochi-16. - Applicants

By Advocate Mr TC Govindaswamy

VS

1. Union of India represented by
the Secretary to Government of India,
Ministry of Agriculture,
New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi-16. - Respondents

By Advocate Mr Govindh K Bharathan, SCGSC

The application having been heard on 1.1.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The first applicant is a pensioner and the remaining applicants are now serving as Processing Workers in the

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Integrated Fisheries Project, Cochin. They commenced their service as Casual Labourers. However, when they were regularised in service 50% the period of casual service were treated as service for the purpose of pension and retiral benefits. By A-4 dated 14.9.98 the Government decided to treat half the period of their casual service as qualifying service for pension on condition that the entire employer's contribution/share of EPF together with interest thereon is deposited by the concerned employees. By A-4 order dated 14.9.98 the amount to be so deposited was quantified in the case of the first applicant. Aggrieved by this, the applicants have filed this O.A. According to them, so long as they are casual labourers they would not hold any civil post and they are not bound to refund any amount under EPF.

2. The applicants have filed this application seeking to set aside A-4 and A-5 and for a direction to reckon 50 % of the casual service rendered by the applicants prior to the date of their regularisation for retiral benefits and for a direction to the respondents to refund the amount of employer's contribution plus interest recovered from the retiral benefits of the first applicant with 18% interest.

3. The respondents have resisted the claim of the applicants and have filed a detailed reply statement. Identical issue came up for consideration before this Bench of the Tribunal in O.A.1292/98 and O.A.1708/98.

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4. After considering rival contentions the Bench held as follows:

"17. The impugned orders are based on Ministry of Agriculture, Department of Agriculture and Co-operation, New Delhi letters No.5-29/95-FY(A) dated 26/27.9.96. No.5-29/95-FY(Adm) dated 21/22.10.97 and No.5-29/95-FY(Adm) dated 7.8.98 and 15.9.98. So, the foundation for the impugned orders is the letters referred to therein. Applicants conveniently say that they are not in receipt of the copy of the letters referred to in the impugned orders. It is not a valid excuse, for copies of the letters referred to and relied on in the impugned orders are produced by the respondents. That being so, the applicants cannot pretend ignorance or non-availability of the same.

18. There is no question of quashing the letters referred to and relied on in the impugned orders for the reason that the applicants have not sought for the same. That being the position, the applicants are not entitled to the declaration sought for or to get quashed the impugned orders to the extent those authorise to deduct the employer's share of contribution in the Contributory Provident Fund.

19. In Government of India, Ministry of Finance O.M.No.17(5)-E.V(A)/60 dated 18th November, 1960 inter alia says that on electing to come over to pension,

the accumulations in the Contributory Provident Fund account of the employee concerned will be adjusted in the manner indicated in Rule 33(b) of the General Provident Fund (Central Services) Rules, i.e., the officer's own subscription with interest will be credited to his General Provident Fund Account (to be newly opened) and the Government contribution with interest resumed by Government.

20. In Government of India, Department of Pension & Pensioner's Welfare O.M.No.4/1/87-P.I.C-I dated 1.5.1987 dealing with change-over of employees from Contributory Provident Fund Scheme to Pension Scheme inter alia says that in the case of employees who come over or are deemed to come to Pension Scheme, the Government's contribution to the Contributory Provident Fund together with interest thereon credited to the C.P.Fund Account of the employees will be resumed by the Government. The employees' contribution together with interest thereon at his credit in the C.P.Fund Account will be transferred to the G.P.Fund Account to be allotted to him on his coming over to the Pension Scheme.

21. It is the same principle that is adopted by the respondents herein also.

22. As far as the prayer of the applicants to direct the respondents to calculate and pay their retiral

benefits including pension, duly reckoning 50% of the casual service rendered by them prior to their date of regular absorption, is granted to them subject to the condition that the employees concerned refund to the Government the amount of employer's contribution with interest thereon. That condition stands good as the applicants are not entitled to the declaration sought for and to get quashed the impugned orders. So, there is no necessity to direct the respondents to calculate and pay the applicants' retiral benefits including pension, duly reckoning 50% of the casual service rendered by them prior to their regular absorption."

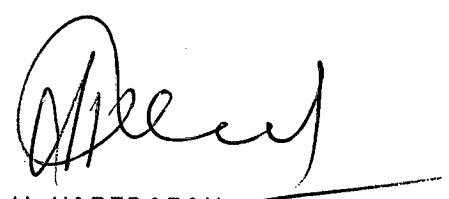
5. We are in respectful agreement with the view taken by the Bench in the aforesaid judgement.

6. In the light of what is stated above, finding no merit, the application is dismissed leaving the parties to bear their own costs.

Dated, the 1st of January, 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the order:

Annexure A4: True copy of the Office order bearing No.178/98 dated 14.9.1998 issued by the 2nd respondent.

Annexure A5: True copy of Office Memorandum bearing No. A.5/4-1/97 dated, 24.10.98 issued by the 2nd respondent.