

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.76/08

TUESDAY, this the 21st day of July 2009

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. R.M.Sreedharan,
S/o.Chathu, Group 'D' Dafty,
Passport Office, Kozhikode.
Residing at Kaithapoyilil,
Mokery PO, Calicut.
2. Baby Sharmila,
D/o.Chathappan, Group 'D' Dafty,
Passport Office, Kozhikode.
Residing at Kurruppankandiparampu,
Puthiyara PO, Calicut.Applicants

(By Advocate Mr.Shafik M.A.)

Versus

1. Union of India represented
by Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs, New Delhi.
3. The Passport Officer,
Passport Office, Kozhikode.Respondents

(By Advocate Mr.M.V.S.Nampoothiry,ACGSC)

This application having been heard on 15th July 2009 the Tribunal
on 21st July 2009 delivered the following :-

O R D E R

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

The applicants are regular Group 'D' employees under the
3rd respondent. The first applicant initially joined as casual labourer
with effect from May, 1989, while the second applicant with effect

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from February, 1991. As per Annexure A-2 statement, their seniority position is 81 and 170 respectively and the total number of days of service rendered by them as on 6.12.1993 were respectively 392 days and 257 days.

2. Vide Annexure A-1 order dated 10th September, 1993, guidelines were issued for grant of temporary status to those who had been working as casual labourers as on 10.9.1993 and who had rendered 206 days service in a year. The applicants, however, were not granted the temporary status as per Annexure A-1 and on inquiry it was informed that the 1st applicant had not completed 206 days as on 1.9.1993 and as regards the 2nd applicant, initially she was not sponsored by the Employment Exchange. Later, however, on 12.4.2000 the services of the applicants were regularised as per Ministry's letter dated 5.4.2000. On absorption their pay was fixed at the minimum of the scale of pay applicable to Group 'D' employees.

3. It was after four years of regular services by the applicants that in 2004 some of the casual labourers who had joined the Department after the applicants and whose services were not regularised, had the benefit of regularisation vide Annexure A-3 order dated 28th June 2004. The three officials concerned were regularised since 2000. This regularisation entailed certain benefits such as grant of increment etc. The applicants could notice an anomaly in the matter of pay between themselves and the subsequently regularised Group 'D' employees inasmuch as juniors to the applicants by virtue of certain dispensations of rules were drawing more salary than the applicants. The applicants had

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represented to the same vide Annexure A-4 and Annexure A-5. There was no response to the same and the applicants had moved this O.A claiming the following reliefs :-

- (i) To call for the records relating to A-1 to A-5 and to declare that the applicants are entitled to be conferred with temporary status with effect from 1.9.1993 and the refusal on the part of the respondents to grant them temporary status is illegal, arbitrary, unjust, unreasonable and irrational.
- (ii) To declare that the applicants are entitled to be conferred with temporary status with effect from 1.9.1993 and the refusal on the part of the respondents to grant them temporary status is illegal, arbitrary, unjust, unreasonable and irrational.
- (iii) To direct the respondents to grant the applicants pay parity with their juniors either by stepping up their pay to that of their juniors or by reckoning their pay by including the increment element for the period between the date on which the temporary status ought to have been conferred on them and the date of their regular absorption as Group 'D'.

4. Respondents had contested the O.A. The facts mentioned in O.A have not been denied but referring to the decision by the Apex Court in the case of Secretary, State of Karnataka and others Vs. Uma Devi and others [2006 (4) SCC 1] the respondents have contended that the applicants cannot be granted temporary status. As regards anomaly, even though the difference in pay has not been denied, the respondents contended that right to be treated equally with other employees employed on daily wages cannot be extended to claim for equal treatment with those who were regularly employed.

5. The applicants have filed the rejoinder reiterating their contentions in the O.A and also contending that the case of Uma Devi does not have any application to the facts and circumstances of their cases.

6. Counsel for the applicant submitted that the claim of the applicants is pure and simple. When juniors to the applicants have been granted certain benefits, the same should have been extended to the applicants as well. Uma Devi's case has no application in their case. The pay anomaly has not been denied by the respondents. As such all that is required was parity in pay and pay scale at par with the juniors.

7. Counsel for the respondents had not denied about the existence of anomaly in pay. It appears that in so far as cases wherein regularisation was granted from 2004, even though the pay has been stated to have been fixed at the minimum of the pay scale, the three casual labourers have been the beneficiaries of the increments granted to them during the period of temporary status which would have been taken into consideration while fixing the pay on regular scale. This benefit of counting of increment prior to regularisation could not be available in respect of the applicants. The fact remains that the applicants are senior to other casual labourers both during their casual labourer service as well as regular Group 'D' employees. As such, it would be totally inappropriate to justify the anomaly in pay on any hyper technical ground. It is inconceivable to think of a person ranked junior drawing more pay in the same pay scale than his seniors when both of them were in the same situation in the past. If the Ministry of Labour had given some dispensations for the junior casual labourers, the benefit of which has resulted in the pay anomaly, the seniors cannot be denied the benefits on account of the fact that their services had already been regularised. The case of Uma Devi does not have any application in the facts and circumstances of this case. Of course, the

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applicants claim for regularisation or temporary status from 1.9.1993 cannot be accepted as they had not fulfilled the qualifications at that particular point of time. But this cannot deny the applicants parity in pay at par with juniors. Again the contention of the respondents that there cannot be equality between casual labourers and regularised employees cannot be pressed into service here, since in this case the juniors are drawing more than seniors.

8. In view of the above, this O.A is allowed. It is declared that the applicants are entitled to fixation of pay at the same stage as of the immediate junior of the applicants. The same, however, be notional from the date the junior drew more pay, actual being payable only from February, 2008 when this O.A was filed. Respondents are directed to accordingly pass suitable orders revising the pay of the applicants and arrears as stated above shall be paid to the applicants within a period of four months from the date of communication of this order. No costs.

(Dated this the 21st day of July 2009)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


K.B.S.RAJAN
JUDICIAL MEMBER

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