

Central Administrative Tribunal

Ernakulam Bench

Dated Thursday the 30th day of November 1989

Present:

Hon'ble Shri. N.V. Krishnan, Administrative Member
and

Hon'ble Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION : 80/89

K.A. Babuthe applicant

V.

Union of India
represented by the
Secretary, Ministry of
Defence, New Delhithe 1st respondent

The Controller of Defence
Accounts(N), No.1 Cooperage
Road, Bombay-39the 2nd respondent

The Area Controller of
Defence Accounts (ACDA),
Area Accounts Office,
Naval Base, Cochin-4the 3rd respondent

M/s. T.V. Babu Cherukara & Isaac George, counsels appeared
on behalf of the applicant

Mr. K.P. Thangakoya Thangal, Additional Central Government
Standing Counsel appeared on behalf of the respondents.

JUDGMENT

Shri N. Dharmadan, Judicial Member.

The applicant, who worked in the office
of the 3rd respondent, filed this application under
Section 19 of the Administrative Tribunals Act 1985
after his termination of service on 22.12.1987 with

the allegation that from 4.2.1985 till 22.12.1987 he was working continuously in the post of Casual Labourer but he was discharging the duties of a Class IV employee or Group-D staff and he is entitled to the same pay of such an employee. He seeks for the issue of an order directing the respondents to pay the applicant the arrears calculating the same salary and allowances as that of a Class IV employee or Group-D staff.

2. The learned counsel for the applicant argued placing reliance on the decision reported in *Surinder Singh V. Engineer-in-Chief, C.P.W.D. and another*, (1986(1) SCC 642) and submitted ⁱⁿ that though the applicant was appointed as per Annexure-A.1 as a Casual Labourer, he was actually working as peon in the office of the third respondent till the date of his termination and so he is entitled to the benefits of "equal pay for equal work" in the light of the principles laid down in the decision of the Supreme Court in the above case. The Court in that case held as follows:

"The Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments

such as those which were advanced before us that the principles of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of State and State undertakings. We allow both the writ petitions and direct the respondents as in the Nehru Yuvak Kendra's case to pay to the petitioners and all other daily rated employees, to pay the same salary and allowance as are paid to regular and permanent employees with effect from the date when they were respectively employed....."

3. The respondents 1 to 3 in the counter affidavit denied that the applicant was discharging the duties of a peon. The relevant portion reads as follows:

" The applicant worked intermittantly as and when his service was required. As per his own admission in the para 4(a) he was working by virtue of Annexure A.1 order as Casual Labourer. He did not work as peon at any time. Without forgoing the formalities to be followed for appointing a peon the respondents cannot and did not appoint him as peon nor he served as such."

The case of the respondents is that the applicant is not entitled to the pay of a regular employee because of his own admission in para 4(a) and that he did not work as a peon at any time. In para 4(a) ^{of b} the application, he only stated the facts and submitted that he was appointed as per Annexure-A.1 order as a Casual Labourer by the third respondent in his office; but the further explanation in para 4(b) is relevant. He has stated in that para as follows:

".....From 4.2.1985 onwards the applicant was working continuously without any termination in the third respondent's office in the post of Peon till 22.12.1987. There are three peon posts and out of the three, against one post the applicant was appointed even though in the appointment order, Annexure-A.1 no designation is shown. To the utmost satisfaction of the employer the applicant was discharging all the duties as that of a permanent peon. The applicant was duly qualified for the post also....."

The respondents have denied this averment.

4. The applicant has a case that even though the 3rd respondent appointed him as Casual Labourer he had worked as a peon to the utmost satisfaction of the employer and that he has a right to get salary and allowances as that of a regular group-D staff from the date of his appointment on 4.2.1985 xxxxxxxx till 22.12.1987. He has also stated aspects, in ^h these ~~in~~ Annexure-2 representation dated 5.3.1988. But nothing is mentioned in the counter affidavit of the respondents 1 to 3 as what happened to this representation. If the respondents have received such a representation they are bound to consider and dispose of it. ~~the~~ The grievances of an employee, either in service or out of service, voicing some complaints about their service received they are expected ^h are ~~to~~ be disposed of by the employer without any delay or default. The attitude of the respondents in this

case seems to be an indifferent one. It seems, they have completely ignored the representation, Annexure-2 submitted by the applicant on 5.3.1988 as if they are not at all bound to look into the same. Presumably that may be the reason why they did not mention about it in the counter affidavit.

5. When the claims for equal pay on the ground of discharge of equal work as raised, the courts are generally taking the view that a detailed investigation is to be made as to whether the duties performed by the claimants and their counter-parts, whose equation in the salary is claimed, are same even if the nomenclature of the posts are different and only when the courts are satisfied about it that the principle of "equal pay for equal work" would be applied for granting reliefs. The Supreme Court very recently in Y.K. Metha and others V. Union of India and another, (1989)1 L.L.J. 225, held as follows:

"....Even leading out of our consideration Article 39(d), the principle of "equal pay for equal work", if not given effect to in the case of one set of Government servants holding same post or similar posts, possessing same qualifications and doing same kind of work, as another set of

Government servants, it would be discriminatory and violative of Article 14 and 16 of the Constitution...." (emphasis added)


6. But the Supreme Court also held that these are matters to be examined initially by the executive authorities. In *Randhir Singh V. Union of India*, AIR 1982 SC 879, it was held as follows:

".....We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same....."


7. Under the above circumstances we are of view that the third respondent ought to have considered the claim of the applicant for "equal pay for equal work" in the light of his statement in Annexure-2 after conducting necessary enquiry about the matters and dispose of the same in accordance with law.

8. Having regard to the facts and circumstances

of this case we feel that justice would be met sufficiently if we dispose of this case with the direction to the third respondent, before whom Annexure-2 representation has been submitted, to consider the same after affording an opportunity of being heard to the applicant and dispose of it in accordance with law in a period of 4 months from the date of receipt of the copy of this judgment. Accordingly, we do so. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

30.11.89


(N.V. Krishnan)
Administrative Member

30.11.1989

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