

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 83/94

Thursday, this the 12th day of January, 1995

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

M.D. Paul S/o Devassy, Casual Driver
Manjali, Vaduthala, Cochin
Regular Group-D Government Servant
Office of Divisional Engineer,
Telephones, Ernakulam

Applicant

By Advocate Mr. M.R. Rajendran Nair

vs.

1. Union of India represented by
Secretary to Government, Ministry
of Communications, New Delhi.

2. The General Manager, Telecom,
Ernakulam

Respondents

By Advocate Mr. Varghese P. Thomas, ACGSC

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

Applicant a group-D employee with effect from 1.12.86, seeks a declaration that he is entitled to receive the pay and allowances admissible to a driver since he has been doing the work of a driver.

2. Though a group-D employee, he had been discharging the duties of a driver and he had been paid Rs. 4/- per day as honorarium. According to applicant, he is entitled to be paid same emoluments as a regular employee on the principle 'equal work equal pay'. By orders in O.A. 931/92 a Bench of this Tribunal directed respondents to consider the claim of applicant. It was considered and rejected by A-I order, and that leads to this application.

3. Learned counsel for applicant who argued his case with thoroughness referred to several decisions of the Supreme Court and contended that an official performing the duties of a post is entitled to receive the same emoluments

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payable to a regular employee though he is not one. He invited our attention particularly to the decisions reported in Randhir Singh vs. Union of India and others, (AIR 1982 SC 879) Surinder Singh and another vs. Engineer, CPWD and another (AIR 1986 SC 584) and Dhirendra Chamoli vs. State of U.P. (1986) 1 SC 637) to support his contention. These decisions take the view that a person though not regularly appointed to a post is eligible for the remuneration payable to a regular employee in the post, if he has discharged the duties thereof. There is no dispute that applicant had discharged the duties of the post. We think that the decisions cited by applicant squarely govern the case and that the benefits available under the Government order dated 7.6.88 issued pursuant to the decision in Surinder Singh's case (AIR 1986 SC 584) should govern the case on hand.

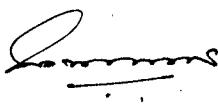
4. Standing Counsel for respondents contended that there is considerable delay on the part of applicant in seeking reliefs. We would have accepted this submission without hesitation, if it had been raised in the earlier Original Application. But, no such objection was raised and there was a direction by a Bench of this Tribunal in O.A. 931/92 to consider the case and pass orders. Orders passed in accordance with the direction are under challenge and equity stands in the way of respondents from pleading estoppel in these circumstances.

5. Counsel then argued that it is not for this Tribunal to examine whether two persons are similarly situated, for purpose of equal pay. This proposition is so well settled ever since the decision in the case of J.P. Chaurasia (AIR 1989 SC 19). But in this case there is no need or occasion to consider whether two posts are similarly situated. The post is one, and the duties were discharged by an employee who is not regularly appointed (admitted in para 4 of reply statement).

6. In the circumstance, we allow the application and direct respondents to pay applicant in terms of the order dated 7.6.88 (produced as A-VII along with Miscellaneous Application No. 54/95) less payments made to him at the rate of Rs. 4/- per day. We would exercise our discretion and restrict the claim of applicant to the period preceding three years prior to his regular appointment as driver. We do not think that at this distance of time we would be justified in ordering payment with effect from 1.12.1986.

7. Application is allowed as aforesaid. No costs.

Dated the 12th January, 1995.


S. P. BISWAS
ADMINISTRATIVE MEMBER

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CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of annexures

Annexure A1: True copy of the order No.Q.8611 dated 23.12.1993 issued by 2nd respondent to the applicant.

Annexure VII: True copy of the order F.No.49014/2/86-Estt. (C) dated 7.6.1988 issued by the Govt. of India Ministry of Personnel, Public Grievances and Pensions, Department of personnel & Training, New Delhi.