

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 116 of 1999

Thursday, this the 31st day of May, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. M.V. Mohanan, S/o Velayudhan,
residing at Makkaparambil House,
Muravanthuruth, Vadakkekara PO, N.Paravur
(Temporary Status Casual Motor Cleaner,
INS Dhronacharya under the Commanding-
in-Chief, Headquarters,
Southern Naval Command, Kochi-4)
2. K.K. Mohanan, S/o K.N. Kunjan,
Karuvelpiparambu House, Sastri Road,
Vaduthala, Kochi
(Temporary Status Casual Motor Transport
Cleaner, INS Garuda under the Commanding-
in-Chief, Headquarters,
Southern Naval Command, Kochi-4) .. Applicants

By Advocate Mr. A.X. Varghese

Versus

1. Union of India, rep. by Secretary,
Ministry of Defence, New Delhi.
2. Flag Officer Commanding-in-Chief,
Head Quarters, Southern Naval Command,
Kochi.
3. Commodore, Chief Staff Officer (P&A),
Head Quarters, Southern Naval Command,
Kochi. .. Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC (represented)

The application having been heard on 31-5-2001, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek to declare that they are entitled to the
benefit of paid weekly off for Saturdays/Sundays/Holidays
which is admissible to those working in Administrative Offices
since they are also working 45 hours in a week within a period
of 5 days, to quash A1 and A3 and to direct the respondents

to waive and write off the amount received by them on account of wages paid on holidays.

2. Applicants are temporary status casual Motor Transport Cleaners. After grant of temporary status they were enjoying all the benefits provided in the scheme formulated by the Government of India. While so, the Lt. Commander, Logistics Officer, INS Garuda as per notice dated 31-7-1998 informed them that the facility of paid weekly off is admissible after six days of continuous work and would not be admissible to casual employees employed for five days in a week on nerrick rate of pay. The notice further states that the proposed action ^{is} to recover the excess amount on account of wages paid to them on holidays, Saturdays and Sundays from 26th of March 1996. They were given ten days to give representation. They submitted representation. That representation is turned down as per A3.

3. Respondents say that applicants are entitled to nerrick rate of pay with reference to the minimum pay scales admissible to regular Group 'D' employees including allowances, whereas they were paid wages for Saturdays, Sundays and holidays in violation of the provisions contained in the Department of Personnel and Training OM dated 10th of September, 1993 due to an oversight which was subsequently noticed by the unit. The engagement of applicants was on monthly rate of pay as on required basis. Applicants were given temporary appointment on long term basis for one year. Such temporary appointments were given to them with the intention of regularising them against sanctioned posts as and when vacancies arise. Since sanctioned posts were not available, applicants were granted temporary status with effect from 26th of March, 1996. Due to an oversight INS Garuda has claimed and paid wages on

monthly rates to the temporary status Motor Transport Cleaners, which was subsequently noticed by the unit and corrective action was initiated. Since the overpayment is in violation of the Department of Personnel and Training OM, the action taken by respondents 2 and 3 to recover the amount is in order.

4. There is no dispute as to the fact that applicants are temporary status attained casual labourers. R3-A is the scheme called Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993. Para 5 of the scheme says that temporary status would entitle the casual labourers to wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA, apart from certain other benefits. Reliance is sought by the respondents on R3-B clarification to point No.5, wherein it is stated that since the facility of paid weekly off is admissible after six days of continuous work, this would not be admissible to casual employees working for five days in a week. At this juncture, it is pertinent to note para 6 of R3-A, which says that no benefit other than those specified in para 5 will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of the provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers. The stand taken by the applicants is that their services can be termed as services in an Industry. There is no denial of the same in the reply statement.

5. In the light of R3-A, there cannot be any doubt that the applicants are entitled to wages at daily rates with reference to the minimum of the pay scale for a corresponding regular

Group 'D' official including DA, HRA and CCA. There is no case for the respondents that the applicants have been paid anything in excess of the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA. What is stated in the reply statement is that due to an oversight INS Garuda has claimed and paid wages on monthly rates to the temporary status Motor Transport Cleaners. It is not known how it can be done on a different way in the light of para 5 of R3-A. The version of the respondents that they have claimed and paid wages on monthly rates to the applicants makes it clear that what has been paid to them is only in conformity with para 5 of R3-A and not anything in excess of what the applicants are entitled to.

6. The question of recovery on the basis of an erroneous payment arises only if there is an excess payment erroneously. Going by the respondents' case it cannot be said that there was any excess payment erroneously.

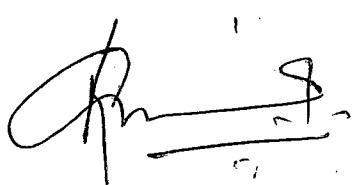
7. Respondents say that overpayment was made in violation of the Department of Personnel and Training OM, i.e. R3-A and its clarification R3-B. With regard to R3-A and its clarification we have already stated. It is also pertinent to note that R3-B the clarification was issued as early as on the 12th of July, 1994 and this alleged overpayments were made only in the year 1996. So, it is not a case that under a bonafide mistake an overpayment was made and it was realised that it was a mistake after receiving the clarification.

8. A1 dated 31st of July, 1998 is the show cause notice issued to the applicants with regard to the proposed recovery. A3 is the order issued in response to the representation submitted by the applicants on receipt of A1. For the reasons we have stated, A1 and A3 cannot be sustained.

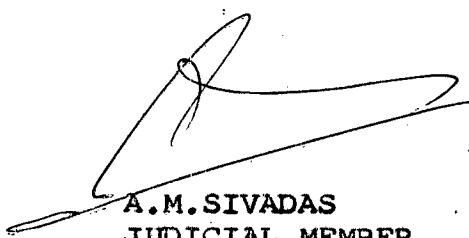
9. Accordingly, A1 and A3 are quashed. Respondents are directed not to effect any recovery on the basis of A1 and A3.

10. The Original Application is disposed of as above. No costs.

Thursday, this the 31st day of May, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the Notice No. 275/56/3 dated 31-7-1998 issued by the Lt.Commander, Logistic Officer of the 2nd respondent.
2. A3 True copy of the letter No. CS 2765/35/ in respect of the Recovery of excess amount received by the applicants on account of wages paid on holidays issued by the Chief Staff Officer (P&A) of the 2nd respondent.
3. R3-A Photocopy of the OM No. 51016/2/90-Estt(C) dated 10-9-93.
4. R3-B Photocopy of the OM No. 49014/2/93/Estt. 'C' dated 12-7-94.