

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 173/2006

MONDAY THIS THE 27th DAY OF NOVEMBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

J.Krishnankutty S/o late Janardhanan
Group-D, Non test category
O/o the Director of Accounts
Kerala Circle, Thiruvananthapuram.
Residing at Puthenvila Veedu
Thuruvickal, Trivandrum Medical College
Trivandrum-695 011

.. Applicant

By Advocate Mr Vishnu S. Chempazhanthiyil

Vs.

1 Director of Accounts (Postal)
Kerala Circle, GPO Complex
Thiruvananthapuram

2 Chief Postmaster General
Kerala Circle,
Thiruvananthapuram-33

3 Union of India represented by its Secretary
Ministry of Communications
New Delhi.

.. Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein is aggrieved that on his being regularised in a Group-D post his pay has been fixed at the minimum of the pay scale of Rs. 2550-3200 without taking into account the increments

drawn by him as a temporary status attained Casual Labourer.

2 The following reliefs have been sought:

"1 Call for the records leading to the issue of Annexure A-7 and set aside the same

2 Call for the records leading to the issue of Ext. P3 and set aside the same to the extent applicant's pay is fixed at Rs. 2550/-in the minimum of pay scale Rs. 2550-3200/-

3 Declare that the fixation of pay of the applicant on his regular appointment as a Group-D at Rs. 2550/-is illegal and arbitrary and direct the respondents to protect the pay drawn by the applicant as a temporary status casual labourer.

4 Direct the respondents to fix the pay of the applicant with effect from 15.7.2005 protecting the increment drawn by him as temporary status casual labourer treated as temporary government servant and grant all consequential benefits.

5 Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

6 Award the cost of these proceedings."

3 Briefly the facts as stated by the applicant are that he commenced service as a Casual Labourer in the RMS, TV Division, Thiruvananthapuram and was conferred with temporary status w.e.f. 1.1.1995 (Annexure A-1); on completion of three years Annexure A-2 order was issued conferring on him the benefits admissible to temporary Group-D employees. Later the applicant was appointed as a Group-D in a non-test category in the pay scale of Rs. 2550-2560-30-3200 w.e.f. 15.7.2005. Before appointment and regularisation as Group-D the applicant was drawing a basic pay of

Rs. 3080/-with allowances But on his appointment his pay was fixed at the minimum of Rs. 2550/- in the scale of Rs. 2550-3200 and thereby, there was a drop in his emoluments which was reduced to Rs. 5219/- as against Rs. 6303/- which he was drawing. The applicant has relied on the decision of this Tribunal in O.A. 552/2003 on the same issue and which had been implemented by the respondents therein. When the applicant by Annexure A-6 representation brought the matter to the notice of the respondents it was rejected by A-7 order on the basis of the OM No. 49014/4/97-Estt. Dated 29.1.1998 of the Department of Personnel and Public Grievances.

4 The respondents have averred in the reply statement that the applicant being a casual mazdoor was getting only wages and not pay prior to his regularisation in the Group-D post. With reference to the order in O.A. 552/2003 granting the benefit to the similarly placed employee, the respondents have submitted that that order is not applicable to the applicant herein. As per their contention, the Government of India OM referred to above still holds good and has not been revised in the light of the order in O.A. 552/2003. They have denied that the applicant has drawn any increment, he was only given increase of wages and hence his pay on regularisation was rightly fixed at the minimum of the pay scale.


5 We have heard the learned counsel appearing on both sides. The learned counsel for the applicant relied on Annexure A-8

2

judgment of this Tribunal in O.A. 552/2003 in which direction was given to fix the pay protecting the increments drawn in the capacity of temporary status Casual Labourers on being regularised in a Group-D post. The learned counsel also produced another order in O.A. 275/2002 of this Bench in an identical case pertaining to the Postal Department itself. This judgement was also rendered in the light of earlier judgments of the Tribunal, Ernakulam Bench in O.A. 1373/99 and that of the Hyderabad Bench in O.A. 1051/1998.

6 The argument advanced by the learned counsel for the respondents was that despite the judgments referred to by the learned counsel for the applicant the OM dated 29.1.1998 of the Department of Personnel stipulating that the pay of a Casual Labourer with temporary status on his regularisation against Group-D post may be fixed at the minimum of the pay scale still stand and that the respondents have acted upon it.

7 We have gone through the records and perused the judgments referred to by the applicant's side. This is not a fresh question coming up before us. It has been considered from 1998 onwards by various Benches of this Tribunal. The validity of Annexure R-1 was considered by the Hyderabad Bench in O.A. 1051/1998 and they have set aside the OM dated 29.1.1998 of the Department of Personnel and subsequent judgments of this Bench in O.A. 1373/99, 275/2002 and 552/2003 all followed the same ratio. The order of this Tribunal in O.A. 1373/1999 was carried before the Hon'ble High



Court of Kerala and the Hon'ble High Court dismissed the OP 13244/2001 by judgment dated 4.1.2002. Thus the matter has been finally settled by the Hon'ble High Court by upholding the orders of this Bench. In the light of this legal position, the respondents cannot contend that the OM dated 29.1.1998 which had already been quashed is still valid. The respondents have admitted that this applicant in this O.A is similarly placed as the applicants in the earlier OAs referred to above. We therefore do not find any reason to differ from the earlier judgments which after analysing all relevant rules and instructions, have come to the conclusion that reduction of pay to the minimum of the pay scale is legally unsustainable.

8 Accordingly, following the judgments in O.A. 275/2002, OA 1373/1999 and O.A. 552/2003 the prayers of the applicant are allowed. The impugned orders at Annexures A-3 and A7 are set aside. The respondents are directed to refix the pay of the applicant in the scale of pay of Rs. 2550-3200 protecting the pay drawn by him as a temporary status Casual Labourer and to grant consequential benefits within three months from receipt of this order. The O.A. is allowed. No costs.

Dated 27.11.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN