

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 239/2003

Dated Monday this the 30th day of June 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

N.Madhusoodanan Nair
Electrical Khalasi
Trivandrum Central Electrical Division
C.P.W.D., T.C.E.S. D.No.2
Met. Centre, Trivandrum.

Applicant

(By advocate Mr.D.Sreekumar)

Versus

1. Union of India represented by
Secretary to the Central Public
Works Department
New Delhi.
2. Superintending Engineer (Coord.)
South Zone, Central P.W.D. Rajaji Bhavan
Basant Nagar, Madras.
3. Executive Engineer (E)
Trivandrum Central Electrical Division
C.P.W.D., Trivandrum.
4. T.K.Babu
Wirman, Electrical Sub Division No.2
C.P.W.D., Trivandrum.

Respondents.

(By advocate Mr.P.M.M.Najeeb Khan, ACGSC for R1-3)

The application having been heard on 30th June, 2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

This is the second round of litigation in which the
question of seniority of the applicant vis-a-vis the 4th
respondent is in dispute. The applicant commenced service as an
NMR worker on 21.11.1984 and the 4th respondent commenced service
on 12.12.1985. The applicant, according to him, completed 240
days of continuous service in two consecutive years on 8.10.1987

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while the 4th respondent completed the same on 22.10.87. The applicant was regularized in service by order dated 29.7.89. The 4th respondent was also regularized by the same order. In the A-1 seniority list of work charged staff as on 1.10.98, the applicant was placed at Sl.No.16 while the 4th respondent was placed at Sl.No.20. However, in A-3 seniority list as on 1.1.93 issued by the Superintending Engineer (Coord.) - Respondent No.2, the 4th respondent was placed at Sl.No.18 while the applicant at S.No.19. Aggrieved by this, the applicant raised a dispute. As the conciliation failed, the failure report A-6 was sent to the Government. However, no reference under Section 11 of the Industrial Disputes Act was made nor did the applicant proceeded in that line before appropriate forum provided under the Industrial Disputes Act. However, the applicant filed OA No.1219/99 explaining how he is entitled to have his seniority fixed above the 4th respondent and claiming reliefs accordingly. The respondents resisted the claim of the applicant. The Tribunal, although did not go into a thorough and factual adjudication, noticed that there has been discrepancies in the matter of counting the number of days of work each the applicant and the 4th respondent had put in and, therefore, disposed of the application with a direction to the third respondent, in consultation with the 2nd respondent, to reconsider the matter and make a factual adjudication and determine the seniority properly. It was in purported compliance of the Tribunal's order that A-8 order had been issued. In A-8, the 3rd respondent has not mentioned that the order was passed after a factual adjudication in consultation with the second respondent. The crucial question is whether the number of days of work put in by

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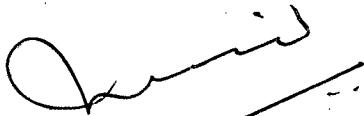
each of the incumbants on holidays have been correctly credited in reckoning the date on which each of them completed 240 days of continuous service each year. This has not been adverted to. There also appears to be considerable difference in the date on which the applicant as also the 4th respondent had completed 240 days of continuous service in the second consecutive year, as is seen from the impugned order A-8 as also R-2 & R-3. In the impugned order, it has been stated that the applicant completed 240 days on 13.10.87 and the 4th respondent did it on 8.10.87. It is seen from R-2 and R-3 that the applicant completed 240 days in the second consecutive year only on 22.10.87 while the 4th respondent did it on 19.10.87. This discrepancy has not been explained. We have not been shown any rule or instructions which indicates that if a casual labour works on holidays, he would be entitled to wages of overtime and that those days should not be added to his credit as the number of days of work for the purpose of regularization on counting 240 days of service. This apparently appears to be wrong and based on no instructions at all.

2. In the light of the above facts and circumstances, we are of the considered view that the matter should go back to the authorities concerned for a proper fixation of seniority of the applicant vis-a-vis the 4th respondent, giving credit to the number of days they had put in irrespective of the fact whether they worked during holidays or working days. The authority before taking a decision should hear the 4th respondent also.

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3. In the light of the above, we direct the 2nd respondent to reconsider the issue on the basis of the vouchers, registers and other relevant documents which would show the number of days of work the applicant and the 4th respondent had put in, in two consecutive years and if it is found that the applicant had completed 240 days in two consecutive years earlier than the 4th respondent, to fix his seniority accordingly and issue a speaking order within 2 months from the date of receipt of a copy of this order after giving the fourth respondent a notice and an opportunity for being heard. In the course of the above process, the 2nd respondent shall allow the applicant to produce whatever material he has got in his possession in support of his claim. The impugned order is set aside. No costs.

Dated 30th June, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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