

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 279 of 2002

Monday, this the 30th day of May, 2005

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. S. Nelson,
Temporary Status Group 'D',
Head Record Office,
Railway Mail Service 'TV' Division,
Trivandrum.

Applicant

[By Advocate Shri Thomas Mathew]

Versus

1. Head Record Officer,
Railway Mail Service, Trivandrum Division,
Trivandrum.
2. Senior Superintendent,
Railway Mail Service, Trivandrum Division,
Trivandrum.
3. Director General,
Department of Posts, New Delhi.
4. Union of India, represented by its
Secretary, Department of Posts, New Delhi.

Respondents

[By Advocate Shri T.P.M. Ibrahim Khan, SCGSC]

The application having been heard on 30-5-2005, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The central issue involved in this case is whether casual labourers of the Postal Department with continuous service of three years after conferment of temporary status according to Casual Labourers (Grant of Temporary status and Regularisation) Scheme are entitled to get bonus on par with regular Group D employees or only as applicable to

Casual Labourers. Aggrieved by the non-granting of the same, the applicant has filed this OA seeking the following main reliefs:-

"(a) to declare that the applicant is entitled to bonus for the year 1999-2000 and 2000-2001 as admissible to temporary Group 'D' employee and quash Annexure A4;

(b) to direct the respondents to pay the applicant the balance amount of bonus for the year 1999-2000 and 2000-2001 with interest at 12%."

2. When the matter came up for hearing, vide order dated 20th September 2004, a Division Bench of this Tribunal has referred the matter to a Full Bench since there were conflicting decisions of the Bangalore Bench on the issue. Considering various aspects in the matter and the issue involved, the Full Bench, vide order dated 9th March 2005, has answered the reference approving the earlier Full Bench decision in OA 1517 and 1577 to 1646 of 2000 in V. Suresh Kumar and others vs. Sr. Superintendent and others of the Bangalore Bench decided on 1-5-2002 which has been upheld by the Karnataka High Court in the matter of Writ Petition No. 35419 and 42378-443 of 2002 decided on 9-7-2003.

3. In view of the above decision, we are of the view that the relief sought by the applicant will not survive and the Original Application is only to be dismissed. Accordingly, the Original Application is dismissed. In the circumstances, there is no order as to costs.

Monday, this the 30th day of May, 2005



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

Ak/NRP


O.A.279 and 280 of 2002

Mr Thomas Mathew for applicant
Mr TPM Ibrahimkhan, SCGSC

For the reasons to be recorded separately, we
answer the reference in the following words:

We approve the earlier Full Bench decision in
O.A. 1517 and 1577 to 1646 of 2000 in V. Suresh Kumar
and others v. Sr. Superintendent and others of the
Bangalore Bench decided on 1.5.2002 which has been
upheld by the Karnataka High Court in the matter of Writ
Petition No.35419 and 42378-443 of 2002 decided on
9.7.2003.

The matter may be listed before the appropriate
Division Bench.



H.P.DAS
MEMBER(A)
9.3.05



JUSTICE P. SHANMUGAM
VICE CHAIRMAN
9.3.05



JUSTICE V.S. AGGARWAL
CHAIRMAN
9.3.05

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULA BENCH**

O.A. NO. 279/2002

&

O.A. No. 280/2002

New Delhi, this the 9th day of March 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE JUSTICE P. SHANMUGAM, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, MEMBER (A)**

O.A. NO. 279/2002

S. Nelson, Temporary Status Group D
Head Record Office,
Railway Mail Service,
TV Division, Trivandrum

...Applicant

(By Advocate: Mr. Thomas Mathew)

-versus-

1. Head Record Officer,
Railway Mail Service,
Trivandrum Division,
Trivandrum.
2. Senior Superintendent,
Railway Mail Service,
Trivandrum Division,
Trivandrum.
3. Director General,
Department of Posts,
New Delhi.
4. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.

...Respondents

(By Advocate: T.P.M. Ibrahimkhan, SCGSC)

O.A. No. 280/2002

G. Saramma,
Temporary Status Group D
Head Record Office,
RMS TV Division,
Trivandrum.

...Applicant

(By Advocate: Mr. Thomas Mathew)

-versus-

1. Head Record Officer,
Railway Mail Service,
Trivandrum Division,
Trivandrum.
2. Senior Superintendent,
Railway Mail Service,
Trivandrum Division,
Trivandrum.
3. Director General,
Department of Posts,
New Delhi.
4. Union of India, represented by its
Secretary, Department of Posts,
New Delhi.

...Respondents

(By Advocate: T.P.M. Ibrahimkhan, SCGSC)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman:

Following question has been referred vide order dated 20.09.2004
before the Full Bench of this Tribunal:

“Whether Casual Labourers of the Postal Department who had been granted temporary status in accordance with the Scheme for Grant of temporary Status and Regularization after continuous service of three years in the newly acquired temporary status and treated on par with temporary Group D employees are entitled to be paid Productivity Linked Bonus on par with Group D employees or whether they would be entitled to bonus only on par with Casual Labourers according to the policy decision of the Government.”

2. The relevant facts are that Sh. S. Nelson, applicant in O.A. No. 279/2002, had been conferred temporary status w.e.f. 29.11.1989. On completion of three years of continuous service and after acquiring the temporary status on 28.11.1992, it was ordered that he would be entitled



to the benefits that are admissible to Group-D employees. It is averred that for the years 1999-2000 and 2000-2001, while the bonus payable to Group-D employees amounted to Rs. 4000/-, the applicant was paid Rs. 1428/- for the year 1999-2000 and Rs. 1530/- for the year 2000-2001. The said applicant had submitted a representation to the Senior Superintendent, Railway Mail Service, Trivandrum claiming bonus at par with Group-D employees. His claim was rejected on the ground that as per orders, bonus has to be paid to casual labourers with temporary status at the rate applicable to casual labourers only and not at par with Group-D employees. Applicant alleged that denial of bonus to him at the rate applicable to Group-D employees is illegal and arbitrary. It is against the directions of the Supreme Court of India and thus he filed the Original Application for declaration that he is entitled to bonus as applicable to Group-D employees and for setting aside of the order rejecting his claim.

3. Smt. G. Saramma, applicant in O.A. No. 280/2002, was also conferred a temporary status w.e.f. 29.11.1989. On completion of three years of continuous service and after conferment of temporary status, it was ordered that she would be entitled to the bonus admissible to Group-D employees. In her case also, for the year 2000-2001, while bonus payable to Group-D employees came to be more than Rs. 4000/-, she was only paid Rs. 1617/- as bonus. She also represented against this action for which she was served with the order informing her that her representation has been rejected and that as per orders on bonus, the casual labourers with temporary status were entitled to get the bonus at the rate applicable to casual labourers and not Group-D



employees. She also filed the Original Application claiming almost the same relief.

4. Both these Original Applications had been contested. Similar pleas had been raised. Respondents plead that bonus for accounting years are determined and disbursed as per directions and formula circulated by the Postal Directorate, that for the year 2000-2001 the method and rate of circulation of bonus to various categories had been circulated by Directorate's letter of 16.10.2001 according to which, the casual labourers with temporary status are also entitled to Productivity Linked Bonus as applicable to casual labourers.

5. At this stage, it would be relevant to mention that this question had come up for consideration before a Full Bench of this Tribunal at Bangalore in O.A. No. 1517 and 1577 to 1646 of 2000 in **V.Suresh Kumar and others vs. Sr. Superintendent and others** decided on 1.5.2002. It is reported in Administrative Tribunals Full Bench Judgments 2002-2003 at page 117. This Tribunal had referred to earlier decision of the Ernakulam Bench of this Tribunal in the case of **All India Telecom Employees Union vs. Union of India & others**, 1992(21) ATC 615. The decision had been quoted in extenso. The majority view in this regard has been stated to be:

"8. On the issue whether the applicants are entitled to payment of bonus at par with temporary, Group D employees or temporary status casual labourers a clarification was sought vide letter of 29.6.2000 (Annexure R-3 page 11). The Ministry of Finance, Department of Expenditure by its clarification dated 6.7.2000 (Annexure R-4 page 12) has decided the issue as follows: "It is clarified that the employees with temporary status are eligible for grant of bonus at the rates applicable to casual workers and not at par with the regular group D

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employees.” Furthermore attention is invited to the communication of 13.11.1999 (Annexure R-9 page 28) which shows that the issue regarding grant of bonus to casual labourers has been preferred in the National Council (JCM) which in turn in its meeting of 21.9.1991 have taken its decision in regard to grant of enhanced bonus. This is in terms of the concluding sentence in para 11 of the order of the Supreme Court “it has been agreed before us that the claim of bonus may be left to the arbitration or for being dealt with by the Consultative Council.

9. Having regard to the aforesaid facts and the reasons given above I am clearly of the view that casual labourers acquiring temporary status after completing three years would not be entitled to bonus equivalent to that of temporary Group D employees. They would be entitled to bonus as determined according to the policy decision of the Government as held by the Ernakulam Bench in All India Telecom Employees Union, Line Staff and Group B (NFPTE) V. Union of India and Bombay Bench in the case of Babu Eknath Jadhav and others v. Union of India.”

6. When this matter came up for consideration before the Bench at Ernakulam in the present Original Applications, strong reliance apparently was placed on the decision of the Supreme Court in the case of **Jagrit Mazdoor Union (Regd.) & Ors. vs. Mahanagar Telephone Nigam Limited & Ors.**, 1990(1)SLR 839. A Bench of this Tribunal felt that the minority view in the Full Bench runs in line with the decision of the Supreme Court. They expressed doubts regarding correctness of the decision of the Full Bench of this Tribunal, to which we have referred to above, and observed:

“Hon’ble Shri Nityananda Prusty, Member (J) who expressed the descending view in the Full Bench judgment in OA Nos. 1517 and 1577 to 1646/2000 has dealt with the point in detail in the descending opinion. While the Casual Labourers who had rendered three years continuous service after conferment of temporary status have been recognized by the

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Apex Court as a group to be treated on par with Temporary Group D Employees and entitled to such benefits as are admissible to Group D employees and while the Government itself has issued order dated 30.11.1992 deciding to treat the Casual Labourers who have rendered three years of service in the newly acquired temporary status on par with temporary Group D employees and entitled to the benefits admissible to Group D employees such as leave as admissible to temporary employees, holidays, counting of service for the purpose of pension, Employees Insurance Scheme, General Provident Fund, Medical Aid, Leave Travel Concession and all advances and bonus it does not appear to be logical that the intention was to give them bonus only par with casual labourers. In view of this position, we very strongly feel that the majority view of the Full Bench in OA Nos. 1517 and 1577 to 1646/2000 is required to be reconsidered."

7. We have heard the parties' counsel and have seen the relevant records.

8. Learned counsel for the applicants read to us different paragraphs from the decision of the Supreme Court in the case of **Jagrit Mazdoor Union** (supra) and on the strength of the same urged that the decision of the Full Bench of this Tribunal runs counter to the decision of the Apex Court. In particular, reference was made to paragraphs 11 and 12 of the decision of the Supreme Court, which reads:

"11. This tentative scheme does not take into account the several specific claims advanced by the petitioners in the two writ petitions. These are House Rent Allowance, City Compensatory Allowance, Bonus and Earned Leave. There are also demands for weekly off day, postal holiday and maternity leave. Weekly off has now been given to RTPs, casual labourers and substitutes under orders of this court and the claim does not survive for adjudication. All these three categories in these two writ petitions are also being given three National Holidays. For the remaining postal holidays, the claim has been pressed but we are of the view that until



absorption, they may not be granted. It has been agreed before us that the claim of bonus may be left to arbitration or for being dealt with by the Consultative Council.

12. As regards House Rent Allowance, City Compensatory Allowance and Maternity Leave, we see no justification for treating the employees of the Postal Department differently from those covered under the regularization Rules in the Telecommunication Department. Temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of offices observing five days week) and on conferment of temporary status. House Rent Allowance and City Compensatory Allowance shall be admissible. There would be no justification to withhold Maternity Leave as that is an obligation of the employer under the law and the State as an ideal employer fulfilling the Directive Principles of State Policy envisaged in part IV of the Constitution should provide the same. After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis."

It is on the strength of the same that the above said claim had been so floated. Respondents also relied upon the same paragraphs and urged that the Supreme Court had not held that casual labourers with temporary status are entitled to the same bonus as Group D employees.

9. We know that a Scheme, known as Casual Labourers (Grant of Temporary Status and Regularization), had been made operational from October 1, 1989. The Supreme Court had found the said Scheme to be comprehensive and in the case, to which we have referred to above, on the assurance of the respondents Nigam that Scheme would be given full effect, had passed the orders referred to. The applicants' plea is that tentative proposal was deficient inasmuch as it did not take into account

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several specific claims advanced by the petitioners in regard to House Rent, City Compensatory Allowance, Bonus, etc. It is contended that while the Apex Court had adjudicated specific claims in respect of other categories, it has, by a general order, equalized temporary status holder casual labourers with three years continuous service with Group-D employees. The plea further is that notwithstanding the mechanism, a casual labourer, who holds temporary status with the number of years, referred to above, would be entitled to the bonus available to a temporary Group-D employee.

10. Before proceeding further, we can take liberty in referring to the order of the Chief Post Master General, Kerala Circle dated 16.10.2001.

Paragraph 5(i) and (ii) of the same reads:

“5(i) Casual labourers who worked at least 240 days (eight hours each or a full working day) for each year for three years or more as on 31.3.2001 are eligible for ad-hoc payment for 54 days for accounting year 2000-2001. The amount of bonus will be paid on notional monthly wages of Rs. 1200/- (Rupees twelve hundred only) and will be calculated at the rate of Rs. 5.839 per day for the days for which the services of the casual employees had been utilized during the period from 1.4.2000 to 31.3.2001. In case where the actual wages fall below Rs. 1200/- per month during the period from 1.4.2000 to 31.3.2001, the amount will be calculated on actual monthly wages.

5(ii) The casual labourers with temporary status are eligible for grant of bonus at the rates applicable to casual labourer/workers and not at par with regular Group ‘D’ employees. The instructions issued vide this Directorate letter No. 26-11/96-PAP dated 29-08-2001 regarding payment of ad hoc bonus to temporary status casual labourers should be followed scrupulously.”

It is in accordance with the same that it has been contended on behalf of the respondents that the claim of the applicants has no force.



11. We would have gone further into details of the submissions, to which we have referred to above in brief, but our attention was drawn towards the decision of the Karnataka High Court in Civil Writ Petition No. 35419 and 42378-443 of 2002 decided on 9.7.2003 in the matter of **V. Suresh Kumar & Ors. vs. Union of India & Ors..** The Full Bench decision of this Tribunal, to which we have referred to above, keeping in view the same controversy as before us, had been taken up for consideration. The decision of the Supreme Court even in the case of **Jagrit Mazdoor Union** (Supra) was also considered and interpreted. The Karnataka High Court held:

“10.5 The entire decision of the Supreme Court will have to be understood in proper perspective with reference to different categories claiming different reliefs. If thus carefully read, it would be clear that decision in **JAGRIT MAZDOOR UNION** did not hold that casual labourers with temporary status who have put in three years of continuous service are to be treated on par with Group-D employees as far as bonus is concerned. The decision in **JAGRIT MAZDOOR UNION** is therefore of no assistance to the petitioners to claim bonus equivalent to Group 'D' employees.

11. We will next deal with the order dated 30.11.1992 of the Department relied on by the petitioners. The said order dated 30.11.1992 was issued by the Department to give effect to the order the Supreme Court **JAGRIT MAZDOOR UNION**. The said order does not give any relief in excess of what has been given by the Supreme Court. It merely provides that from 29-11-1992 casual labourers with temporary status who have put in three years of continuous service will be entitled to several benefits including the benefit of bonus which was not earlier available to them. The order dated 30-11-1992 therefore merely states that casual labourers with temporary status who have put in three years of continuous service are entitled to bonus as temporary 'D' group employees are also entitled to Bonus. It does not state that they are entitled to bonus of a quantum equivalent to that of



Group-D employees. This is because para 11 of the order in *JAGRIT MAZDOOR UNION* having indicated that casual labourers with three years service will be entitled to bonus, left the manner and quantum of entitlement open, to be decided by arbitration or for being dealt with by consultative council. Therefore nothing in para 12 of the decision in *JAGRIT MAZDOOR UNION* will apply to claim of casual labourers for bonus."

Thereafter the decision of the Full Bench of this Tribunal had been approved holding:

"The view of the Ernakulam Bench of the Tribunal, followed by the Full Bench of the Tribunal (Bangalore Bench) deserve to be approved as stating the correct legal position. As rightly held by the Tribunal, it is for the employer Government to fix the quantum of bonus to be paid to the casual labourers and such fixation amounts to matter of policy and such policy cannot be interfered with unless it is shown to be arbitrary or malafide. Refusal to pay the same bonus as in the case of 'D' Group employees does not mean that the policy is arbitrary or malafide."

12. This clearly shows that not only the decision of the Full Bench of this Tribunal had been approved but the Karnataka High Court went on to hold that it is for the employer Government to fix the quantum of bonus to be paid to the casual labourers and if they are not paid at the rate on which Group-D employees are paid, the policy cannot be held to be arbitrary. The claim that persons, like the applicants, are entitled to bonus at the rate at which it was granted to Group-D employees, was rejected. The Karnataka High Court further considered the circular of 30.11.1992 that was issued and held that it does not imply that they are entitled to bonus at the same rate as Group-D employees.

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13. Learned counsel for the applicants had still urged that the decision of the Supreme Court must prevail and not the decision of the Karnataka High Court.

14. It has to be remembered that not only Full Bench of this Tribunal had interpreted the decision of the Supreme Court, to which we have referred to above, but the same has been so interpreted by the Karnataka High court.

15. In the landmark judgment of the Supreme Court in the case of **L. Chandra Kumar vs. Union of India & Ors.**, JT 1997(3) SCC 589, the Supreme Court had upheld the principle of judicial review. It is held that it is one of the basic structures of the Constitution. Resultantly, powers of the High Courts to judicially review orders of the Tribunal could not be withdrawn.

16. We are conscious of the decision of the Supreme Court in the case of **M/s. East India commercial Co. Ltd. Calcutta and another vs. Collector of Customs, Calcutta**, AIR 1962 Supreme Court 1893. In the cited case, the appellant – East India Commercial Co. Ltd. had applied for grant of licence to import fluorescent tubes and fixtures from the United States of America. The licence had been issued subject to the condition not to sell the goods so imported. Subsequently, some breach in the condition was noticed and a notice had been issued to the licence holder in this regard. One of the questions that came up for consideration before the Supreme Court was as to whether the decision of the High Courts would be binding on the Tribunals or not. The

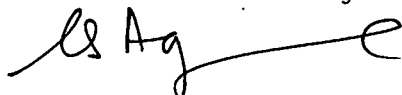
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Supreme Court held that it would be binding. The findings read:

“....Under Art.227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction.”

17. In another decision rendered by the Supreme Court pertaining to Orissa State Administrative Tribunal reported as ***State of Orissa and others vs. Bhagaban Sarangi and others***, (1995) 1 Supreme Court Cases 399, the Supreme Court in unambiguous terms held that the Tribunal is a Tribunal and is bound by the decision of the High Court of the State. The short judgment of the Supreme Court reads:

“1. In our opinion, it is not correct for the Tribunal to have stated that they are not prepared to accept the judgment of the Orissa High Court in Kunja Behari Rath vs. State of Orissa, O.J.C. No. 668 of 1969. We make it clear that the Tribunal in this case is nonetheless a Tribunal and it is bound by the decision of the

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High Court of the State. It is incorrect to side-track or by-pass the decision of the High Court.

2. However, on the merits of the matter, we do not think that there is any case for interference. The order of the Tribunal appears to be just. We accordingly dismiss the special leave petition."

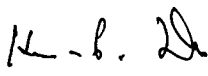
18. A Full Bench of this Tribunal in the case of **Dr. A.K. Dawar vs. Union of India** (OA No. 555/2001) decided on 16.4.2004 even had considered this question. It held that when there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere else in India, this Tribunal would be bound by the decision of that High Court.

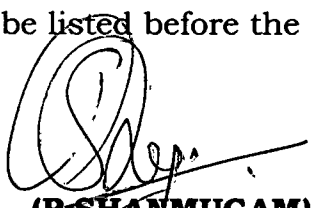
19. In face of the aforesaid, it is obvious that decisions of the Karnataka High Court, which in any case had upheld the decision of the Full Bench of this Tribunal, would bind this Tribunal and thus there is no ground to take a different view or again go into the said controversy.


20. Resultantly, we answer the reference in the following words:

We approve the earlier Full Bench decision in O.A. 1517 and 1577 to 1646 of 2000 in **V. Suresh Kumar and others vs. Sr. Superintendent and others** of the Bangalore Bench decided on 1.5.2002, which has been upheld by the Karnataka High Court in the matter of Writ Petition No. 35419 and 42378-443 of 2002 decided on 9.7.2003.

The matter may be listed before the appropriate Division Bench.


(H.P.DAS)
Member (A)


(P.SHANMUGAM)
Vice Chairman


(V.S. AGGARWAL)
Chairman

/na/

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOS.279/02 & 280/02

.....MONDAY.....THIS THE 20th DAY OF SEPTEMBER, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

O.A.No.279/2002:

S.Nelson, Temporary Status Group D
Head Record Office,
Railway Mail Service,
TV Division, Trivandrum.Applicant

(By Advocate Mr.Thomas Mathew)

V.

1. Head Record Officer,
Railway Mail Service,
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Secretary, Department of Posts,
New Delhi.Respondents

(By Advocate Mr.C.Rajendran, SCGSC)

O.A.No.280/2002:

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Temporary Status Group D
Head Record Office,
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Railway Mail Service,
Trivandrum Division,
Trivandrum.
3. Director General,
Department of Posts,
New Delhi.
4. Union of India, represented by its
Secretary, Department of Posts,
New Delhi. Respondents

(By Advocate Mr. C.B. Sreekumar, ACGSC)

The applications having been heard on ²⁼⁼⁸⁼⁰⁴ 23.8.2004 and
on 20.9.2004 delivered the following:

O R D E R


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

The central issue involved in both these applications is whether the Casual Labourers of the Postal Department with continuous service of three years after conferment of temporary status according to Casual Labourers (Grant of Temporary Status and Regularisation) Scheme are entitled to get bonus on par with regular Group 'D' employees or only as applicable to Casual Labourers.

2. The facts are as follows. Shri S.Nelson, the applicant in OA 279/02 was conferred with temporary status with effect from 29.11.89. On completion of three years of continuous service in the newly acquired temporary status on 28.11.92 by Annexure.A.1 order dated 2.8.93, it was ordered that he would be entitled to benefits admissible to Group D employees. For the years 1999-2000 and 2000-2001 while the


bonus payable to Group D employees amounted to Rs. 4000/the applicant was paid a sum of Rs.1428/- and Rs. 1530/for 2000-2001. The applicant submitted Annexure.A.3 representation to the Senior Superintendent, RMS, Trivandrum claiming bonus on par with Group D employees. In reply to his representation the applicant was served with Annexure.A.4 order rejecting his claim on the ground that as per orders on bonus Casual Labourers with temporary status were eligible for bonus only at the rates applicable to Casual Labourers only and not at par with Group D officials. Alleging that the denial to the applicant of bonus at the rate applicable to Group D employees is arbitrary, irrational and against the direction contained in the judgment of the Hon'ble Supreme Court of India, the applicant has filed this application for a declaration that the applicant is entitled to bonus for the years 1999-2000 and 2000-2001 as applicable to Group D employees setting aside Annexure.A.4 order and for a direction to the respondents to pay the applicant balance amount of bonus with interest at the rate 12 per cent per annum.

3. Smt.G.Saramma, the applicant in OA 280/02 was conferred with temporary status with effect from 29.11.89 by Annexure. A.1 order dated 26.9.2000. On completion of three years of continuous service after conferment of temporary status as on 5.3.2000 it was ordered that the



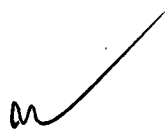
applicant would be entitled to the benefits admissible to Group D employees. For the years 2000-2001 while the bonus payable to Group D employees came to more than Rs. 4000/the applicant was paid only a sum of Rs. 1617/- as bonus. The applicant represented against this action for which she was served with the impugned order Annexure.A4 informing her that as per orders on bonus Casual Labourers with temporary status were entitle to get bonus only at the rate applicable to Casual Labourers and not Group D employees. Aggrieved the applicant has filed this application for a declaration that the applicant is entitled to bonus for the year 2000-2001 as admissible to temporary Group D employees, to quash Annexure.A4 and to direct the respondents to pay the applicant the balance amount of bonus for the year 2000-2001 with interest at 12 percent per annum.

4. In both these applications the respondents have filed reply statements raising identical contentions. In the reply statements and additional reply statements the respondents contend that the bonus for the accounting years are determined and disbursed as per directions and formula circulated by the Postal Directorate, that for the year 2000-2001 the method and rate of calculation of bonus to various categories have been circulated by the Directorate letter dated 16.10.2001 according to which Casual Labourers with temporary status are also entitled to get productivity



linked bonus as applicable to Casual Labourers and that the decision to pay bonus to casual labourers with temporary status who had completed three years of service as admissible to casual labourers and not on par with Group D employees is not opposed to the dictum of the judgment of the Hon'ble Supreme Court of India in Jagrit Mazdoor Union V. Mahanagar Telephone Nigam Limited and another, 1990(1) SLR 839. It is further contended that the Ernakulam Bench of the Central Administrative Tribunal in All India Telecom Employees Union Vs. Union of India and others, 1992(21) ATC 615 ((DB) and a Single Member of the Bombay Bench in Babu Eknath Jadhav and others Vs. Union of India and others (OA 737/2000), a Full Bench of this Tribunal in OA 1517 and 1577 to 1646 of 2000 (V.Suresh Kumar and others Vs. Sr.Supdt. and others) of the Bangalore Bench have settled the position holding that Casual Labourers acquiring temporary status after completing three years would not be entitled to bonus on par with Group D employees and would be entitled to bonus only as determined according to the policy decision of the Government. They contend that in view of Full Bench ruling there is no merit in the claim of the applicants.

5. Shri Thomas Mathew, the learned counsel of the applicants in both these cases referred us to the observation in the ruling of the Hon'ble Supreme Court in Jagrit Mazdoor Union and others Vs. Mahanagar Telephone



Nigam Limited and another, 1990 Supp.SCC 113 at para 12 ".....After rendering three years of continuous service with temporary status, the Casual Labourers shall be treated on par with temporary Group D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis" as also the Government of India, Department of Posts No.66-9/91-SPB.I dated 30.11.1992 which reads as follows:

Benefits to Casual Labour on completion of three years service in temporary status.

Vide this Office Circular Letter No.45-95/87-SPB.I dated 12th April, 1991 (Sl.No.191 of June, 1991 Swamys news) a scheme of giving temporary status to casual labourers fulfilling certain conditions was circulated.

2., In their judgment, dated 29.11.1989 the Hon'ble Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis.

3. In compliance with the above said directive of the Hon'ble Supreme Court it has been decided that the Casual Labourers of this Department conferred with temporary status as per the scheme circulated in the abovesaid circular No.45-95/87-SPB.I dated 12.4.1991 be treated at par with temporary Group D employees with effect from the date they complete three years of service in the newly acquired temporary status as per the abovesaid scheme. From that date they will be entitled to benefits admissible to temporary Group D employees such as--

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.

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3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularisation.
4. Central Government Employees Insurance Scheme.
5. General Provident Fund.
6. Medical Aid.
7. Leave Travel Concession.
8. All advances admissible to temporary Group D employees.
9. Bonus.


4. Further action may be taken accordingly and proper service record of such employees may also be maintained."

and argued that the Casual Labourers who had acquired temporary status and have thereafter rendered three years of continuous service are for the enumerated benefits not to be treated on par with Casual Labourers or other Casual Labourers who had acquired temporary status but on par with regular Group D employees and therefore, the contention of the respondents that for the purpose of payment of bonus they are to be treated on par with Casual Labourers and not Group D employees is not only against the direction contained in the ruling of the Hon'ble Apex Court quoted supra but also against the order of the Government of India dated 30.11.92 itself. The learned counsel argued that the majority view of the Full Bench in OAs 1517 and 1577 to 1646 of 2000 of Bangalore Bench being not in conformity with the ruling of the Apex Court and the decision contained in the order of Government of India, Department of Posts dated

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30.11.92 is required to be reconsidered. Shri C.B.Sreekumar, Additional Central Government Standing Counsel on the other hand argued that the decision of the Full Bench of the Tribunal in OA 1517 and 1577 to 1646/2000 by majority is binding on the Division Bench of the Tribunal and therefore this Bench may follow the Full Bench ruling. He further submitted that the Apex Court in its order in Jagrit Mazdoor Union Vs. Mahanagar Telephone Nigam Limited and another in paragraph 11 had stated "It has been agreed before us that the claim of bonus may be left to arbitration or being dealt with by a consultative council" and that therefore the observation in paragraph 12 of the judgment "after rendering three years of continuous service with temporary status, the Casual Labourers shall be treated on par with temporary Group D employees of the Department of Posts and would thereby entitle to such benefits as are admissible to Group D employees on regular basis" can be held to relate only to claim of benefits other than for bonus as has been held by the Full Bench and that the Full Bench of the Tribunal which settled the correct legal position is not required to be reconsidered.

6. The decision of the Ernakulam Bench of the Tribunal in All India Telecom Employees Union V. Union of India and others, 1992(21) ATC 615 is not of much assistance in taking a view in the matter because entitlement to bonus of that



class of Casual Labourers who had completed three years of service after acquiring temporary status was not specifically considered in that case. When a question has been resolved by a ruling of the Full Bench, normally the decision is binding on subsequent Division Benches of the Tribunal. However, on a very careful reading of Paragraphs 11 and 12 of the ruling of the Apex Court in 1990 Supp.SCC 113 and a scrutiny of the Government of India, Department of Posts order No.66-9/91-SPB.I dated 30.11.1992 (A2) quoted supra we are unable to persuade ourselves to agree with the majority view taken in the Full Bench judgment in OAs 1517 and 1577 to 1646/2000 of Bangalore Bench of the Tribunal, that the Casual Labourers with temporary status even after three years of continuous service would not be entitled to bonus at par with Group D employees. We strongly feel that a conjoint reading of paragraphs 11 and 12 of the judgment of the Apex Court reported in 1990 Supp.SCC 113 would not admit an interpretation that the observation in Paragraph 12 that "after rendering three years of continuous service with temporary status, the Casual Labourers shall be treated on par with temporary Group D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis" relates only to claim of benefits other than the claim for bonus. It is profitable to extract paragraphs 11 and 12 of the judgment of the Apex Court which read thus:

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"11. This tentative scheme does not take into account the several specific claims advanced by the petitioners in the two writ petitions. These are House Rent Allowance, City Compensatory Allowance, Bonus and Earned Leave. There are also demands for weekly off day, postal holiday and maternity leave. Weekly off has now been given to RTPs, casual labourers and substitutes under orders of this Court and the claim does not survive for adjudication. All these three categories in these two writ petitions are also being given three National Holidays. For the remaining postal holidays, the claim has been pressed but we are of the view that until absorption, they may not be granted. It has been agreed before us that the claim of bonus may be left to arbitration or for being dealt with by the Consultative Council.

12. As regards House Rent Allowance, City Compensatory Allowance and Maternity Leave, we see no justification for treating the employees of the Postal Department differently from those covered under the regularization Rules in the Telecommunication Department. Temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of officers observing five days week) and on conferment of temporary status. House Rent Allowance and City Compensatory Allowance shall be admissible. There would be no justification to withhold Maternity Leave as that is an obligation of the employer under the law and the State as an ideal employer fulfilling the Directive Principles of State Policy envisaged in Part IV of the Constitution should provide the same. After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis."

What is stated in paragraph 11 is only that a tentative scheme for absorption of Casual Labourers has been formulated and that there has been agreement in regard to certain claims and that it had been agreed by the parties that the claim of bonus be left to arbitration or being

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dealt with by consultative council. In the concluding part of Para 12 it has been in clear terms held that after completion of three years of continuous service with temporary status the Casual Labourers should be entitled to be treated on par with Group D employees of the Department of Posts and would be entitled to such benefits as are admissible to Group D employees on regular basis. This direction it appears has been clearly understood by the Government of India, Department of Posts and they had issued order regarding benefits of Casual Labourers on completion of three years of service in temporary status dated 30.11.1992 are in unequivocal terms stipulate that the Casual Labourers conferred with temporary status on completion of three years continuous service thereafter would be treated on par with temporary Group D employees and would be entitled to benefits admissible to Group D employees such as:

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....
- 6.....
- 7.....
- 8.....
9. Bonus

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In the impugned order in both these cases the claim is seen to have been rejected on the ground that Casual Labourers with temporary status are eligible for bonus only at the rate applicable to Casual Labourers and not to Group D officials. Further what is contained in the Directorate Letter No.26-4/2001-PAP dated 16.10.2001 (Annexure.R.1) is relied on for holding that Casual Labourers who have rendered three years continuous service after confirmation of temporary status are still to be treated only on par with Casual Labourers for the purpose of bonus. The relevant part of the above letter are paragraphs 5(i) and 5(ii) which is quoted below:

"5(i) Casual Labourers who worked at least 240 days (Eight hours each or a full working day) for each year for three years or more as on 31.3.2001 are eligible for adhoc payment for 54 days for accounting year 2000-2001. The amount of bonus will be paid on notional monthly wages of 1200/- (Rupees twelve hundred only) and will be calculated at the rate of Rs. 5.839 per day for the days for which the services of the casual employees had been utilized during the period from 1.4.2000 to 31.3.2001. In case where the actual wages fall below Rs. 1200/per month during the period from 1.4.2000 to 31.3.2001, the amount will be calculated on actual monthly wages.

5(ii) The casual labourers with temporary status are eligible for grant of bonus at the rates applicable to casual labour/workers and not at par with regular Group D employees. The instructions issued vide this Directorate letter No.26-11/96.PAP dated 29.8.2001 regarding payment of adhoc bonus to temporary status casual labourers should be followed scrupulously."

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In paragraph 5(i) the entitlement of casual labourers who had worked atleast 240 days each year for three years or more has been mentioned. This obviously does not include Casual Labourers with temporary status. The entitlement of Casual Labourers with temporary status for bonus is contained in paragraph 5(ii). Apart from Casual Labourers who have not been granted temporary status and Casual Labourers who had been granted temporary status there is yet another category of Casual Labourers namely those Casual Labourers who after conferment of temporary status had rendered three years of continuous service in the newly acquired temporary status and are entitled to be treated on par with Group D employees. Regarding the entitlement of this category of casual labourers for bonus no special mention is made in this letter (Annexure.R.1) which according to us must be because their entitlement to bonus is governed by order of the Government of India, Department of Posts No.66-9/99-SPB.I dated 30.11.92 (A2) according to which "they will be entitled to benefits admissible to Temporary Group D employees such as -

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2.....

3.....

4.....

5.....

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7.....

8.....

9. Bonus

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Hon'ble Shri Nityananda Prusty, Member (J) who expressed the descending view in the Full Bench judgment in OA Nos.1517 and 1577 to 1646/2000 has dealt with the point in detail in the descending opinion. While the Casual Labourers who had rendered three years continuous service after conferment of temporary status have been recognised by the Apex Court as a group to be treated on par with ^{Temporary} Group D Employees and entitled to such benefits as are admissible to Group D employees and while the Government itself has issued order dated 30.11.92 deciding to treat the Casual Labourers who have rendered three years of service in the newly acquired temporary status on par with temporary Group D employees and entitled to the benefits admissible to Group D employees such as leave as admissible to temporary employees, holidays, counting of service for the purpose of pension, Employees Insurance Scheme, General Provident Fund, Medical Aid, Leave Travel Concession and all advances and bonus it does not appear to be logical that the intention was to give them bonus only on par with casual labourers. In view of this position, we very strongly feel that the majority view of the Full Bench in OA Nos.1517 and 1577 to 1646/2000 is required to be reconsidered. We are aware that normally a Full Bench ruling should be followed by a Division Bench. But in this case as the matter relates to substantial rights of Casual Labourers who are in the lowest rung of service and our sincere feeling that the majority decision of the Full Bench was taken without taking notice of the correct

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import of what is contained in Paras 11 and 12 of the Judgment of the Apex Court in 1990 Supp.SCC 113 and the Government of India letter dated 30.11.92 (A2) prompt us to come to this conclusion.

7. In the light of the above discussion, we are constrained to hold that the matter is required to be placed before the Hon'ble Chairman for settling the legal position namely "whether Casual Labourers of the Postal Department who had been granted temporary status in accordance with the Scheme for Grant of temporary Status and Regularisation after continuous service of three years in the newly acquired temporary status and treated on par with temporary Group D employees are entitled to be paid Productivity Linked Bonus on par with Group D employees or whether they would be entitled to bonus only on par with Casual Labourers according to the policy decision of the Government" by constituting a Larger Bench.

8. Registry is directed to forward the entire file with this order to the Principal Bench for being placed before the Hon'ble Chairman.

Dated this the 20th day of September, 2004


H.P.DAS
ADMINISTRATIVE MEMBER

(s)


A.V. HARIDASAN
VICE CHAIRMAN