

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 28 of 1991.
~~XXXXXX~~

DATE OF DECISION 29.4.1991

D.S.Sajitha Rani and Applicant (s)
32 others

MR Rajendran Nair Advocate for the Applicant (s)

Versus

UOI rep.by Secretary, Respondent (s)
Ministry of Communications
and Another

TPM Ibrahim Khan, Advocate for the Respondent (s)
for R 1 & 2

CORAM:

The Hon'ble Mr. S.P. MUKERJI - VICE CHAIRMAN

The Hon'ble Mr. A.V. HARIDASAN - JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 1.1.91 filed under Section 19 of the Administrative Tribunals Act, 33 Postal Assistants working under the Senior Superintendent of Post Offices, Ernakulam have prayed that they should be declared the to be entitled to productivity linked bonus during which they rendered service as RTP, at the same rates as applicable to the regular employees. The brief facts of the case as indicated in the application are as follows.

2. The applicants were initially recruited on the basis of a qualifying examination and thereafter trained in

the Postal Training Centres. They commenced their service in the Reserve Trained Pool on various dates between 2.1.83 and 20.2.85. After completing training for three months they were absorbed as regular Postal Assistants between 5.3.87 and 29.5.90. They had been posted as ^{RTP} short duty Assistants intermittently and while working as ^S such they discharged all the duties of the regular Postal Assistants but were denied inter alia the productivity linked bonus. They have referred to the decisions of Madras Bench of the Tribunal in O.A.132/89 and this Bench of the Tribunal in O.A.171/89 and O.A.612/89 in which the applicants therein as RTP candidates were declared to be entitled to the benefit of productivity linked bonus like casual workers if they had put in 240 days of service each year for three years or more as on 31st March of each bonus year after their recruitment as RTP candidates. Even though their unions were a party, the applicants did not get the bonus as allowed to the applicants in the aforesaid two cases. They have argued that the classification of the employees between regular and Reserve Trained Pool is discriminatory and they should be given the same productivity linked bonus as regular employees. They have referred to the decision of the Hon'ble Supreme Court in Daily Rated Casual Labour P&T Department Vs. Union of India, AIR 1987 SC 2342 directing that casual labourers should be paid at rates equivalent to the minimum pay in the pay scale of regular workers in

corresponding cadres along with D.A. In support of their contention of equal pay for equal work, they have referred to some other rulings of the Hon'ble Supreme Court also. They have also questioned the decision in O.A.171/89 in which RTP candidates have been treated at par with casual mazdoors.

3. The respondents in spite of several opportunities and adjournments given did not file any counter affidavit. Accordingly we have heard the learned counsel for both the parties and have gone through the documents to dispose of this case. An identical case of grant of productivity linked bonus to RTP Postal Assistants fell for decision by us in O.A.612/89. In that case the applicants had been working in RTP capacity intermittently as Postal Assistants since 1983. As regards their entitlement to productivity linked bonus, [✓]in our judgment dated 26.4.90 in that case & _✓we held as follows:-

"In accordance with the scheme as was promulgated in 1980 (Exbt.R.2(c) and as reiterated in D.G.(Posts) letter of 5th October, 1988 (Annexure-A) productivity linked bonus is admissible to both the Extra-Departmental employees and casual labourers of the department. The quantum of bonus admissible under the scheme as indicated in Annexure-A is determined as follows:

"The quantum of bonus as admissible under these orders will be calculated on the average emoluments during year 1987-88. The term emoluments will comprise pay (including personal pay, special pay and deputation pay) and dearness allowance but will not include other allowances such as HRA, CCA, Remote Locality Allowance, Children Education Allowance etc. For the purpose of these orders, the average emoluments will be the total emoluments for the accounting year 1987-88 (1.3.87 to 29.2.88) divided by 12. The bonus will thereafter be calculated as under:-

Average emoluments x 35 "
30.4

The casual labourers are eligible for the aforesaid bonus in terms of para 6 of Annexure-A as quoted below:

"Casual labour who worked at least for 240 days for each year for three years or more as on 31.3.1988 are eligible for adhoc payment. The amount will be paid on a notional monthly wage of Rs.300/- irrespective of actual monthly wage. The amount of adhoc payment will be calculated at the rate of 94.6 paise per day for the days for which the service of the casual employees had been utilised during the accounting year 1987-88."

Since the RTPs cannot be held to be having a status inferior to that of a casual labourer as they had been selected after a tough open market competition and trained by the department, we feel that the RTPs should also be entitled to the productivity linked bonus at least in parity with the casual workers of P&T Department. The RTPs when employed contribute to the production of the department as much as any casual or regular worker. The Jabalpur Bench of this Tribunal, as indicated by the applicant, in T.A.82/86 had held that RTPs are performing the same duties as the other Postal Assistants. The only difference is that the service rendered by them is intermittent and not continuous and is subject to the availability of work. Any discrimination against the RTPs according to us will be discriminatory and violative of Articles 14 and 16 of the Constitution of India."

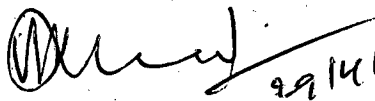
Again a similar issue was decided by this Bench of the Tribunal (to which one of us was a party) in its judgment dated 18.6.90 in O.A.179/89. The Tribunal relying upon our judgment in O.A.612/89 held as follows:-


"The question of payment of Productivity Linked Bonus to the Reserve Trained Pool Postal Assistants was considered by this Bench of the Tribunal to which one of us (Shri S.P.Mukerji) was a party in O.A.612/89. In the judgment dated 26.4.90 in that case the two applicants therein as RTP were declared to be entitled to the benefit of Productivity Linked Bonus, if like casual workers they have put in 240 days of service each year for three years or more as on 31st March of each year after their recruitment. The ratio in that judgment was that no distinction can be made between an RTP worker and the Casual Labourer. If Casual Labourers have been given exgratia payment on the lines of Productivity Linked Bonus there was no reason why the RTP candidates also should not get the same after they fulfil the same conditions of intermittent employment etc. which are applicable to Casual

Labourers also. The argument of the respondents in the case before us that R.T.P. candidates being not regular employees and not holding any post are not entitled to Productivity Linked Bonus cannot be accepted because Casual Labourers also are not regular employees nor do they hold any post in the department. It appears that R.T.P. candidates were excluded from the Bonus scheme because as indicated by the respondents themselves, when the original scheme of Productivity Linked Bonus was framed the category of R.T.P. was not in existence. For that account, they cannot be, to our mind, discriminated against."

The applicants' contention that as R.T.P. they should be treated at par with regular Assistants cannot be accepted as they had not at that stage been appointed to regular posts and belong^{-ed} to a different category altogether. Even the Supreme Court in Daily Rated Casual Labour P&T Department Vs. Union of India, AIR 1987 SC 2342 as quoted by the applicants themselves did not allow the casual workers the pay scale of regularly employed workers but only the minimum of the pay scale without any increments. The principle of equal pay for equal work does not therefore, apply for grant of identical pay or pay scale as admissible to regular employees. The RTPs in that respect are more akin to casual employees as they are employed as and when work is available intermittently. In any case if the applicants felt aggrieved by the decision of this Tribunal in O.A.171/89 they could have gone up in appeal or review against the same in accordance with law. We in any case do not see any justification to depart from the decision given in that case.

4. In the facts and circumstances we allow this application only to the extent of declaring that the applicants while they were in the R.T.P. category are entitled to the benefits of productivity linked bonus, if like the casual workers they ^{had} put in 240 days of service _✓ each year for three years or more as on 31st March of each bonus year after their recruitment as RTP candidates. The amount of productivity linked bonus would be based on their average monthly emoluments determined by dividing the total emoluments for each accounting year of eligibility, by 12 and subject to other conditions of the scheme prescribed from time to time. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

29.4.91

Ks.