

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.294/2001

Tuesday this the 26th day of November, 2002.

CORAM

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

1. G.K.Chandran
2. P.Anukumar
3. N.S.Beenukumar
4. N.Balachandran Nair
5. J.Ashok Kumar
6. T.Sasidharan
7. G.Unnikrishnan Nair
8. T.Vidyadharan

(All are Group-D employees, Office of the
Chief Postmaster General, Kerala Circle,
Trivandrum-33).

Applicants.

(By advocate Mr.Thomas Mathew)

Versus

1. Assistant Director (Accounts)
Office of the Chief Postmaster General
Kerala Circle, Trivandrum.
2. Chief Postmaster General
Kerala Circle, Trivandrum.
3. Director General
Department of Posts
New Delhi.
4. Union of India represented by its
Secretary
Department of Posts
New Delhi.
5. Director
Department of Personnel &
Training, New Delhi

Respondents

(By advocate Ms.Rajeswari.A. ACGSC)

The application having been heard on 26th November, 2002,
the Tribunal on the same day delivered the following:

O R D E R

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

Applicants who commenced service as casual labourers were
granted temporary status with effect from 29.11.1989 and were
treated on par with Group-D employees after three years. The
basic pay of applicants 1 to 3 and 6 to 8 was fixed at Rs.786/in

the scale of pay of Rs.750-12-870-14-940 with effect from 29.11.1992 on their regularization to Group-D post taking into account the increments as on 29.11.92 by A-1 order. The pay of applicants 4 & 5 was also fixed at Rs.786/- in the above pay scale as per A-5 & A-6 orders respectively. In implementation of the 5th Central Pay Commission's recommendations, the applicants' pay was further revised. While so, the applicants were informed by order dated 15.1.2001 that their pay had been irregularly fixed at Rs.786/-, that it required to be refixed at Rs.750/- and that the overpayment was required to be recovered, giving the applicants an opportunity to make their representations. Applicants submitted their representations explaining as to why the proposed action should not be taken. These representations submitted by the applicants were rejected by the impugned order A-11 dated 27.3.2001. As the OM No.49014/4/97-Esst(c) dated 29.1.98 was relied on by the respondents for taking the view contained in A-11, the applicants filed this application seeking to set aside A-11 & A-12, declaring that the decision taken in A-11 order to refix the applicants' basic pay at Rs.750/- in the pre-revised scale with effect from 29.11.92 and to recover the alleged overpayment as illegal, arbitrary, discriminatory and unfair and for a direction to the respondents not to reduce the applicants' pay. It has been alleged in the application that the Hyderabad Bench of this Tribunal in OA No.1051/98 had set aside the OM dated 29.1.98 (A-12) and this Bench of the Tribunal had followed the above decision in OA No.1373/99 and that, therefore, the impugned orders are liable to be set aside.




2. Respondents in their reply statement seek to justify the impugned action on the ground that the fixation of pay of the applicants, giving them the benefit of increment granted during the temporary status of casual service is not found to be in accordance with the rules and, therefore, the action taken to rectify the error cannot be assailed.

3. We have heard Mr.Thomas Mathew, the learned counsel of the applicants and Ms.Rajeswari.A. the learned counsel of the respondents. Mr.Thomas Mathew invited our attention to the order of the Hyderabad Bench of this Tribunal in OA No.1051/98 which considered the identical issue of casual labourers later regularized as Group-D employees in the Postal Department and were threatened with cancellation of the fixation of pay granting the benefit of increment earned during the temporary status of casual service. The Bench, adverting to the contentions of the Department on the basis of the OM dated 29.1.98, observed as follows:

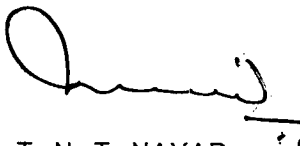
"9.The applicants have earned their increments because of their working as temporary status casual mazdoors. Their career as temporary mazdoors cannot be washed away when they were regular mazdoors by refixing their pay at the minimum pay scale. We see no justification to reject the case of fixation of pay of the applicants at the time of regularization on the basis of least pay drawn by them as temporary status casual mazdoors. The Telecom had acted very correctly as per the guidelines given by them dated 22.12.92.

10. In view of what is stated above, we set aside the impugned letters dated 17/18.6.98 of R-3 (A-1) and also the office memorandum dated 29.1.98 of the Department of Personnel and direct the respondents to continue to pay the applicants in accordance with the pay fixation as was done initially before referring their case to the postal Directorate."




4. This Bench of the Tribunal in OA 1373/99, agreeing with the principles laid down by the Hyderabad Bench of this Tribunal and finding that the OM dated 29.1.98 stands set aside, allowed the application and set aside the impugned order in that case. The facts and the question of law involved in this case are exactly identical and, therefore, we do not find any need to take a different view in this case. Accordingly the impugned orders A-11 & A-12 are set aside. There is no order as to costs.

Dated 26th November, 2002.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

aa.

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of letter No.GEN/31-1/92 dated 14.12.92 issued by Asst. Postmaster General, Office of the 2nd respondent.
2. A-2: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
3. A-3: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
4. A-4: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
5. A-5: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
6. A-6: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
7. A-7: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
8. A-8: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
9. A-9: True copy of letter No.AP/37-17/99 dated 15.1.2001 issued by 1st respondent.
10. A-10: True copy of 1st applicants representation to the 1st respondent dated 29.1.2001.
11. A-11: True copy of order No.A&P/37/17/99/OP dated 27.3.2001 issued by 1st respondent.
12. A-12: True copy of O.M.No.49014/4/57-Estt.(C) dated 29.1.98 issued by Department of Personnel & Training conveyed in Department of Posts Lt.No.1-3/96-PAP dated 24.3.98.
13. A-13: True copy of letter No.269-10/89/STN (Vol.I) dated 12.12.92 of the Ministry of Communication.

Respondents' Annexure:

1. R-1(A): True copy of letter No.45-95/87-SPB-I dated 12.4.91 of Director General, Department of Posts, New Delhi.

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