

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.
XXXXXX

30/91 199

DATE OF DECISION 19.2.1992

V.K.Pazhimala and 29 others

Applicant (s)

Mr.P.V.M.Nambiar

Advocate for the Applicant (s)

Versus
Union of India represented by the Secretary
to Government, Ministry of Defence, Respondent (s)
Govt. of India, New Delhi and 2 others.

Mr.N.N.Sugunapalan, SCGSC

Advocate for the Respondent (s)

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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

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

In this application dated 1st January, 1991 the thirty applicants who have been working as Steno, L.D.C. and Peon in the Naval Repair Yard, Cochin and the Naval Armament Inspectorate, Cochin, at the Headquarters, Southern Naval Command, Cochin and at INS Dronacharya, Naval Base, Cochin as also at the Naval Store Depot, Cochin, have prayed that the respondents be directed to give them all the benefits identical to the one given to the applicants in OA 608/89 and 434/89 by regularising their services from the dates of their initial appointment by condoning the break in service with all consequential benefits of arrears of pay, increments and seniority etc. They have also challenged the impugned order dated 26th November 1990 at Annexure A4 rejecting their representations claiming those benefits.

2. The applicants were originally appointed on a casual basis as at Annexure A1 from various dates between 29.3.1972 and 16.3.1983 and were regularised on various dates between 5.4.74 and 18.8.1988. Their plea is that having been appointed as LDC/Steno/Peon on a casual basis initially with technical

breaks and later absorbed on permanent basis, they cannot be made juniors to others who were appointed on a regular basis after the dates of original appointment of the applicants and once they are regularised the date of regularisation should be the date of their original casual employment in accordance with the Ministry of Defence letter dated 26.9.1966 followed by another letter dated 24.11.1967 laying down that casual non-industrial persons who are converted as regular employees will be treated as having been regularised from the date of casual employment with all consequential benefits of pay, increments, leave, pension, gratuity etc. They, however, feel aggrieved by para-4 of the order dated 24.11.67 by which only the last spell of continuous casual service will be admissible and the previous casual service with breaks will be ignored. They are also aggrieved by another circular dated 27.5.1980 which was issued as a corrigendum to the circular of 24.11.1967 denying the benefit of seniority for even the last spell of unbroken casual service and it was laid down that service rendered on casual basis prior to the appointment on regular basis shall not count for seniority. They have referred to the decisions of the Hon'ble High Court of Andhra Pradesh and different Benches of the Central Administrative Tribunal whereby the applicants therein were given all the benefits of regular employees with effect from the dates of their initial appointment on a casual basis. They have in particular referred to the decisions of this Bench of the Tribunal in O.A. 434/89 and O.A 609/89 allowing similarly situated applicants therein in the Southern Naval Command itself the benefit of regularisation from the dates of their initial appointment on a casual basis by condoning the break in service, in support of their claim. They have mentioned that the benefit regarding seniority was referred to a Larger Bench of the Tribunal in those cases. They have argued that the benefits extended by the Chiefs of Naval Staff to similarly situated persons in other Commands and also in the Southern Naval Command cannot be denied to them.

3. In the counter affidavit the respondents have justified the short breaks in the casual service of the applicants between two casual employment and do not consider them to be technical or artificial breaks. The applicants were absorbed as and when regular posts became available and given the benefit of casual service only for the last spell of continuous casual service in accordance with the Ministry of Defence order dated 24th November, 1967. Their further order of 27th May 1980 excluded casual service prior to their regular appointment for the purpose of seniority. As regards the benefits given by the High Court of Andhra Pradesh and Hyderabad Bench of the Tribunal, they have stated that the employees in the Eastern Naval Command and Southern Naval Command are under different seniority lists and therefore, the comparison of seniority between LDCs of different Commands does not arise. As regards the decision of this Bench in O.A 434/89 and O.A. 609/89 , the respondents have stated that while the applicants in those cases are borne on an all India roster maintained by the Naval Headquarters, the applicants in this case are borne under the Southern Naval Command in a roster maintained by the 3rd respondent. Accordingly , the applicants before us cannot be treated at par with the applicants before the Andhra High Court and other Benches of the Tribunal.

4. In the rejoinder the applicants have stated that they had been appointed on a casual basis against regular vacancies and were given technical breaks intentionally till they were regularised in order to avoid regularisation from the date of their initial appointment. They have averred that they are similarly situated like the applicants before the High Court of Andhra Pradesh and various Benches of the Tribunal and the ratio of those judgments are applicable to them also. All the Benches of the Tribunal in one voice directed that the applicants before them should be regularised from the dates of their original appointment on a casual basis by condoning the break in service with all consequential benefits.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. This very

Bench of the Tribunal in the judgment dated 20.8.1990 in O.A.434/89 and O.A.609/89 where a similar relief as in this case was claimed by the Assistant Store Keepers of the Southern Naval Command, decided the question of regularisation and consequential benefits other than that of seniority in the following terms:-

✓ "12. In so far as the first issue is concerned, there is consensus of findings by the High Court of Andhra Pradesh and all the Benches of the Tribunal to the effect that, in accordance with the various orders of the Ministry of Defence, the applicants are entitled to be converted into regular employees with effect from the date of their initial employment as casual employees and that if there have been some technical breaks during their entire period of casual employment, the same are to be condoned. The relevant portion of the order dated 24/25.8.89 of the New Bombay Bench of the Tribunal which typifies the findings in all cases is as follows:-

"Respondents shall give all benefits due to the applicants in both the cases as per the Ministry of Defence letter No.83482/EC-4/Org.4(Civ)(d)/13754/D(Civ-II) dated 24.11.67 as amended by corrigendum No. 13051/OS-SC(ii)2968/D(Civ-II)dated 27.5.80, from the dates on which the applicants were initially appointed on casual basis, by ignoring the artificial or technical breaks in their services".

"13. We see no reason to depart from the above decision in case of the applicants before us in these two cases and others similarly circumstanced. The stand taken by the respondents that the decision given by the High Court and the various Benches of the Tribunal should be applicable only to the applicants before them, cannot be accepted. Apart from the fact that a principle which is held good by the High Court of Andhra Pradesh and endorsed by the Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of the Tribunal cannot be dismissed as not applicable in case of the applicants who are similarly circumstanced as the applicants before those Benches. The applicants before us belong to the same cadre as the applicants in the aforesaid cases, and over and above that, they admittedly figure in the same all-India Seniority List, irrespective of the Naval Command to which they belong. The letter dated 3.11.86 of the Chief of Naval Staff (vide p.77 of the Paper Book) also extended the benefit of Andhra Pradesh High Court's judgment to all similarly circumstanced.

"14. In the above circumstances and in conformity with the various decisions of High Court of Andhra Pradesh Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of this Tribunal, we allow this application in part with the direction that the respondents shall ignore the artificial or technical breaks in the casual services of the applicants and regularise them from the date of their initial appointment on a casual basis with all benefits due to them as per Ministry of Defence Letter No. 83482/ EC-4/Org.4(Civ)(d)/13754/D(Civ-II) dated 24.11.67 as amended by corrigendum No.13051/OS-SC(ii)/2968/D(Civ-II) dated 27.5.80."

6. In view of the unambiguous decision in respect of persons similarly situated as the applicants before us, we have no hesitation in allowing this application in so far as pre-dating the date of regularisation with effect from the date of initial casual appointment by condoning the break in service and financial benefits flowing therefrom. Whether they are borne in an all India list or a Command list makes no difference. As regards the question of seniority this Bench of the Tribunal in O.As 434/89 and 609/89 referred the matter to a Larger Bench because of the fact that it found that whereas the Hyderabad, Calcutta and Madras Benches of the Tribunal had impliedly accorded seniority to the applicants before them on the basis of their date of initial appointment without bringing in the restriction imposed by the circular of 27.5.80, the New Bombay Bench relying on the ^{circular} corrigendum of 27.5.80 had directed that "the respondents shall fix the seniority of the applicants in their respective grade from the dates on which they are absorbed against regular vacancy". The Larger Bench in their judgment dated 29.11.1990 observed as follows:-

" 12. In our considered opinion, once it is concluded that the applicants should be regularised with effect from the date of their initial appointment as casual employees after condoning the technical breaks, it is implicit that those employees would be entitled to seniority from the same date of their initial appointment in which they have been regularised.

13. In G.P.Doval vs. Chief Secretary, Government of U.P., 1984(4) S.C.C. 329 at 342, the Supreme Court has observed that "It is thus well settled that where officiating

"appointment is followed by confirmation, unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list." (See also Delhi Water Supply and Sewage Disposal Committee & Others Vs. R.K. Kashyap & Others, 1989 S.C.C. (L&S) 253).

"14. The New Bombay Bench has struck a different note by relying on the corrigendum dated 27.5.1980 which has no application to the facts and circumstances of the two applications before us.

"15. In the case before the New Bombay Bench, it is clear that the applicants were absorbed after the issue of the corrigendum dated 27.5.1980, while in the case of the applicants before us, they had been regularised much earlier than the issue of the said corrigendum. The applicants in O.A-434/89 were regularised on various dates from November, 1974 to April, 1979, while the applicant in O.A-609/89 was regularised w.e.f. 1.6.1979. Consequently, the decision of the New Bombay Bench is clearly distinguishable."

In conclusion the Larger Bench answered the reference as follows:-

"20. We, therefore, answer the reference to the Full Bench as follows:-

- "(i) The benefit of seniority to casual employees who were regularised in accordance with the Ministry of Defence letter dated 24.11.1967, can be given from the date of initial appointment on a casual basis, if the breaks in service are condoned, irrespective of the availability of a regular vacancy. The corrigendum issued on 27.5.1980 will not apply to regularisation from dates prior to the date of its issue, as in the present case.
- "(ii) The judgment of the New Bombay Bench dated 24/25.8.1989 in O.A. Nos.516 and 732 of 1988, is distinguishable as the applicants in those cases were absorbed after the issue of the corrigendum dated 27.5.1980. In view of this, we see no conflict between the judgments delivered by the various Benches of the Tribunal.

(iii) The applicants before us as well as those before the other Benches of the Tribunal similarly situated are borne on an All India seniority list. The judgment of the New Bombay Bench results in determination of the seniority of such persons who were before that Bench in a different manner. We leave open the question whether such determination is legally sustainable, as the same is not germane to the issue raised for our consideration."

From the above it is clear that the Larger Bench accepted the general principle that once casual service is regularised with retrospective effect, such regularised casual service will automatically count towards seniority irrespective of availability of vacancy. The Larger Bench however, did not find any conflict between the New Bombay Bench ^{so as to invoke the aforesaid general principle &} or other Benches of the Tribunal as the applicants before the New Bombay Bench had been regularised after 27.5.1980 when the circular was issued disqualifying the casual service for purpose of seniority, and other Benches of the Tribunal, the applicants before whom had been regularised before 27.5.1980. In accordance with the decision of the Larger Bench, therefore, all the applicants before us except the following who were, in accordance with Annexure A.1, as accepted by the respondents also, regularised after 27.5.80 will be entitled to all the benefits including the benefit of seniority from the dates of their original appointment on a casual basis. The names of the excluded applicants with the dates of their regularisation are as follows:-

<u>Sl.No.</u>	<u>Name</u>	<u>Date of regularisation</u>
1.	K.V.Mathew	4.10.1982
2.	P.M.Radhakrishnan Nair	1.5.1988
3.	C.K.Rajeswari	18.8.1988
4.	M.V.Narayanan Kutty	1.12.1989
5.	C.M.Balagangadharan	24.10.1980
6.	V.R.Bhasi	24.11.1980
7.	Premalatha P.N.	1.3.1990
8.	Santha Mohan	4.10.1982
9.	K.J.Mercy	31.1.1983
10.	P.G.Annamma	1.9.1981
11.	Omana K.M.	3.4.1983
12.	Deenamma Xavier	7.1.1982
13.	K.G.Manomani	30.3.1983

7. In the facts and circumstances we allow this application in so far as applicants No. 1, 3, 4, 6 to 9, 12 to 18, 20, 22 & 28 are concerned with the direction to the respondents to regularise their services as L.D.Clerks/Steno/Peon with effect from the date of their initial appointment on a casual basis by ignoring the breaks and give them all consequential benefits in accordance with the Ministry of Defence letters dated 26.9.1966 and 24.11.1967 as also the benefit of seniority. As regards the other applicants No.2, 5, 10, 11, 19, 21, 23 to 27, 29 and 30, the respondents are directed to regularise their services from the dates of their initial appointment on a casual basis and give them the benefits contemplated in the aforesaid orders dated 26.9.1966 and 24.11.67 as in case of other applicants. So far as the benefit of seniority for these thirteen applicants is concerned, we reiterate our views as expressed in our judgment dated 20.8.1990 in O.A. 434/89 and O.A. 609/89, a copy of which judgment is at Annexure A.2, and disagree with the finding of the New Bombay Bench given in their judgment dated 24/25 August, 1989 in O.A. 516/88 and O.A.732/88, that the benefit of seniority will accrue from the date they are regularised against regular vacancies. We feel that once the previous casual service is regularised it has to count for seniority as any regular service irrespective of existence of any regular vacancy which is material only for confirmation. The Larger Bench in very unequivocal terms endorsed our view as in paras 12 and 13 of their judgment dated 29.11.1990 which we repeat again as follows.

" 12. In our considered opinion, once it is concluded that the applicants should be regularised with effect from the date of their initial appointment as casual employees after condoning the technical breaks, it is implicit that those employees would be entitled to seniority from the same date of their initial appointment in which they have been regularised.

"13. In G.P.Doval vs. Chief Secretary, Government of U.P.,1984(4) S.C.C. 329 at 342, the Supreme Court has observed that "It is thus well settled that where officiating appointment is followed by confirmation, unless a contrary

" rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list." (See also Delhi Water Supply and Sewage Disposal Committee and Others vs. R.K.Kashyap & Others, 1989 S.C.C.(L&S)253).

The Larger Bench also in item (iii) of their finding questioned the legality of the decision of the New Bombay Bench to determine the seniority of post 27.5.80 persons in a different manner. We have no doubt in our mind that the Larger Bench did not endorse the restrictive finding of the New Bombay Bench. (para 5 supra)

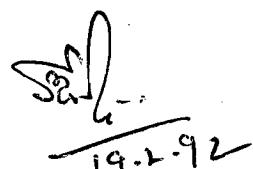
8. It would not have been necessary for us to refer the question of these thirteen applicants again to them had the Larger Bench given their finding on the general point referred to them, but they distinguished 'pre-27.5.1980' cases from 'post 27.5.80' cases and did not give their finding on the general question of seniority based on regularised casual service. Now that these applicants are 'post-27.5.1980' regularised persons their cases ^{will} have to be decided by overruling or accepting the decision of the New Bombay Bench. We, accordingly direct the Registry to refer the following issue to the Hon'ble Chairman for constituting a Larger Bench for a decision. The issue is as follows:-

Whether the benefit of seniority to casual employees who are regularised in accordance with the Ministry of Defence letter dated 24.11.67 as amended by the corrigendum dated 27.5.1980 can be given from the date of initial appointment on a casual basis if the breaks in service are condoned, irrespective of the availability of a regular vacancy even in respect of those casual employees who were regularised after 27.5.1980.



(A.V. Haridasan)
Judicial Member

(9.2.92)



(S.P. Mukerji)
Vice Chairman

19.2.92

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CPC 28/94 in OA 30/91.

Monday, this the 7th day of March, 1994.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

1. VK Pazhanimala, Steno, Naval Ship Repair Yard, Naval Base, Cochin
2. KV Mathew, Lower Division Clerk, -do-
3. EA Vijayan, Peon, -do-
4. LH Thilakavathy, Lower Division Clerk, Naval Armament Inspectorate, Naval Base, Cochin.
5. PM Radhakrishnan, Lower Division Clerk, Naval Armament Inspectorate, Naval Base, Cochin.
6. Kumudagopinath, Lower Division Clerk, Naval Armament Inspectorate, Naval Base, Cochin.
7. P Indira, Lower Division Clerk, -do-
8. KG Chandrikamma, Lower Division Clerk, Headquarters, Southern Naval Command, Cochin
9. KN Chandrakala, Upper Division Clerk, -do-
10. CK Rajeswari, Steno, -do-
11. NM Thankamani, Lower Division Clerk, Naval Aircraft Yard, Naval Base, Cochin.
12. CA Omana, Lower Division Clerk, INS Dronacharya, Naval Base, Cochin.
13. KA Francis, Lower Division Clerk, -do-
14. Kamala Raman, Lower Division Clerk, -do-
15. K Sumathy, Lower Division Clerk, -do-
16. PM Sheela, Upper Division Clerk, -do-
17. CM Balagangadharan, Lower Division Clerk, -do-
18. K Padmavathy Ammal, Upper Division Clerk, -do-
19. VR Bhasi, Lower Division Clerk, -do-
20. P Ambujam, Lower Division Clerk, Naval Store Depot, Naval Base, Cochin.
21. Chinnamma Mathew, Lower Division Clerk, -do-
22. KJ Mercy, Lower Division Clerk, -do-
23. KM Omana, Lower Division Clerk, -do-
24. Santha Mohan, Lower Division Clerk, -do-
25. KG Manomani, Lower Division Clerk, -do-

....Petitioners

By Advocate Shri VV Nandagopal Nambiar.

Vs.

contd.

Vice Admiral Indrajith Bedi,
Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base, Cochin-4.

.... Respondent

By Shri VB Unni Raj, Addl Central Govt Standing Counsel

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN

It is submitted by both sides that the judgement in OA 30/91 has been complied with, to the extent of making payments. It is unnecessary to consider the other issues, as they depend on the decision to be reached by the Full Bench.

2. Without expressing any opinion on the merits, we dismiss the contempt petition. No costs.

Dated the 7th March, 1994.


PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN