

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A..NO. 302/2000

MONDAY, THIS THE 29th DAY OF APRIL, 2002.

C O R A M

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

T. Girish S/o E. Balakrishnan Nair
Group-D, Udyogamandal Post Office
Eloor.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The Senior Superintendent of Post Offices
Ernakulam, Kochi

2. The Chief Postmaster General
Kerala Circle,
Trivandrum.

3. Union of India represented by the
Secretary to Government of India
Ministry of Communications,
New Delhi.

Respondents

By advocate Mr.C.B. Sreekumar, ACGSC

The Application having been heard on 3.4.2002 this Tribunal
delivered the following on 29.4.2002.

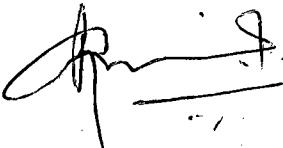
O R D E R

HON'BLE LMR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Aggrieved by A1 order dated 16.12.98 issued by the
first respondent rejecting his representation dated 19.11.98
and A-2 memo dated 8.4.99 issued by the first respondent
rejecting his representation dated 30.3.1999 both claiming
for pay in higher rate from 1.1.1996 based on 5th Pay
Commission Report and bonus for 1994-95, 1995-96, 1996-97 and
1997-98 the applicant filed this Original Application seeking
the following reliefs:

(i) Quash annexure A1 and A2

(ii) To declare that the applicant is entitled to
arrears based on the pay scale sanctioned as per 5th
Pay Commission recommendation for the period from
1.1.1996 to 28.4.1997 and to direct the respondents



to disburse the arrears of pay based on the 5th pay commission recommendation for the period from 1.1.96 to 28.4.1997 with 18% interest per annum.

(iii) To declare that the applicant is entitled to bonus for the period 96-97 and to direct the respondent to pay the applicant bonus for the year 1996-97.

(iv) Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

(v) Grant the cost of this Original Application.

2. The applicant at the time of filing of the OA was working as a Group-D Temporary Status Mazdoor at the Udyogamandal Post Office, Eloor. He was conferred with Temporary Status w.e.f. 29.4.1994 by Memo No. B4/1715 dated 31.10.1996. According to the applicant on conferment of Temporary Status Casual Mazdoors engaged for full working hours would be paid at daily rates equal to the minimum of the pay scale of a regular Group-D official including DA, HRA & CCA according to the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme. dated 12.4.91 (Annexure A-3). The applicant claimed that he was given wages on par with the minimum in the scale of pay of Regular Group-D only for the period from 1.11.1996. He was not paid the arrears for the period from 29.4.1994 to 31.10.1996. He was denied the Bonus for the year 1997-98. He received the arrears of pay recommended by the Vth Pay Commission for the period 29.4.97 to 30.9.97. He submitted representation to the first respondent which elicited no response. Aggrieved he filed OA 1559/98 which was disposed of by this Tribunal by A-4 order dated 5.11.98. Pursuant to Annexure A-4 order the applicant submitted A-5 representation dated 19.11.98 which was rejected by annexure A-1 order dated 16.12.98. Applicant filed A-6 representation dated 30.3.99 to the first respondent requesting to review his order favourably. A-6 was rejected by A2 order. Hence he filed this OA seeking the reliefs mentioned above.



3. Respondents filed reply statement. It was submitted that on reconsideration of the case they had authorised payment of wages to the applicant on daily rate basis with the minimum of the pay scale with the corresponding pay of Group-D employee including DA, HRA, and CCA by R1(b) memo dated 4.5.2000 authorising the wages for the period from 1.1.96 to 28.4.97 and arrears of Rs. 1771/- was paid to the applicant on 14.6.2000. According to the respondents for a casual labourer to be entitled for the productivity linked bonus for the year 1996-97, in terms of R1(c) and R1(d) letters issued by the Department of Posts, Ministry of Communications, he should have worked for at least 240 days for each year for 3 years or more as on 31.3.1997. The applicant who was first engaged as casual labourer xxxx on 29.4.1993 had only worked for 225, 255 and 298 days upto 1995-96 and hence was not eligible for productivity linked bonus for 1996-97. The OA was not within the limitation period as A1 order was issued on 16.12.98 and OA was filed on 12.3.2000. A2 was only a communication confirming A1. The OA was liable to be dismissed..

4. Heard the learned counsel for the parties.

5. Learned counsel for the applicant submitted that in view of the development and the fact that the applicant had received the arrears of pay based on the pay scale revised as per Vth Pay Commission recommendation for the period from 1.1.96 to 28.4.97 the only surviving claim was regarding the payment of bonus for the period 1996-97. According to him as per the scheme of conferment of Temporary Status giving

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certain benefits to the Casual Labourers he was entitled for the Bonus and hence he was entitled for the relief sought for.

6. The learned counsel for the respondents took us through the reply statement and submitted that the applicant was not entitled for the Bonus.

7. We have given careful consideration to xxxxxxxx the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. The question to be decided in this case is whether the applicant is entitled for the payment of bonus for the year 1996-97. Para 9 of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme A-3 deals with payment of bonus. The said rule reads as under:

"9. Their entitlement to Productivity Linked Bonus will continue to be at the rate applicable to casual labourers."

9. We find from R-1(c) letter dated 26.8.98 issued by the Ministry of Communications, Department of Posts dated 26.8.98 that for the accounting year 1996-97 Productivity Linked Bonus was to be made on the same terms and conditions as laid down in the Department's letter No. 26-6/96-PAP dated 15.10.96. We note that para 6 of R1(d) letter dated 15.10.96 gives the conditions for payment of Productivity Linked Bonus to the Casual Labourers for the year 1995-96 as under:

"6. 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 31.3.1996 are eligible for adhoc payment for 40 days for accounting



year 1995-96. The amount of bonus will be paid on notional monthly wages of Rs. 750/- (Rupees even hundred fifty only) and will be calculated at the rate of Rs. 2.095 per day for the days for which the services of the casual employees had been utilised during the period from 1.4.1995 to 31.3.1996. In case where the actual wages fall below Rs. 750/- per month during the period from 1.4.95 to 31.3.96 the amount will be calculated on actual monthly wages.

10. From the above it is clear that a Casual Labourer would be eligible for Productivity Linked Bonus for the year 1995-96 if he had worked for atleast 240 days for each year for three years or more as on 31.3.1996. On the same analogy it is admitted by the respondents that for the year 1996-97 for getting bonus the casual labourer should have worked for more than three years as on 31.3.1997 i.e. he should have worked for 240 days for each year for three years or more as on 31.3.97.

11. At the same time respondents have denied the benefit of bonus to the applicant on the ground that he had not satisfied the condition of working 240 days in a year for three years prior to 1996-97. According to them as the applicant's service was 225 days during 1993-94, 255 days during 1994-95 and 298 days 1995-96, he was not eligible for grant of bonus for 1996-97.

12. We find that there is no dispute that the applicant was first engaged as Casual Laborer on 29.4.93. Hence he completed three years on 28.4.96. Therefore as on 31.3.1997 he had completed more than three years, having worked more than 240 days in each of the years ending on 28.4.94, 28.4.95 and 28.4.96. There is no stipulation in para 6 that three financial years' service should have been completed. In this view of the matter we are unable to sustain the contention of

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the respondents stated in the impugned A-1 letter dated 16.12.98. As A-2 letter confirms what is stated in A-1, A-2 also cannot be sustained.

13. The second plea raised by the respondents is that the challenge to A-1 is barred by limitation. While we find that the same is factual, it is also true that the respondents have again confirmed the same reason in A-2 and A-2 is not barred by limitation. When the respondents have entertained the appeal against A-1 and disposed of the same by A2 we hold that the OA is not barred by limitation. Further the Government of India as a model employer should not refuse the legitimate claims of their employees on the technical ground of limitation especially in a case like this where the employee is a casual labourer and had appealed immediately after the rejection of his lawful claim, for reconsideration. Accordingly, we reject the plea of limitation.

14. In the result this Original Application succeeds. Accordingly we set aside and quash A-1 letter dated 16.12.98 and A-2 letter dated 8.4.99 and we declare that the applicant is entitled to bonus for the period 1996-97. We direct the respondents to pay to the applicant the productivity linked bonus for the year 1996-97 for the number of days of his service from 29.4.1996 to 31.3.1997.

15. The Original Application stands allowed in part as above. In the circumstances the parties shall bear their respective costs.

Dated the 29th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Order No.G/SP-44(Pt.) 97 dated 16.12.98 issued by the 1st respondent to the applicant.
2. A-2: True copy of the Memo NO.G/SP-44(Pt.) 97 dated 8.4.99 also issued by the 1st respondent.
3. A-3: True copy of the Government of India, Department of Post, Letter No.45-95/87-SPB.I DATED 12.4.91.
4. A-4: True copy of the order dated 5.11.98 in OA 1559/98 on the file of this Hon'ble Tribunal.
5. A-5: True copy of the representation dated 19.11.98 submitted by the applicant to the 1st respondent.
6. A-6: True copy of the representation dated 30.3.99 submitted by the applicant to the 1st respondent.

Respondents' Annexures:

1. R-1(a): True copy of the Memo No.B4/17-15 dated 31.10.96 issued by the 1st respondent.
2. R-1(b): True copy of the letter No.G/SP-44 (Pt.) 97 dated 4.5.2000 issued by the 1st respondent.
3. R-1(c): True copy of the order No.26-10/97-PAP dated 26.8.98 issued by the Director General, Dept. of Post, New Delhi.
4. R-1(d): True copy of the letter No.26-6/96 dated 15.10.96 issued by the Director (Estt), Dept. of Post, New Delhi.

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