

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.322/97

Wednesday, this the 11th day of June, 1997.

C O R A M

HON'BLE SHRI AV HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

- | | |
|--------------------------------|---|
| 1. Kandilath Bambathibi, | Casual Labourer, Coir Production cum-Demonstration Centre, Androth Island, UT of Lakshadweep. |
| 2. Mathiyathoda Makkambi, | -do- |
| 3. Achadapurakkat Pathumabi, | -do- |
| 4. Neelathupurakkat Rahmathbi, | -do- |
| 5. Kirakkeda Sayeeda, | -do- |
| 6. Pathada Kadeeja, | --do- |
| 7. Belichetta Ayshomabi, | -do- |
| 8. Pontramvelikat Ayshabi, | -do- |
| 9. Lavanakkal Attabi, | -do- |
| 10. Kunnashada Attabi, | -do- |
| 11. Lavanakal Rajabi, | -do- |
| 12. Makkot Attabi, | -do- |
| 13. Aliyathara Kunhikoya, | -do- |
| 14. Kunnashada Kayarunnishabi, | -do- |

....Applicants

By Advocate Shri Shafik MA.

vs

1. Union of India represented by the Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. The Director,
Department of Industries,
Union Territory of Lakshadweep,
Kavaratti.

....Respondents

By Advocate Shri PR Ramachandra Menon.

contd.

The application having been heard on 9th June, 1997,
the Tribunal delivered the following on 11th June, 97:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Casual Workers in the Coir Production-cum-Demonstration Centre, Androth Island, Lakshadweep. They had earlier approached this Tribunal for regularisation in OA 1848/92 and subsequently they were granted temporary status with effect from 1.9.93 in terms of the scheme of the Government of India in that behalf laid down in OM dated 10.9.93. Their grievance is that they have not been paid wages at the rate of 1/30th of the minimum of the relevant pay scale plus dearness allowance for a work of eight hours a day as prescribed in A.2 OM dated 7.6.88 for the period from 7.6.88 to 1.9.93, on which date, they have been granted temporary status and were placed on regular scale of pay. They pray that they may be granted wages at the rate of 1/30th of the minimum of the pay scale plus dearness allowance for the above period with consequential benefits of arrears with interest at 18% per annum. Their request in this behalf was rejected by A.1 impugned order dated 3.9.96, which is under challenge. In support of their claim, applicants have produced A.8 order of the Tribunal in OA 420/96 in which persons working in the Coir Fibre Factory and Coir Production Centre in another Island, Amini, have been directed by the Tribunal to be paid wages at the rate of 1/30th of the minimum pay in the corresponding scale. Learned counsel for applicants submits that A.8 directions of the Tribunal have been implemented by the respondents.

2. Respondents submit that the question of enhanced wages from 1988 is barred by limitation. They also submit that

contd.

according to A.2, enhanced wages are to be paid only where the nature of work entrusted to the casual workers and the regular employees is the same and that where the work done by the casual workers is different from the work done by a regular employee, the casual worker is to be paid only the minimum wages notified. According to respondents, the nature of duties of the applicants is not the same or similar in nature with Group D staff of other Departments and there are no regular Group D posts carrying similar duties and work as that of applicants in the Coir Production-cum-Demonstration Centre where the applicants are working or in other similar industrial units. Therefore, the provisions of A.2 OM are not attracted in the case of applicants. Respondents also submit that a similar matter has been considered by the Tribunal in OA 45/90 in which the Tribunal had held that:

"We have no doubt in our mind that the work of the Production-cum-Demonstration Centre is basically and intrinsically different from the work done in the Coir Fibre Factory. The Coir Factory is engaged in production of coir fibres by machine processing while the Production Centre is engaged in coir spinning and production of coir products like the door mats, corridor mats etc. The principle of 'equal pay for equal work' as upheld by the Supreme Court entitles inter alia casual workers to the same pay as is admissible to regular employees doing similar work. Since in the Production Centre where the applicant is working as a casual labourer, there is no regular Class IV employee, the question of parity in the Production Centre does not arise. The applicant's claim of parity with the pay scale of regular Helpers in the Fibre Factory cannot be admitted because of complete dissimilarity of work...we find that the applicant as a casual labourer in the Production-cum-Demonstration Centre cannot claim parity with the regular Class IV Helpers of a completely different unit of Coir Fibre Factory."

contd.

Respondents, therefore, submit that the claim of the applicants cannot be accepted. Respondents also submit that R.2 order dated 11.7.95 passed by the respondents in response to a direction in OA 1848/92 rejecting the claim of the applicants has not been challenged.

3. We find that the order R.2 deals only with regularisation of applicants and states that temporary status had already been granted to applicants with effect from 1.9.93 and that the Administration is not in a position to create additional posts to regularise applicants for the reasons stated. Here, the applicants are not praying for regularisation, but for payment of wages at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance in terms of the OM dated 7.6.88. The Tribunal in OA 1848/92 did not give any direction with reference to the wages. Therefore, the fact that R.2 has not been challenged is not fatal to this application. As regards the decision of the Tribunal in OA 45/90, though the OM dated 7.6.88 was referred to in the OA as a submission made by the applicant, the implications of the OM dated 7.6.88 were not discussed and the prayer of the applicant was dealt with in terms of the principle of equal pay for equal work in the light of various decisions of the Supreme Court. Subsequent to the decision in OA 45/90, the Government of India have passed orders regarding grant of temporary status to the casual labourers in OM dated 10.9.93 and it is on the basis of this OM that applicants were granted temporary status. This implies that they were placed on a regular scale of pay on 1.9.93 for performing the same work that they have been doing earlier as casual labourers. The Tribunal had already held in OA 1375/94 and connected cases that:

"We find that the OM does not insist that the duties performed by the casual labourers should

be the same as that of a regular employee. A mathematical equality of the duties performed by the two categories is not called for. It is only the nature of work entrusted that has to be the same."

It may be noticed that A.2 OM dated 7.6.88 states only that the nature of work done by the casual worker and that by a regular employee should be the same. Nowhere is there a restriction that 1/30th wages can be paid only where there already exist regular employees in the organisation or where there already existed regular posts in the organisation. What is required is an examination whether the nature of work done by the casual worker is similar to that of a regular employee who is on a regular scale of pay. Once the applicants were granted temporary status on 1.9.93, they were placed on a regular scale of pay without any change in the nature of work and, therefore, a comparison was available as to what should be the scale of pay, if the work was performed by a regular employee doing the same nature of work. Once a comparison is available, OM dated 7.6.88 lays down that the wages of the casual worker should be 1/30th of the minimum of the scale plus dearness allowance. It is on this basis that noticing the grant of temporary status, the Tribunal proceeded in OA 420/96 to grant the relief prayed for. At the time when the Tribunal considered the matter in OA 45/90, there had been no grant of temporary status and, therefore, no comparison was available with a regular employee. Respondents cannot now rely on OA 45/90 when after the grant of temporary status, a comparison is available as to what a regular employee performing work of the same nature as applicant would be paid. The claim of the applicants for payment of 1/30th of the minimum pay plus dearness allowance for the period 7.6.88 to 1.9.93 is, therefore, well founded. Respondents cannot deny this claim on the ground of

contd.

limitation since the applicants have been agitating for this relief from 1988 onwards and despite several directions from the Tribunal in similar matters respondents have taken a perverse view to deny applicants their claim for enhanced wages.

4. Learned counsel for respondents cited two decisions of the Supreme Court in support of his contention. In Ghaziabad Development Authority and Others vs Vikram Chaudhary and Others, (1995) 5 SCC 210, in which employees on daily wages claimed parity in payment and pay with regular employees and for regularisation, the Supreme Court stated:

"Since they are temporary daily wage employees, so long as there is no regular posts available for appointment, the question of making pay on a par with the regular employees does not arise. But the appellant should necessarily and by implication, pay the minimum wages prescribed under the statute, if any, or the prevailing wages as available in the locality."

It may be noticed that respondents in that case were not employees of the Government of India and they are not governed by the provisions in OM dated 7.6.88. It is also seen that the Supreme Court has rejected the claim for appointment and pay on par with regular employees. Here, applicants are not claiming appointment or pay on par with regular employees. They are not claiming the scale of pay of a regular employee. They are claiming only daily rate of wage which is to be computed on the basis of 1/30th of the minimum of the scale plus dearness allowance. Paying a casual worker enhanced wages does not bring him on par with a regular employee who is on a scale of pay in any sense of the word. We, therefore, consider that the Supreme Court decision cited does not apply to this case.

5. The other case cited by the learned counsel for respondents in State of UP and Others, vs UP Madhyamik Shiksha Parishad

Shramik Sangh and another, AIR 1996 SC 708, is a case in which respondents were daily wagers in Class IV service working with UP Madhyamik Shiksha Parishad, UP. The Supreme Court held:

"Unless the posts are created, they are not entitled to be fitted into any regular post. The performance of the manual duty may be like the duty of regular class IV employees. However, they are not entitled for the payment of equal wages so long as there are no posts created in that behalf."

Again, in this case, the respondents were not employees of the Union of India and they were not entitled to the benefits extended under OM dated 7.6.88. According to the OM dated 7.6.88, even if there are no posts available, wages are to be paid at 1/30th of the minimum of the relevant scale plus dearness allowance so long as the nature of work done by the casual labourer is similar in nature to the work done by a regular employee. There is no necessity for the existence of any regular post for fixing the wages under the OM dated 7.6.88. The wages are to be fixed not in terms of the principle of equal pay for equal work, but in terms of the instructions in OM dated 7.6.88. That being so, the decision cited by the learned counsel for respondents will have no application to this case.

6. In the light of the discussion above, we consider that on 1.9.93 when the respondents granted temporary status to applicants and granted them a scale of pay without any change in the nature of work performed by them, a basis was available for comparing applicants with regular employees who might be engaged to perform work of the same nature. Once such a comparison is available, the instructions in OM dated 7.6.88 are attracted and the applicants are entitled to wages on the basis

contd.

of 1/30th of the minimum of the scale of pay plus dearness allowance.

7. Accordingly, we allow the application and direct the respondents to fix the wages of the applicants for the period from 7.6.88 to 1.9.93 at 1/30th of the minimum of the scale which has been granted to them with effect from 1.9.93 plus dearness allowance for eight hours work per day. The arrears of wages shall be computed and paid to applicants within four months from today. No costs.

Dated the 11th June, 1997.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



AV HARIDASAN
VICE CHAIRMAN

psl0.

LIST OF ANNEXURES

1. Annexure A1: True copy of the Order F. No.15/1/96-Ind. dated 3.9.1996 issued by the 2nd respondent.
2. Annexure A2: True copy of the OM No.F.No.49014/2/86-Estt.(C) dated 7.6.1988 of the Ministry of Personnel, Public Grievances & Pensions, New Delhi.
3. Annexure A8: True copy of the Order dated 13.11.1996 passed by the Central Administrative Tribunal, Ernakulam Bench in O.A. No.420/96 filed by M. Nafeesa and others.
4. Annexure R-2: True copy of the Order dated 11.7.1995 F. No.1/5/93-IND passed by Administration of the U.T. of Lakshadweep(Directorate of Industries), Kavarathi Island.

.....