

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 377 of 2000

Tuesday, this the 28th day of May, 2002

CORAM

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

1. C.N. Sukesini,
W/o late V.K. Pavithran,
UD Clerk, Office of the Controller Materials
Naval Store Depot, Naval Base, Cochin
residing at Chengarappilly House,
Thevara Colony, Cochin-13Applicant

[By Advocate Mr. V.R. Ramachandran Nair]

Versus

1. Union of India represented by
Secretary, Ministry of Defence, New Delhi.
2. Chief of Naval Staff,
Naval Headquarters, New Delhi.
3. Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base, Cochin-4
4. Chief Staff Officer (P&A),
Southern Naval Command,
Naval Base, Cochin-4
5. The Controller Materials,
Naval Store Depot, Naval Base,
Kochi-4

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 28-5-2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This OA has been filed by the applicant against A-11 order dated 14-5-1998 issued by the 5th respondent and A-13 order dated 10-2-2000 issued by the 3rd respondent rejecting her A-12 representation dated 4-6-1999, seeking the following reliefs:-



- "i. To call for the records leading upto Annexure A-11 and Annexure A-13 and quash the same to the extent it orders to effect the reduction/recovery from the pay of the applicant.
- ii. To issue a direction to the respondents not to reduce the pay of the applicant already fixed in 1986 as per A2 order and subsequent pay fixations based on Annexure A-2.
- iii. To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. According to the applicant's averments in the OA, she was originally appointed as Ward Sahayika on 23-10-1973 in Southern Naval Command, Kochi. She appeared for the departmental promotion test for the post of Lower Division Clerk and she qualified for the same in that year itself. After getting qualified for the post of Lower Division Clerk, from 9-2-1976 onwards she was posted to officiate as Lower Division Clerk in various units under the Southern Naval Command, Kochi intermittently. On completion of each spell of officiating service as Lower Division Clerk she got reverted to the post of Ward Sahayika as her initial regular appointment was against that post. She was posted as Lower Division Clerk against a regular vacancy in the Naval Store Depot with effect from 1-12-1979 and she continued against the said post without interruption. Pursuant to A-1 representation dated 29-4-1986 of the applicant, by A-2 Civilian Establishment List (CE List for short) No.63/86 dated 20-9-1986 the applicant's pay was fixed in the post of Lower Division Clerk taking into account the officiating service. The said fixation of pay in the post of Lower Division Clerk was taken into consideration for the successive pay commissions also and the pay was revised based on the said fixation. In the meanwhile, the applicant also joined along with other 28 persons and filed OA No.1736/92 before this Tribunal claiming seniority over certain directly recruited persons and claiming benefits of regularisation. The

said OA was disposed of by this Tribunal by A-3 order dated 16-12-1993. By A-4, CE List No.6/94 dated 5-2-1994 was issued by the 5th respondent regularising the applicants in OA No.1736/92. Subsequently, A-5 notice dated 1-11-1996 was issued to the applicant stating that in implementation of the said decision of the Tribunal it was proposed to take action to recover the excess amount paid to the applicant. The applicant submitted A-6 representation dated 5-11-1996 to the 5th respondent. By A-7 order dated 2-1-1997 the 4th respondent rejected the representation. The applicant filed further representation A-8 dated 18-1-1997 to the 3rd respondent. Without considering A-8 representation, the 4th respondent issued A-9 order dated 2-12-1997. According to the applicant, the respondents had misconstrued that the benefit of pay fixation granted to the applicant in 1986 was to be as a result of the decision in OA No.1736/92. Against A-9 order, the applicant by A-10 letter dated 24-12-1997 requested the 5th respondent to issue a due-drawn statement showing the casual service benefits given to her so as to enable the applicant to approach the court of law for relief. By A-11 CE List No.18/98 dated 14-5-1998, the earlier CE List No.6/94 was cancelled. According to the applicant, what is being enjoyed by the applicant was not in any way pursuant to the implementation of the directions of this Tribunal and they were only the benefits available to her under the Fundamental Rules and which benefits were granted to her as early as in 1986. The applicant filed A-12 representation dated 4-6-1999 explaining her points in detail and requesting the 2nd respondent to refrain from taking any step by reducing the pay and making recoveries from the applicant's pay. She received A-13 reply dated 10-2-2000. Aggrieved, she filed this OA. According to her, she was not similarly situated as the applicants in OA No.1736/92 and no benefits had been granted to her pursuant to the order in OA

No.1736/92. She was not a casual labourer. In 1986 her pay was fixed taking into account the provisions of FR 22 and the attempt of the respondents to reduce the pay citing the order of this Tribunal in OA No.1736/92 was not correct.

3. Respondents filed reply statement resisting the claim of the applicant. According to them, this Tribunal in its judgement in OA No.1736/92 had granted the applicant the benefit of regularisation of service from the date of initial appointment of Lower Division Clerk condoning the artificial/technical break periods and in pursuance of the said order the applicant was erroneously given the consequential benefits by condoning the entire breaks in between officiating appointments. As the Tribunal's directions were only for condonation of artificial/technical breaks, the administrative authorities had taken a decision that break exceeding 30 days and 90 days in the case of women employees for maternity purpose at a stretch, could not be treated as artificial/technical break. The Tribunal's order had been passed relying on the Ministry of Defence letter dated 24-11-1967 which envisaged that in cases involving break in casual service the benefit of the said orders would be admissible from the latest spell of continuous service without break and the period of service earlier to the break would be ignored. The administrative authorities had regularised the officiating service of the applicant without due consideration of artificial/technical break erroneously and the error was now required to be rectified. 168 days break in service of the applicant could not be condoned as artificial/technical break. As the Tribunal had not quantified the artificial/technical break, the administrative authorities had taken a decision to condone break in between casual appointments upto 30 days and 90 days for women employees for maternity purpose as



artificial/technical break. As the applicant's break in service exceeded the limit prescribed, it could not be condoned. They relied on R-4(A) order of this Tribunal dated 27-4-1998 in OA Nos. 1100/95, 287/97, 469/97, 475/97 and 555/97.

4. Heard the learned counsel for the parties.

5. Sri V.R. Ramachandran Nair, learned counsel for the applicant submitted that the applicant by mistake had filed OA No.1736/92 and in OA No.1736/92 this Tribunal had not adjudicated the matter on facts. He specifically referred to para 2 of A-3 order of this Tribunal in the said OA and submitted that the respondents were to extend the reliefs granted to the applicants in OA No.973/90 only if the applicants in the OA were similarly situated as the applicants in OA No.973/90. The respondents without satisfying themselves that the applicant was similarly situated as the applicants in OA No.973/90 had treated her as similar to the applicants in OA No.973/90 by which the applicant's pay was now proposed to be reduced and overpayment recovered. According to him, the OA was liable to be allowed and the impugned orders were liable to be set aside and quashed.

6. Learned counsel for the respondents took us through the reply statement. He admitted that the applicant was not a casual labourer, but as the applicant along with others had sought the following reliefs through OA No.1736/92 the respondents had issued orders regularising the officiating appointment of the applicant and the applicant could not be allowed to go back on that and the respondents could not withdraw the benefit granted to her pursuant to the orders of this Tribunal:-



- "(a) Issue direction to respondents commanding them to regularise the service of the applicants as LD Clerks with effect from the date of initial appointment on casual basis by ignoring the breaks.
- (b) Issue a direction to the respondents commanding them to grant and disburse the revised periodical increments and arrears thereof to the applicants on such regularisation in service with effect from the date of initial appointment on casual basis.
- (c) Issue a direction to the respondents to give the applicants regular promotion revising the seniority list and calculating their seniority from the date of regularisation."

7. We have given careful considerations to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. In response to the latest representation submitted by the applicant dated 4-6-1999, the respondents have issued A-13 impugned order dated 10-2-2000. In this reply, they have referred to A-9 earlier reply dated 2-12-1997 issued to the applicant. In the said letter, the respondents have given the following reasons for not considering the request made by the applicant in her representation dated 18-1-1997 (A-8). The said reasons are as follows:-

"(c) The above contentions have been carefully considered, but not tenable for the following reasons:-

- i. You alongwith others had filed OA 1736/92 with prayer for a direction to respondents to regularise your casual service from the date of initial appointment with all consequential benefits including seniority. The Hon'ble Tribunal by their order dated 16 Dec 93 in OA 1736/92 directed the respondents for granting of benefits as granted to the applicants in OA 434/89. You have been granted all consequential benefits in pursuance to the direction of Hon'ble Tribunal dated 16 Dec 93.
- ii. You have not raised any objection, nor brought out the facts to the notice of the Hon'ble Tribunal and respondents at appropriate time. A notice for withdrawal of benefits of condonation of more than 30 days as technical/artificial breaks was issued to you



on 01 Nov 96. In response to that you had failed to bring the facts to the notice of respondents. Therefore a different view which you consider advantageous for you cannot be taken at this belated stage and will be violation of court order. The error occurred in condonation of more than 30 days has to be rectified in your case also."

8. It is evident from the above that the reason given by the respondents for not acceding to the request of the applicant was the apprehension of the violation of the order of this Tribunal in OA No.1736/92 dated 16-12-1993. In the order dated 16-12-1993 in OA No.1736/92, in para 2, specifically the following directions had been given:-

"We direct the respondents to consider whether applicants are similarly situated as the applicants in O.A.973/90. If they are so situated, they will be granted the reliefs granted to the applicants therein, within a period of five months from today. We alert respondents to adhere to the time schedule. We leave open the claim for seniority."

9. We find from the above order that this Tribunal had not adjudicated the matter on merits. It had only directed the respondents to consider the cases of the applicants in the OA after satisfying themselves that they were similarly situated as the applicants in OA No.973/90. As the whole issue was regarding the casual service of the applicant and admittedly, the applicant in this OA was not a casual labourer and was appointed on regular basis as Ward Sahayika from 23-10-1973, her regular service cannot be treated as casual labour service. In this view of the matter, we are of the considered opinion that the respondents have committed an error in treating the applicant as similarly situated as the applicants in OA No.973/90. In the light of the above factual position, we have to hold that the respondents' contention that in view of the order of this Tribunal in OA No.1736/92 the respondents could not review the benefits granted to the applicant pursuant to the order in OA No.1736/92 cannot be sustained. The



respondents should have first satisfied themselves that the applicant was similarly situated as the applicants in OA No.973/90. Moreover, by A-4 CE List No.6/94 dated 5-2-1994 the applicant's appointment as Lower Division Clerk was advanced to 9-2-1976, but by A-11 CE List No.18/98 dated 14-5-1998 the same was cancelled. This would indicate that the applicant had not been given any benefit pursuant to the order in OA No.1736/92.

10. Keeping in view of the above developments and in the particular facts and circumstances of the case and the admitted position of the respondents that the applicant was regularly appointed as Ward Sahayika from 1972 onwards, we are of the considered view that the applicant's representation dated 4-6-1999 had not been considered keeping the factual position obtaining in the case of the applicant. Therefore, we set aside and quash A-13 letter dated 10-2-2000 issued by the 3rd respondent. We direct the 3rd respondent to consider A-12 representation of the applicant afresh keeping in view the factual aspects of the service particulars of the applicant as directed in OA No.1736/92 and pass a detailed order.

11. The Original Application stands disposed of as above with no order as to costs.

Tuesday, this the 28th day of May, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER

ak.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of representation dated 29th April 1986 addressed to the Senior Naval Store Officer, Cochin by the applicant.
2. A-2: True copy of C.E.List No.63/86 dated 20th September 1986 fixing the pay of the applicant in the post of LD Clerk taking into account the previous officiating service.
3. A-3: True copy of the judgement in O.A.No.1736/92 dated 16th December 1993 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench.
4. A-4: True copy of C.E.List No.6/94 dated 5th February 1994 issued by the 5th respondent regularising the applicants in O.A.No.1736/92.
5. A-5: True copy of Notice No.NSC/III/3651/Court case dated 1st November 1996 issued by the 5th respondent to the applicant.
6. A-6: True copy of representation dated 5.11.96 submitted by the applicant against the order No.NSC/III/3651/Court/Court Case to the 5th respondent.
7. A-7: True copy of letter No.CS/2695/43/308 dated 2.1.97 issued by the 4th respondent to the applicant.
8. A-8: True copy of representation dated 18 January 97 submitted by the applicant before the 3rd respondent.
9. A-9: True copy of order No.CS/2695/43/308 dated 2.12.97 issued by the 4th respondent to the applicant.
10. A-10: True copy of representation dated 24 December 97 submitted by the applicant against Annexure A-9 order, requesting the 5th respondent to issue a copy of the due-drawn statement.
11. A-11: True copy of the C.E.List No.18/98 dated 14th May 1998 issued by the 5th respondent cancelling the earlier C.E.List No.6/94.
12. A-12: True copy of representation dated 4.6.99 submitted by the applicant to the 3rd respondent.
13. A-13: True copy of the reply order No.CS/2695/43/308 dated 10th February, 2000 issued by the Office of the 3rd respondent.

Respondents' Annexures:

1. R-4A: Photo copy of the common order dated 27.4.98 in OA 1100/95, 287/97, 469/97, 475/97 & 555/97 issued by Hon'ble C.A.T., Ernakulam Bench.

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