

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM

DA No.403/89 and DA No.94/90

Date of decision: 31.8.1990

DA 403/89

The General Secretary, Central Government
Small Scale Industries Organisation
Employees Union, Ettumanoor, Kottayam Dist
and 2 others

Mr R Rajasekharan Pillai

: Applicants

: Counsel of
Applicants.

Vs.

The Union of India rep. by the Ministry
of Industrial Development, New Delhi
and 2 others

Mr A Abul Hassan, ACGSC

: Respondents

: Counsel of
Respondents.

DA 94/90

The Director, Government of India,
Production Centre, Ettumanoor,
Kottayam District.

Mr A Abul Hassan, ACGSC

: Applicant

: Counsel of
Applicant.

Vs

The General Secretary,
Central Government Small Scale
Industries Organisation Employees Union
Ettumanoor, Kottayam District
and another

Mr R Rajasekharan Pillai

: Respondents

: Counsel of
Respondent-1

CORAM

Hon'ble Mr NV Krishnan, Administrative Member.

and

Hon'ble Shri AV Haridasan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. To be circulated to all Benches of the Tribunal?

JUDGMENT

These two applications are filed by the workmen and the management respectively against the same impugned order dated 12th December, 88 of the Industrial Tribunal, Quilon in ID 5/1987. Therefore, they were heard together and are now being disposed of by this common judgment.

2.1 Certain benefits were claimed by the applicants in DA 403/89, referred to herein as the workmen, for short, and the respondents therein, referred to herein as the management, for short, did not accede to those demands. The workmen, therefore, took up the matter before the High Court of Kerala in OP 4554/82. It is admitted that this petition was allowed by the High Court and the Union of India represented by the Ministry of Industrial Development was directed to refer the dispute to the Industrial Tribunal. Consequently, five issues as follows were referred to the Industrial Tribunal, Quilon for adjudication.

1. "Whether the Director of the Government of India Production Centres, Ettumanoor was justified in fixing 36 Helper mistries recruited in 1971-72 as mistries at minimum of the scales 110-155 after one year of their service in the lower scale, or whether they should have been given a higher start in the scale as per their appointment orders?
If so, what should be their initial fixation in the scale 110-155 and consequent entitlement?"
2. "Whether the Mistries under the Director, Government of India Production Centre, Ettumanoor should be provided with promotional opportunities, and if so, what should be the proportion of higher posts, the scale of pay and the Criteria/conditions for promotion to such posts?"

3 "Whether the demand of Helpers under the Director Government of India Production Centre, Ettumanoor for quasi-permanancy, confirmation, provision of uniforms, gratuity, pension and other service benefits applicable to regular employees is legal and justified? If so, to what extent and subject to what conditions".

4 "Whether the action of the Director, Government of India Production Centres, Ettumanoor in non-regularisation of the suspension period from 15.2.74 to 14.7.74 in r/o. Shri G Bhaskaran, Helper, after he was re-instated and further non-payment of wages to him is in order? If not, to what relief the concerned workmen is entitled to?"

5 "Whether the demand for payment of bonus to the workmen of the Production Centre, Ettumanoor under the payment of Bonus Act, is justified? If yes, to what relief the said workmen are entitled to?"

2.2 After hearing the parties the Industrial Tribunal made its award dated 12th December, 88 (Annexure A in OA 403/89) hereinafter referred to as the 'Award'.

3 We first take OA 403/89 filed by the workmen.

The workmen in this application are aggrieved by the Award relating to the first issue and by a portion of the Award on the 3rd issue in so far as it relates to the demand for the provision of uniforms.

4 Issue No.1 has been found against the workmen by the Tribunal on the ground that in ID 3/74 and ID 27/74 before the Industrial Tribunal, Madras, the points involved in this issue have already been answered against the workmen. It is also stated that findings of that Tribunal have been confirmed by the High Court of Kerala as per Exbt. M7 and M8 judgments though, it is admitted that an appeal is pending before the Supreme Court. The management contended that in the light of these judgments the workmen are not entitled to any relief in respect of Issue No.1.

5 This was countered by the workmen who took the plea that the Management did not raise this plea either in their counter statement before the Tribunal nor at the time of recording of evidence as will be evident from the Award itself. Nevertheless, the Tribunal has come to the conclusion that the High Court of Kerala has finally decided this issue against the Union as per Ext.M-8 judgment.

6 The learned counsel for the workmen also submitted that the issue involved in the Award made by the Industrial Tribunal, Madras was slightly different. That can be better understood by referring to the relevant para of the appointment order dated 4.12.71 (Annexure-B) which is produced below:

"The Director, Production Centre, Ettumanur is pleased to offer Shri Raveendran KS a temporary post of Helper Mistry in the Government of India Production Centre, Ettumanur on a pay of Rs 75/- (Rupees seventy five only p.m.) in the scale of Rs 110-3-131-4-143-EB-4-155/- after seeing his performance for a few months. He will be entitled to draw dearness and other allowances according to the Central Government Rules".

He submitted that before the Industrial Tribunal, Madras the workmen had contended that the Director, Production Centre, Ettumanoor was not ~~the~~ competent authority to appoint the workmen on the pay scale of Rs 75-95 as Helper Mistry, even though they had been recruited to the posts of Mistry on the scale of Rs 110-155. It was this plea that was not accepted in the earlier case before the Industrial Tribunal, Madras. In the present case the issue is different. The workmen did not challenge the appointment order. They have accepted the position that

they have been properly appointed as Helper Mistry on the pay scale of Rs 75-95. They only demand that when, after about a year, they were appointed as Mistris on the pay scale of Rs 110-155, they should be given a higher start in that scale as promised in the Annexure-B, instead of being given the minimum of Rs 110/-. This demand is based on the term stipulated in the appointment order itself reproduced above viz "he will be given a higher start in the scale of Rs 110-155". The plain meaning of this sentence is that in consideration of the employee having worked for about an year in a lower pay scale, his pay in the higher pay scale will be fixed at a stage higher than the minimum.

7 We have heard the learned counsel for the management. His plea is that the said term is complied with when the pay scale of Rs 110-155 was granted. Besides, pay in the higher pay scale could be fixed only at the minimum of Rs 110/- because the workmen were drawing only Rs 75/- in the lower scale at that time. There was no other assurance in the appointment order.

8 We have considered this matter. It is no doubt true that an issue based on the Annexure B appointment order dated 4.12.71 had already been decided by the Industrial Tribunal, Madras in ID 3/74 and ID 27/74 and the issue now raised, if it is different ought to have been raised there. The Awards of that Tribunal were

subsequently confirmed by Exbts. M7 judgment dated 8.11.76 and Exbt. M8 judgment dated 5.7.77 of the High Court of Kerala in OP No.4228/75 and Writ Appeal No. 83/77 respectively, and hence a plea of resjudicata or constructive resjudicata can be raised. But we are of the view that plea cannot be raised now nor could have been raised before the third respondent i.e., the Industrial Tribunal Quilon. For, we are of the view that the Union of India should have taken this plea before the High Court when the workmen filed OP No.4554/82 wherein, ultimately the High Court directed the Union of India to refer the disputes including this issue to the Industrial Tribunal. We are, therefore, of the view that in this circumstance^s, the awards and the judgments referred by the Industrial Tribunal in para-7 of its order will not operate as resjudicata or constructive resjudicata against the workmen. Hence, this is a matter which requires reconsideration by the Tribunal.

9 The second grievance of the workmen is that the Tribunal has not passed any order on the demand of the Helper mistries for the provision of uniforms which is part of Issue No.3 referred to that Tribunal. The case of the workmen and the Management in regard to the supply of the impugned order of uniforms has no doubt been discussed in para 3 and 4. However, there is no specific Award as to their entitlement to the uniforms because para-9 thereof which deals with the issue No.3, is silent on the question of grant of uniforms. The question whether the workmen

are entitled to uniforms in accordance with their claims or the rules applicable to Class-IV employees of the Government of India will apply to them as stated by the management is a matter which has not been examined though it is stated by the applicant's counsel that evidence has been recorded in this regard. We are, therefore, of the view that this point requires reconsideration.

10 We can next take DA 94/90 which has been filed by the Management. They are aggrieved by the Tribunal's award in regard to issues 2,3, & 4...

11 Issue No.2 is reproduced below:

"Whether the Mistries under the Director, Government of India Production Centre, Ettumanoor should be provided with promotional opportunities and if so, what should be the proportion of higher posts, the scale of pay and the Criteria/ conditions for promotion to such posts?

In regard to this issue the Tribunal has awarded as follows:

"Since there is stagnation in the post and recommendation by former Director and that the statement of the union on this point in the claim statement, Ext.W6 statement and deposition of WWI remains unchallenged, I am of opinion that these mistries are entitled to get promotion as given to similarly placed employees, in other Central Government Establishments. The management is, therefore, directed to provide promotion grades to the mistries and pay scales on par with similar employees in other industrial establishments owned by the Government of India such as the establishments stated in Ext.W6 and to disburse arrears with retrospective effect as per the recommendations of the pay commission from 1971. This issue is answered in favour of the union".

12 In regard to this issue the workmen had contended that 170 Mistries in the Ettumanoor Centre ~~xxx~~ with 17 to 30 years of service were stagnating in the same scale of pay due to the absence of any promotional posts. They

filed Exhibit W-6 statement showing the various grades and pay scale granted to similar employees in the Naval Physical and Oceanography Organisation, Cochin, ISRO, Thumba, Cochin Shipyard, Cochin and BHEL, Trichy and pleaded that they are also entitled to similar promotional avenues. In reply, the management pointed out that the nature of the Production Centre is totally different from the Organization mentioned in Exhibit W-6 and they are not comparable. Further, promotional opportunities exist for Mistries who since July, 1978, have been classified Skilled Workers Gr.II on the pay scale of Rs.260-350 (pre-revised) because they could be promoted to the post of Skilled Worker Gr.I in the pay scale of Rs.380-560 (pre-revised). It was also contended that after the implementation of the Fourth Pay Commission pay scales, there is no stagnation experienced by the workmen. These conditions were not considered by the Tribunal when it passed the award as extracted in para 10 supra, directing inter alia, to provide promotion posts to the workmen (mistries) on par with the establishments mentioned in Exhibit W-6.

13. We have heard the learned counsel of the parties. It is submitted by the counsel for the workmen that even now all the workmen i.e., Mistires are only in one pay scale. No promotion post exists. That is not denied by the Management and therefore, the averment that avenues for promotion to the post of skilled worker Grade I exists has no basis. The learned counsel for the Management, however, submits that the work in the establishments where the workmen are employed is

totally different and cannot even be compared with the organisations mentioned in W6. The two Production Centre at Ettumanoor and the Extension Centres at Attingal and Muvattupuzha are essentially meant for imparting training to the trainees to acquire the necessary skills in certain trades so as to make them fit for seeking employment in the market or for self employment Production at Ettumanoor is purely incidental to the main objective of imparting training and the Centres are not primarily commercial in nature. The Mistries are engaged only as trainers and after the revision of pay scales based on the 4th Pay Commission Report, they should have no grievance.

14 Having carefully considered the matter, we are of the view that the Tribunal had not paused to consider whether the Production Centre-Ettumanoor and the two Extension Centres, with 170 mistris can ever be compared with the establishments referred to in W6. This, in our view, is a misreading of the evidence and therefore requires rectification. We also do not accept the contention of the Management that with the implementation of the revised pay scale on the basis of the 4th Pay Commission's recommendations, there should be no cause for grievance/is neither valid nor carries conviction. The revised pay scale for the Mistries reclassified as skilled workmen Gr.II is Rs 950-20-1150-E8-25-1500 covering a span of 24 years. In other words, if a direct recruit is appointed as Mistry at the minimum

of the pay scale of Rs.950/-, he will reach the maximum ~~only~~ in the 24th year. As the workers retire at the age of 60 years, there is bound to be stagnation for about 15 years to 20 years. The workmen also may be required to face stagnation, depending on the stage of the revised pay scale at which their pay has been fixed.

15. We are, therefore, of the view that the workmen are entitled to promotion grades. In fact, the Management has as good as conceded that they are entitled to get promotion as skilled worker Gr.I as noted in para 12 supra. We are, however, of the view that the direction given in respect of Issue No.2 requires to be toned down as this is necessary considering the circumstances of the case.

16. In regard to Issue No.3, the Management is aggrieved by the fact that the Tribunal has held that the workmen are entitled to get regularisation with effect from 1.1.65 and other consequential benefits such as fixation of pay and arrears. This decision is based on the award of the Industrial Tribunal, Alleppey in ID No.1/74 because in that award the question whether 35 casual labourers (i.e., the workmen in this case) should be given temporary status, regular scales of pay etc. was considered. The contention of the Management is that there is no such finding by the Industrial Tribunal, Alleppey in ID No. 1/74.

17 We have perused the award in ID 1/74. The relevant portions of the award are contained in the last portion of para-17 and in paras 18, 19 and 20 which are re-produced for a proper appreciation of the finding.

"(17) Therefore, the contention of the learned counsel as per his argument notes, that there is no specific claim nor any pleadings in the claim statement etc, regarding payment to be made commencing from a date anterior to the date of reference of the dispute, cannot be considered as gospel truth. In fact, although the spirit of the claim statement of the Union is that the workmen are entitled to get regularisation with effect from the very beginning of the Institution, they have made their demand only in the year 1965. Yet the retrospective payment can be decided, only taking into consideration the financial burden which may be imposed upon the Institution by such an award.

(18) The Deputy Director of the Management establishment has deposed at the fag end of the cross examination as follows:-

"We will be able to file a statement showing the differences in wages paid to the regular and casual workers in the various Centres with effect from 1965. We are giving D.A to the regular workers, but not the casual workers so also the regular workers are getting holiday wages and Sunday wages, but the casual workers are not getting the same, In Ext.M3 the wages shown are only from 1.1.73. Previous to Ext.M3 the wages were lower. We can submit statements showing the rate of wages paid to casual as well as regular workers with effect from 1.1.65 onwards".

Inspite of the afore-mentioned admission on the part of the Management no statements were produced by the Management to show the difference in wages between the casual employees and the regular workmen with effect from 1.1.65. Therefore, there is no data for calculation of the financial burden, if at all imposed upon the Management, regarding the retrospective payment.

(19) Now under paragraphs 8 to 17 of this award, I have discussed about the unjustifiability of the attitude of the Management towards the concerned casual employees in the matter of absorbing them as regular employees. Therefore, I find that the concerned casual employees are entitled to be absorbed in the regular scales of pay and other benefits as enjoyed by the regular employees therein and so I declare that the Management is not justified in denying temporary status, regular scales of pay and other benefits to the concerned casual workmen employed at the various Production Centres in the State of Kerala".

(20) Regarding retrospective payment. I hold that it will not be justifiable on my part to direct the Management to give the scales of pay and other amenities to the concerned employees as per the award with effect from the date of their demand viz, 1.1.65, since the financial burden involved in the same may be exorbitant, although no date has been given by the Management to show the financial burden specifically. Yet in order to atone for the inordinate delay caused by the Management in redressing the genuine grievances of the concerned workmen, I hold that it will be only just and reasonable on my part to direct the Management to make the payment with effect from 1.1.1972 and I do so."

There is no specific direction that regularisation should be given with effect from 1.1.65 as demanded by the workmen. Para-19 of that award is the operative portion thereof. There is a declaration that the Management is not justified in denying the temporary status, regular scales of pay and other benefits to the concerned casual workmen employed at the various production centres in Kerala. There is, however, no direction as to the date from which these facilities should be given to the workmen. In para 20 also there is a clear direction that considering all circumstances, the Management should be directed to make payment only with effect from 1.1.72 and not from 1.1.65 as demanded by the workmen. ^Q We cannot fail to note that even here, the Tribunal did not say that it had directed the benefits to be given from 1.1.65.

18. There is no doubt as claimed by the workmen's counsel that the demand all along was for regularisation from 1.1.65. However, the Tribunal in ID 1/74 was quite aware of the large financial burden that would arise if this is acceded to, even though no specific evidence was produced by the Management. In this view of this matter, we are of

On the Award in ID
the view that the interpretation placed by the Tribunal /

No.1/74 to come to the conclusion that the helpers are entitled to get regularisation with effect from 1.1.65

and other consequential reliefs such as fixation of

as that conclusion
arrears, is not justified/ is not borne out by that decision.

19 The last matter over which the Management is aggrieved is the award regarding Issue No.4. That relates to one workman Bhaskaran who was found guilty in the disciplinary proceedings, while he was a casual labourer. Considering his long casual service, the period of suspension from 15.2.74 to 14.7.74 was directed to be treated as period not spent on duty. The Tribunal, after examination of the case relating to the inquiry has come to the conclusion that the Enquiry proceedings are vitiated by the fact that the employee was not given sufficient opportunity to defend his case. As the Tribunal's findings are based on a proper appreciation of the evidence, we are of the view that it would not be proper for us to interfere in the decision rendered by it.

20 Having considered the issues involved in both these cases, we are satisfied that it is necessary to issue certain orders/directions relating to the Award of the Industrial Tribunal dated 12.12.88 in ID 5 of 1987. We proceed to do so.

OA 403/89

(i) The award of the Tribunal in respect of Issue No.1 is quashed. The Tribunal is directed to re-examine the issue in accordance with law in the light of the observations made in this judgment.

(ii) As far as the Award in respect of Issue

No.2 is concerned, the Tribunal is now directed to specifically consider the question relating to the demand for uniforms on the basis of the evidence recorded and record a supplementary award in accordance with law.

OA 94/90

Issue No.2 The directions given by the Tribunal at the end of para-9 of its award are quashed. Instead, the applicant herein (i.e. the Management) is directed to provide promotion grades to the Mistries and pay scales on par with similar employees if any, in the regular staff working under the applicant in the Production Centre and ^{or similar} Extension Centre or in other industrial establishments owned by the Government of India. For this purpose the Management may take into account the report given by Mr DN Dey, the former Director of the Centre. In case, it is found that there is no similar industrial establishment, the Management is directed to consider this matter independently on the ground that it will be unjust to fix the Mistries on one pay scale throughout their service career, and pass such orders as will render justice to the claims of the workmen.

Issue No.3 In regard to Issue No.3, the award given is modified as follows:

(i) The Helpers are entitled to get regularisation with effect from 1.1.65. However, the financial benefits will accrue to them only from 1.1.72. Therefore, their pay will be notionally fixed after regularisation from 1.1.65 and on that basis their pay will be refixed as on 1.1.72. On the basis of this re-fixed pay as on 1.1.72, they are entitled to get arrears for the period commencing from that date.

(ii) Their service after regularisation from 1.1.65 will count for computing all forms of pensionary benefits.

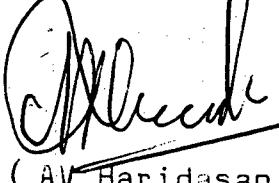
(iii) Their regularisation from 1.1.65 will not confer on them any monetary benefits other than what has been indicated above.

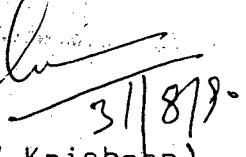
Issue No.4

No case has been made out to interfere with the award of the Tribunal, on this issue.

21 The two applications are disposed of with the above orders/directions and there will be no order as to costs. The case is remanded to the Tribunal for compliance of the directions given in OA 403/89.

Notwithstanding such remand, the respondents are directed to comply with the directions given in OA 94/90 within a period of three months from the date of receipt of this order. There will be no order as to costs.


(AV Haridasan)
Judicial Member


(NV Krishnan)
Administrative Member

31/8/90 31/8/90

31.8.90

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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

RA 72/91 100

DATE OF DECISION 3-3-1992

Union of India & another Applicant (s)

Mr. A.A. Abul Hassan, ACGSC Advocate for the Applicant (s)

Versus

General Secretary, Central Govt Respondent (s)
Small Scale Industries Orgn. Employees
Union, Ettumanoor and others.

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Member (Administrative)

The Hon'ble Mr. A.V.Haridasan Member (Judicial)

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

N.V.Krishnan, A.M.

This is a review petition against our order in OA 403/89 filed by the original respondents. The O.A. was filed by certain workers against the impugned order dated 12th December, 1988 of the Industrial Tribunal, Quilon in I.D.5/87. Against the same order, this review petitioner had also filed OA 94/90. Both the O.As. were disposed of by a common order dated 31.8.90.

2. We are satisfied that this can be disposed of by circulation.
3. The review petitioner has filed R.A. 73/91 in OA 94/90 in which we have passed a detailed order dismissing it. In the present review petition also, a similar M.P. has been filed for condonation of delay for similar reasons. We are of the view that this R.A. should also be dismissed for the same reasons. Ordered accordingly.

(A.V.Haridasan)
Member (Judicial)

(N.V.Krishnan)
Member (Admve.)

3-3-1992