

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 42 of 2002

Friday, this the 1st day of November, 2002

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HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. Mallika P.U,
Safaiwala (Temporary),
Range Office, Central Excise, Trichur
residing at Porthikattil House,
Pattikkara, Chiranalloor PO,
(via) Kechary, Trichur.
2. T.K. Padmini,
Safaiwala (Temporary),
Divisional Office, Central Excise, Trichur
residing at Mullakkal House, Thyoor PO,
Erumapetty, Trichur.Applicants

[By Advocate Mr. Babu Cherukara]

Versus

1. Union of India, represented by the
Secretary, Ministry of Finance, New Delhi.
2. The Commissioner of Central Excise,
Commissionerate, Cochin-I,
Central Revenue Building, IS Press Road, Cochin.
3. The Commissioner of Central Excise,
Commissionerate, Cochin-II,
Central Revenue Building, Mananchira PO, Calicut.
4. Assistant Commissioner of Central Excise
and Customs, Trichur Division,
S.T. Nagar, Trichur.Respondents

[By Advocate Mr. M.R. Suresh, ACGSC]

The application having been heard on 1-11-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The two applicants in this case challenge A1 order
dated 17-10-2001 issued by the 4th respondent turning down the
applicants' request for grant of monthly wages on par with
regular Group D Safaiwalas and the prayer for regularization in
view of their long service. Applicants are working as casual

labourers (Safaiwalas) who were granted temporary status in terms of the DOP&T's OM dated 10-9-1993 with effect from 1-9-1993. Their grievance is that since they are doing exactly the same work as regular Group D employees, they are also entitled to the pay and allowances on par with such regular Group D employees and that the restricted grant of pay and allowances and other benefits on pro-rata basis offends the principle of 'equal pay for equal work'. The impugned order A1 dated 17-10-2001 is seen to have been made in reply to the applicants' detailed representation dated 18-6-2001 (A5). In the circumstances, the applicants seek this Tribunal's direction to the respondents to pay salary benefits equal to that of regular Group D employees in the Department of Central Excise and Customs and set aside the impugned order A1.

2. Respondents have filed reply statement resisting the Original Application by stating that the applicants are still continuing as casual labourers with temporary status and they have not been regularised yet, ~~nor~~ their service can be regularized only in accordance with the extant rules and instructions, that they are being paid wages and other allowances payable to the Group D employees on pro-rata basis strictly in accordance with the instructions on the subject and that their regularization will be considered on the basis of their seniority having regard to the vacancy position.

3. I have heard Shri Babu Cherukara, learned counsel for the applicants and Shri M.R. Suresh, learned ACGSC for the respondents. According to the learned counsel for applicants, the principle of "equal pay for equal work" enunciated and upheld by the Apex Court in various pronouncements has been given the go by in the applicants' case, though they are continuing as temporary status Safaiwalas for the last several

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years and doing the same work of regular Group D Safaiwala and for the same duration. Learned counsel for applicants would submit that denial of equality of pay with regular Group D employees would be gross injustice, particularly in view of the fact that the need of their service has been recognized, thereby justifying their continuance in the post they are holding. Learned counsel for the applicants has drawn my attention to quite a few decisions of the Hon'ble Supreme Court to support his plea that equal pay be paid to equal work. Shri M.R. Suresh, learned ACGSC, on the other hand, has pointed out that the two applicants are temporary status attained casual labourers, that their position in A3 seniority list is 41 and 40 respectively, and that the question of their regularization can be considered only in accordance with the instructions on the subject. In this regard, inviting my attention to the OM dated 10-9-1993 (R1) and the order dated 11-3-1994 (A2), the learned ACGSC would emphatically state that none of the provisions contained therein has been violated. Since these orders are in force, the applicants could not expect to receive the same salary as regular Group D employees in the same manner for the simple reason that they are not regular employees, according to him. Applicants are given all the benefits which are due to temporary status employees having regard to their seniority, the learned counsel would urge.

4. I have gone through the material placed on record and considered the arguments put forward by the rival counsel. I find that in accordance with the DOP&T's OM dated 10-9-1993 (Annexure R1) and the order dated 11-3-1994 (Annexure A2), the applicants are entitled to pro-rata wages and such wages are referable to the wages to which a regular Group D employee is entitled. However, the provisions permit only pro-rata grant of such wages and allowances and there is no material to show

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that any injustice in that regard has been caused. It can be imagined that though casual labourer and regular Group D do similar work in terms of function and volume, the degree of responsibility and reliability would make the difference. A temporary status casual labourer and a regular Group D employee belong to two different classes. With regard to the claim of regularization also, the position is that there is no breach of seniority involved and the applicants does not have any subsisting cause of action in that regard. That being the position, this Original Application has no merit and is liable to be dismissed.

5. Accordingly, the Original Application is dismissed leaving the parties to bear their respective costs.

Friday, this the 1st day of November, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of the order C.No.II/34/1/98 dated 17.10.2001 of the 4th respondent.
2. A-2: True photocopy of the order C.No.II/3/48/93 Estt.IV dated 1.3.94 issued by the 2nd respondent.
3. A-3: True photocopy of the seniority list of temporary status Casual Labourers as on 1.1.987.
4. A-4: True photocopy of the order in OA No.211 of 2001 dated 20.3.2001 of the Hon'ble C.A.T., Ernakulam Bench.
5. A-5: True photocopy of the representation submitted by the applicants to the 2nd and 3rd respondents, dated 18-6-2001

Respondents' Annexure:

1. R-1: Copy of the OM dated 10-9-1998. Casual labourers (Grant temporary status and regularisation) Scheme of Govt. of India, 1993.(OM No.51016/2/90-Estt(C) dt.10.9.93)
