

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

**Original Application No.356/2007
This the 29th day of January 2009**

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.
HON'BLE DR. A.K. MISHRA, MEMBER ADMINISTRATIVE.

Nand Kumar, aged about 42 years, son of Late Gur Prasad, resident of Mohalla - Rahmanpur, (Ganeshpur), Matiyari Chauraha, Bauddh Vihar Colony, Chinhath, Lucknow.

...Applicant.

By Advocate: Shri Raj Singh.

Versus.

1. Union of India through the Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
2. Director, Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi.
3. Superintendent of Police, Central Bureau of Investigation, 7-Naval Kishore Road, Lucknow.

...Respondents.

By Advocate: Shri K.K. Shukla.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed the OA with a prayer to issue direction to the respondents for fixing pay of the applicants after adding the annual increment earned during the period of nine years, Dearness allowance, HRA, CCA and TA on the date when his services were

regularized and also for payment of arrears as a result of such fixation of pay on the following grounds:-

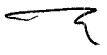
(i). The applicant was already getting annual increments when he was in temporary status, as such the amount of increments ought to have been added while fixing the pay of the applicant when he was granted regular scale.

(ii). The impugned orders Dt. 08.02.2005 and 09.01.2004 are non-speaking orders and no opportunity of hearing has been provided to the applicant before issuance of such orders.

(iii). In spite of his representation Dt. 15.02.2005 to Respondent NO.2 against the order Dt. 08.02.2005, the same is still pending without any decision.

(iv). The action of the respondents in not fixing the salary of the applicant by adding Rs.1238/- is contrary to the Office Memorandum dated 10.09.1993 issued by the Ministry of Personnel, P.G. and Pension, Department of Personnel & Training, Govt. of India.

2. The applicant filed this OA along with M.P.No.1956/2007 for condonation of delay in filing OA, stating that there is no delay in filing the present OA on the ground that no decision has been taken on his representation Dt. 15.2.2007 and further, he is suffering recurring financial loss due to incorrect fixation. He also further stated to condone the delay, if any, in filing the OA, if any delay is there.




3. The respondents have filed Counter Affidavit, stating that the applicant is entitled for regular pay from the date of regularization but not from the date of initial appointment as casual worker as well as temporary status and thus, the orders have been issued in accordance with rules.

4. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents and reiterated the pleas taken in his OA and also relied on the decision of Full Bench of CAT, Principal Bench, New Delhi in O.A.No.524/2000 Dt. 11.09.2001.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief as claimed for.

7. The admitted facts of the case are that the applicant was initially engaged as casual worker in the CBI in Lucknow Region, Lucknow on 02.08.1991 and he was granted temporary status w.e.f. 01.09.1993 in accordance with the instructions contained in DP & TOM No.. 51016/2/09-Estt. (C) Dt. 10.09.1993 conveyed vide CBI, HQ Letter Dt. 16.09.1993 under the scheme "Casual Labourers (Grant of Temporary Status & Regularization) Scheme of Govt. of India, 1993 (Annexure-4). Respondent No.3 also issued Office Order Dt. 16.12.1993 (Ann.-A-5) informing the entitlement of benefits in accordance with the provisions of Office Order Dt. 10.09.1993 (Ann-A-3) and the pay-scale of various employees including the applicant was fixed on



13.11.1997 (Ann-A-6) fixing the basic pay at Rs. 2550-55-2660-60-3200. Thereafter, the applicant was appointed as peon on temporary basis in same scale, which was granted to him earlier as casual worker with temporary status vide order Dt. 11.06.2003 (Ann.-A-7). But, the applicant made representations Dt. 21.10.2003 (Ann-A-8) and Dt. 10.12.2004 (Ann.-A-10), to the Respondent No.3 stating that his pay was incorrectly fixed without including the increment, which he earned prior to regularization, but such representations are not considered properly and passed order Dt. 8.12.2005 (Ann.-A-1) which is non-speaking in nature was passed.

8. Improper or wrong fixation of pay is a continuous cause of action and as such the claim of the applicant to condone the delay in filing OA is allowed.


9. At the time of arguments the learned counsel for the applicant relied on O.M. Dt. 9.5.2008 whereby the Ministry of DOPT, in respect of fixation of pay of Casual labourers (Temporary Status) on their regularization. The operative portion of OM says as follows:-

"3. Past cases may also be reviewed and the pay fixed in respect of casual workers with temporary status regularized in Group 'D' post. Such counting of the past increments earned on regularization will be only for the purpose of pay fixation and will not entitle them to claim seniority or any other benefits like promotion etc. on the basis of such casual service.

4. All Ministries/Departments including attached/subordinate officers are requested to take necessary action to fix the pay of each of those casual labourers who have been regularized in terms of the above scheme accordingly and arrears of pay as admissible paid to them."

10. In the instant case also the applicant is making similar claim of fixation of pay of Casual Labourers (Temporary Status) on his regularization and as such, OA is disposed of with a direction to respondents to consider the claim of the applicant in pursuance of O.M. Dt. 09.05.2008 issued by DOPT and pass reasoned order within a period of two months. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)
24-05-08

Amit/.