

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 352/2001.

Hon'ble Vice Chairman / Member (J) /
Member (A) may kindly see the above judgement for
approval / signature.

SUDHAKAR
~~V.C.~~ / Member (J) / Member (A)

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A)

*I agree
Anil Balal*

mrij.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 352/2001

Date of Decision : 23nd October 2002

O.D.Yadav & Ors. Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri B.N.Bahadur, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

(i) To be referred to the reporter or not ? Yes

(ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?

(iii) Library Yes

S. L. JAIN
(S. L. JAIN)
MEMBER (I)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.352/2001

Dated this the 23rd day of October 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Omprakash Dukhila1 Yadav
2. Shivbhushan Ramkhilavan Yadav
3. Suryabhan Bansilal Yadav
4. Rajnaresh Ranjeet Yadav
5. Badloo Gopal

...Applicants

All are working as Casual
Labourer in Military Farm,
Pimpri, Pune.

By Advocate Shri D.V.Gangal

vs.

1. Union of India
through the Director General
of Military Farms,
Army Headquarters,
Q.M.G's Branch,
Block No.3, R.K.Puram,
New Delhi.
2. The Officer In Charge,
Military Farm,
Pimpri, Pune.

...Respondents

By Advocate Shri R.K.Shetty

..2/-

DRW

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act,1985 for direction to the respondents to pay to the applicants the basic pay of Rs.2,250/- w.e.f. 1.1.1996 along with the difference of pay w.e.f. 1.1.1996 to 31.12.1998 with interest at rate of 18% p.a.

2. The applicants are working as casual labourers at the Military Farm, Pimpri, Pune. The Govt. of India (DOP&T) has issued orders for paying 1/30th of the pay scale to the casual labourers and the applicants were getting the same prior to the recommendations of the Vth Pay Commission. The applicants were paid the basic pay of Rs.750/-p.m. After acceptance of the recommendations of the Vth Pay Commission, the applicants became entitled to the basic pay of Rs.2,250/- w.e.f.1.1.1996. Revised Pay Rules,1997 were issued by the Govt. of India and all Central Government employees were placed in new pay scales and granted the arrears. After representations from casual labourers the respondents placed the applicants in the revised pay scales at Rs.2,250/- w.e.f. 1.1.1999 while they were entitled for the same w.e.f.1.1.1996. The applicants represented for the same. The Union thereafter represented vide its representation dated 12.12.1999 to the respondents and also to the Assistant Labour Commissioner, Pune (A-A-3). The respondents neither paid the arrears nor replied to the representations. Hence, this OA. for the said reliefs.

SLJ

.3/-

3. The applicants have filed this OA. on 16.4.2001 along with delay condonation application (M.P.No.460/2001). The ground stated by them is that they approached the Military Farm Civilian Workers' Union, Pimpri and the Union thereafter addressed the representation dated 12.12.1999 to the Assistant Commissioner, Pune regarding their grievance. Being hopeful of their grievance being settled before the Labour Court and still their case being pending for reconciliation as the reply of ALC is awaited, they realised that nothing will come out from the said case, they decided to approach this Tribunal, as such, they claimed that the delay which is occurred is in pursuing their cause in another Court and they are entitled to claim exclusion of the said period for the purpose of limitation. As such, there is no delay. It is further stated that the respondents (without giving the names, designation of the authorities) have orally assured the applicants that they would be paid the difference of pay but failed to fulfil the promise. As such, they waited till September, 2000. They have an excellent case on merits. They are uneducated and were vigilant about their grievances.

4. The claim of the applicants is being resisted by the respondents. It is being stated that the CCS (Revised Pay) Rules, 1997, para 2 (2)(e) of the said Rules makes it clear that persons pay otherwise than on monthly basis are not entitled to the benefit provided by these Rules. As the applicants are not being paid on monthly basis but are paid on the basis of 1/30th which means that an average daily pay on the basis of 30 day pay,

25/11/

.4/-

they used to get the wages for the number of days they remain present as such they are not entitled to be governed by the said Rules. The respondents have, however, extended this pay scale to the applicants w.e.f.1.1.1999 but without any official sanction or orders to that effect. This action of the respondents is already under objection by the audit authorities on the ground that no sanction under the Rules or specific orders of the Govt. of India to pay them revised pay scales w.e.f.1.1.1999. The applicants are excluded in Notification dated 30.9.1997. Hence, prayed for dismissal of the OA. along with costs.

5. The applicants have filed the rejoinder and thereafter the respondents have filed the sur-rejoinder reiterating the facts.

6. Central Civil Services (Revised Pay) Rules, 1997 issued vide Notification F.No.50(1)/IC/97 dated 30.9.1997 in exercise of powers conferred by the proviso to Article 309 under clause 5 of Article 148 of the Constitution after consultation with Controller & Auditor General in relation to persons serving in India Audit and Accounts Department which shall deemed to have come into force on the 1st day of January, 1996, para 2 (2) (d) & (e) of the same is worth mentioning which is extracted below :-

"These Rules shall not apply ---

(a) -----

(b) -----

(c) -----

(d) Persons paid out of Contingencies.

(e) Persons paid otherwise than on a monthly basis
including those paid on piece rate basis."

Syju --

..5/-

7. Admittedly, the applicants are casual labourers with Temporary Status and they are paid 1/30th the pay basis (A-A-2) based on their working days. The casual labourers with Temporary Status are being employed only on availability of the work. They are not entitled to the same benefits as is available to Group 'D' employees. They are regularised after due screening as per their turn on availability of the regular vacancies, then they can be called as Group 'D' employees. The Central Civil Services (Revised Pay) Rules, 1997, Rule 2 (2)(e), the said rules are not applicable to them.

8. The casual labourers conferred with Temporary Status are being paid out of contingencies as such, in view of para 2 (2)(d) also they are not entitled to be governed by these rules.

9. The learned counsel for the applicants relied on Para 2 (1) of the Central Civil Services (Revised) Pay Rules, 1997 which is extracted below :-

"2. Categories of Government servants to whom the rules apply --

(1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts in connection with the affairs of the Union whose pay is debitible to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department."

..6/-

SPM 1 -

10. The learned counsel for the applicants argued that the applicants are appointed to the post in connection with affairs of the Union, as such, they are appointed to civil services and are governed by the said Rules. In our considered opinion, it is true that they are appointed on post in connection with the affairs of the Union but they are not appointed to civil services hence as both the conditions are not fulfilled, fulfilment of one condition is not sufficient for applicability of the said Rules, as such they are not under categories of Government servants to whom the Rules apply.

11. The learned counsel for the applicants argued on the basis of Article 14 of the Constitution that the applicants are entitled to an equal treatment at the hands of respondents - the state. He claimed that there is no difference between a Group 'D' employee and a casual labour conferred with Temporary Status hence not allowing the said benefit w.e.f.1.1.1996 amounts to violation of Article 14 of the Constitution of India. Suffice to state that casual labourers are class in themselves. Amongst that class casual labourers conferred with Temporary Status and those not conferred with Temporary Status is a further class. Conferring of Temporary Status depends on the policy decision of the Government. As such, when the applicants belong to a different class, it cannot be said that there is a discrimination. The equality can be claimed amongst a class, it cannot be claimed between unequal. Central Government employees and the casual labourers taking together cannot be deemed to be at par. As such, in our considered opinion there is no violation of Article 14 of the Constitution.

12. Assuming it, that the Union represented vide its representation dated 12.12.1999 relating to the grievance and the case in Labour Court is still pending, the applicants are not entitled to exclude the period spent in the said Labour Court for applicability of Section 14 of the Limitation, the decision of the Labour Court is necessary that the claim preferred by the applicants is not within their jurisdiction. In addition to it the applicants are to satisfy that they have preferred the claim bonafide before the Labour Court. Even if the period commencing with 12.12.1999 till filing of the OA. is excluded the applicants claim cannot be treated within the period of limitation, the reason being that they are claiming difference of wages w.e.f.1.1.1996, as per their averment the right accrues to them on 30.9.1997, while they have preferred the representation on 12.12.1999 after a period of more than two years. No ground is stated to explain the said delay. As such, the application for delay condonation deserves to be dismissed and is dismissed accordingly.

13. In view of dismissal of delay condonation application, there is no necessity to go into the merits of the case. However, we have recorded our opinion only for the reason had the Tribunal allowed the delay condonation application, still the applicants are not having a case on merits.

14. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.

SLJ
(S.L.JAIN)

MEMBER (J)

mrj.

B Bahadur
(B.N.BAHADUR)

MEMBER (A)