

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560038.

Dated: 1 NOV 1993

APPLICATION NO(S) 162 of 1993.

APPLICANTS: M. Srinivasaiah

RESPONDENTS: Secretary, Ministry of
Agriculture, New Delhi and Others.

TO.

1. Sri.A.R.Holla, Advocateno3, Second Floor,
Sujatha Complex, First Cross,
Gandhinagar, Bangalore-9.
2. The Director, Central Cattle Breeding Farm,
Hessaraghatta, Bangalore-560088.
3. Sri.G.Shanthappa,
Central Govt.Stng.Counsel,
High Court Building,
Bangalore-1.

Subject:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the
ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the
above said application(s) on 27th October, 1993.

Signed
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for *m. d. s.*
DEPUTY REGISTRAR
JUDICIAL BRANCHES.
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1/11/93

gm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 27TH DAY OF OCTOBER, 1993

PRESENT

HON'BLE SHRI S. GURUSANKARAN ... MEMBER (A)

HON'BLE SHRI A.N.VUJJANARADHYA ... MEMBER (J)

APPLICATION No.162/93

M. Srinivasalah,
S/o. Marappa, aged 34 years,
Working as Casual Worker(Driver),
in Central Cattle Breeding Farm,
Hessarghatta, Bangalore-560 088. ... Applicant

(Shri A.R. Holla ... Advocate)

Vs.

1. Union of India by its
Secretary, Department of
Animal Husbandry & Dairying,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi - 110 001.
2. Director,
Central Cattle Breeding Farm,
Hessarghatta, Bangalore-560 088. ... Respondents

(Shri G. Shanthappa .. Advocate)

This application, having come up before this Tribunal
today for orders, Hon'ble Shri A.N. Vujjanaradhy, Member (J),
made the following:

ORDER

In this application filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant is aggrieved
~~because of~~
~~for~~ non-payment of salary of Driver in response to his represen-
tation dated 5.2.1992, even though his services were being
utilised as Driver now and then.



2. Briefly stated, the case of the applicant is as follows. The applicant was appointed as Casual labourer on daily wages at the rate of Rs.12.75 per day in Central Cattle Breeding Farm, Hessarghatta, Bangalore. In 1987, the applicant obtained a Motor Driving Licence and thereafter he was assigned the duties of Driver in the Tractor bearing registration No.CAQ 2637 under Respondent No.2. A certificate dated 2.5.1989 (Annexure-A1) issued by Respondent No.2 evidences the same as also another certificate dated 1.5.1989 (Annexure-A3). The department had acquired one more tractor during 1989 bearing registration No.CAW 3079 and the services of the applicant were being utilised as a regular Driver for this tractor. But, applicant was not paid the salary of a Driver in spite of his services being utilised as such, and therefore he made a representation dated 5.2.1992 as annexed in A4 to respondent No.2, but it was not replied at all. Applicant has also filed O.A.57/92 before this Tribunal seeking regularisation of his services in Group 'D' post from 1.8.1989. Hence, the application for the following relief.

"To direct the respondents to pay salary to the applicant on par with that paid to the other regular Drivers from 1.5.1989 and to grant such other reliefs deemed fit."

3. The respondents do not dispute the facts, but, plead further that only on the request of the applicant, to enable him to gain experience, his services as Driver were being utilised now and then and only to enable him to seek better service conditions elsewhere, certificates were issued. Respondents further plead that the applicant was paid Rs.20/- per day as wages as per G.O. dated 23.8.1984 (Annexure-A3) which is 1/30th equivalent to that of Group 'D' regular employee and as the

applicant is not a regular Driver, he is not entitled to regular pay compared with other regular Drivers. They, further plead that the applicant is not entitled to seek regularisation of service as permanent Driver and the services of applicant were utilised as Driver only for stop-gap arrangement.

4. We have heard Shri A.R. Holla, the learned counsel for the applicant and Shri G. Shanthappa, the learned additional Central Govt. Standing Counsel for the respondents and perused the records.

5. The only point which is required to be considered in this application is whether the applicant is entitled to the salary on par with that of the regular Driver as sought by him.

6. As was stated earlier, the facts are not in dispute. The applicant was appointed as a casual labourer which is a Group 'D' post. He has been getting only 1/30th of the wages being paid to a regular Group 'D' employee. His services as Driver to drive the tractor of the department was being utilised now and then. While it is the contention of the applicant that there was no regular Driver in respect of the tractor that was acquired subsequently and therefore his services were being utilised regularly by the department, the respondents contend that the services of the applicant were being utilised as Driver now and then only at the request of the applicant to enable him to gain experience and that therefore he cannot seek either regularisation in Group 'D' post or any salary equivalent to that of a Driver. But the fact remains that the services of the applicant were being utilised now and then to drive the departmental tractor. But, the department did not choose to make use of the services of the applicant when the applicant



made a representation putting forth a claim for salary equivalent to that of a Driver as is evident by subsequent representation made by the applicant on 13.2.1993 found at Annexure-R1.

7. Applicant has not produced any material to show as to when or for how many days his services as Driver were utilised by the Department. Though the applicant came to be appointed during the year 1979 as Casual labourer, he had acquired driving licence only during 1987. His claim cannot be considered for the period beyond three years next before the institution of the application.

8. Because the applicant is only a casual labourer, he will be entitled to only 1/30th of the difference in the salary of Group 'D' and Group 'C' employee. In view of the fact that the services of the applicant as Driver were being utilised now and then, the applicant, in our view is entitled to get some remuneration whether it may be in the form of honorarium or wages because services of a Group 'D' employee cannot be utilised for discharging the duties of Group 'C' employee without adequately reimbursing for such utilisation. Even under F.R.46, there is notification dated 25.2.1988, enabling the payment of honorarium for performing the driving duties therein, i.e., at page 217 of F.R.S.R. 1992 Swaney's Edition. Under F.R.46 ^{there is a} stipulation stating that Group 'D' staff who are appointed to work as staff Car Driver has to be paid Rs.4.00 per day. On this analogy, we feel it would be just and proper to direct the respondents to pay to the applicant Rs.4.00 per day for the period during which the services of the applicant were utilised as Driver for driving the tractor. Anyhow, this payment will have to be restricted to a period of three years next before the institution of the application.

9. Even though it is not specifically pleaded in the reply of the respondents, the learned counsel for the respondents contended that the present application is barred by the principle of resjudicata in as much as he has filed another petition in O.A.57/92 seeking regularisation of his services as Group 'D' employee and that a similar prayer as in this application should have been made in the said application itself. We are not impressed by this contention of the learned counsel for the respondents, in as much as the relief sought in this application is entirely different from the relief sought in O.A.57/92 and had the applicant sought this relief in the said O.A.57/92, it would have been bad for multiplicity of reliefs and the applicant could not have ~~been~~^{been} sought relief as in the present application in O.A.57/92. Therefore, we are unable to accept the contention of the learned counsel for the respondents and conclude that the present application is barred by the principles of resjudicata, ^{and} this contention to repeat at the risk of repetition, cannot be accepted.

10. The learned counsel for the respondents next contended that because the applicant happens to be only a casual labourer and not a regular employee of the Union of India, this Tribunal has no jurisdiction to entertain the application and his relief can only be considered by the High Court. Even this contention is without any merit in view of pronouncement of the Supreme Court in Union of India Vs. Deep Chand Pandey reported in A.I.R. 1993 (SC) 382 wherein it was specifically concluded that the casual typist in Govt. Department whose services were terminated has to claim his relief under Administrative Tribunals Act, 1985, and not before the High Court. Thus, it is clear that none of the contentions raised by the respondents has any merit and as such we are unable to accept the same.

11. In view of what is discussed above, the applicant is entitled to succeed in part. We hereby allow the application in part and direct the respondents to pay to the applicant the honorarium at Rs.4,00 per day of utilisation of his services as Driver in the department only from the period of three years next before the institution of the application. We further direct the parties to bear their own costs. *The department should comply with discharge within three months from date of the order.*

Accept of the order
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A.N.

Sd-

Sd-

27/10/93
MEMBER (J)

MEMBER (A)



TRUE COPY

N. K. S.
SECTION OFFICER
ADMINISTRATIVE SERVICES
BANGALORE

1/11/93