

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

OA 924/90.

Dt. of Order:16-11-93.

P.V.Ramana Murthy

....Applicant

Vs.

1. Union of India,
rep. by Secretary,
Ministry of Defence,
New Delhi DHQ PO,
New Delh-11.
2. The Chief of Naval Staff,
NHQ, New Delhi.
3. The Flag Officer Commanding-in-Chief,
Naval Base Visakhapatnam,
HQRS/ENC/Naval base Visakhapatnam.
4. The Officer-in-charge,
Base Victualling Yard,
HQRS/ENC/Naval base,
Visakhapatnam.

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Counsel for the Applicant : Shri P.S.N.Murthy

Counsel for the Respondents : Shri N.V.Ramana, Addl.CGSC

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CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

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....2.

C.A.No.924/90

Dt. of decision:16-11-1993.

WS

Judgement

{ As per the Hon'ble Sri V. Neeladri Rao, Vice Chairman }

These applicants were initially engaged in regard to casual work in Naval Dock Yard, Visakhapatnam ^{between} from 15-8-83 and May 1986. They were not regularised by the date of this application. They were also paid on daily wages and the daily wages paid to them is not equal to 1/30th of the basic of the pay scale provided for the regular employees engaged for the same category. This OA was filed praying for a directions to the respondents to pay the applicants ^{wages} the charges at the same rate at which it was paid to the regular employees pending regularisation and for a further direction to the respondents to regularise the services of the applicants with effect from the date of their initial appointment under the provision of Ministry of Defence Lr. No.2(17)/10805/D(CIV) dt.10-9-53 and NHQ Lr.No.CP(SC) 5109 dt.4-1-79.

2. It is pleaded for the respondents that the workload for unskilled labour is not constant, and as and when there is additional work some are engaged on the basis of spot appointment. It is also stated for the respondents that while regular employees of this category were appointed from amongst those sponsored by the Employment Exchange, ^{the applicants} though they were engaged on the daily wage basis ^{and they were} are not sponsored from the Employment Exchange. While the regular employees are subject to transfer, the question of transfer does not arise in regard to those who ^{are} engaged on daily wage basis. So, it is stated for the respondents that the applicants are not entitled either to the equal pay or for regularisation.

22/10/93

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3. The Ministry of Defence Lr. No.2(17(51)/10805/D(CIV) dt.10-9-53 stipulates ^{that} for any reason the ^{services} ~~appoint-~~ ^{have}ment of the casual industrial employee, to continue beyond six months, the individual will not be discharged and reemployed from the same date and instead he will be allowed to continue in service without break and will be treated as regular industrial employee from the date of his original appointment as casual industrial employee. Even letter No.CP(SC)/5109 dt.4-1-79 ^{states that} ~~speaks~~ same in regard to the industrial employees.

4. By relying upon the same it is urged for the applicants that as they worked for more than six months, their services have to be regularised from the date of their initial appointment. 1986 SC 584 Surrender Singh and another Vs The Engineer-in-Chief, CPWD and Ors. is cited to contend that in such cases the employees have to be paid at ^{the rate at which} ~~both~~ ^{are paid} to the regular employees, from the dates on which they were appointed.

5. In the Ministry of Defence Lr. dated 10-9-53 it is observed that while the casual employees are being paid from contingencies, it had also become frequently necessary "to recruit casual personnel to be paid in the regular monthly scales of pay from regular pay of Work Heads of Account for specific jobs/periods, ~~as~~ as substitute or ^{for} a temporary increased workload." Thus it is manifest that the Ministry of Defence letter dated 10-9-53 is applicable only in regard to casual personnel engaged on regular monthly scales of pay. Even letter dated 4-6-79 refers to Ministry of Defence letter dt. 10-9-53. So, it had to be stated that ~~in~~ the said letter ~~it~~ is applicable for those casual personnel who are engaged on monthly scales of pay, but not to the employees who

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were engaged on daily wage basis. It is not the case of the applicants that they were engaged on monthly scales of pay. As such the Ministry of Defence letter dated 10-9-53 and the letter dated 4-6-79 are not applicable in regard to the applicants.

6. The question of regularisation depends upon the manpower which is constantly required. The reply for the respondents discloses that the workload with regard to unskilled labour varies from day to day and to the extent the unskilled labour is constantly required, ^{Regular} ~~Regular~~ appointments are made and as and when additional work arises, ~~Persons~~ are being engaged on daily wage basis. Even in case of Railways and Telecom the schemes were formulated in pursuance of the directions of the Supreme Court for absorbing the casual labour after assessing the additional posts required. Even those schemes indicate that 1/30th of minimum of ~~the basic pay of the~~ pay scale applicable to the regular employees had to be given to the casual employees, only from the date on which the casual employees attain temporary status. The period prescribed for eligibility for attainment of the 'temporary status' is differently fixed for Telecom and Railways. But it is clear from the above schemes that one is not entitled to the 1/30th of ~~the basic pay in~~ the minimum of the pay scale of the regular employees till ^{he} ~~one~~ attains ~~this~~ 'temporary status'.

7. It is not even pleaded for the applicants that they were engaged continuously from the dates of their initial appointment. But it is vehemently urged that the applicants were not purposefully engaged continuously. In view of the nature of the work for which the applicants are engaged, the plea for the respondents that as and when the additional work is available some are engaged on

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daily wage basis on the day on which the additional work is available cannot be held as unbelievable. ^{able} It is not a type of work which can be postponed. It is not stated for the applicants that some ^{others} ~~one else~~ were engaged on the day on which applicants were not engaged. So, it is not a case of artificial ^{links} ~~trade~~ and in view of the material on record the case of the respondents that when the work was not there the applicants were not being engaged had to be believed. The fact remains that the applicants were ^{not} continuously engaged by the dates on which this OA was filed. When there is no scheme for regularisation of the employees who were engaged on daily wage basis and when the applicants were not engaged continuously, the question of a direction to the respondents to regularise the services of the applicants does not arise.

8. The learned counsel for the applicants had strongly relied upon the following ^{portion} ~~part~~ at the judgement reported in 1986 SC 584:

"This argument lies ill in the mouth of Central Government for it is an all too familiar argument with the exploiting class and a welfare state committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment the choice for the majority of people is to starve or to take employment on what ever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they do not get the same salary and conditions of service as other class IV employees cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in article 14 of the Constitution. This

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J.

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Article declares that there should be equality before and equal protection of the law and implicit in it is the further principle that there must be equal pay for equal work of equal value It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

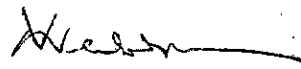
9. By referring to the said para, the learned counsel for the applicants ~~vehemently~~ argued that even if a casual employee is engaged for only one day he had to be paid at the same rate at which the regular employee is paid. But the ^{portion} ~~part~~ relied upon for the applicants is not to that effect. It only shows that when there is constant work and the employee is engaged for a number of years, ~~it is~~ is not proper for the government to exploit the unemployment situation by paying ^{an} ~~the~~ amount as wages, to such employee which is less than the rate of pay of the regular employee for similar work. Any how, ~~as seen by~~ the Supreme Court, ~~the~~ approved scheme ^{as} the Telecom whereby a casual employee is being paid at 1/30th of the pay of the minimum of the pay scale applicable to the regular employee only from the date on which such casual employee attains the temporary status, and as such casual employee is not entitled to pay at that rate for the period earlier to the date on which he attains the temporary status, ^{So contention for} ~~the case of~~ the applicants that even if they are not engaged continuously for want of work, they ^{have} ~~had~~ to be paid at the same rate at which the regular employees are paid, for the days on which they are engaged cannot be accepted.

10. For the reasons stated above this OA ^{has} ~~had~~ to be dismissed.

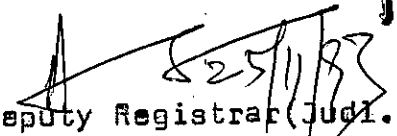
6th 18/7

11. The learned counsel for the applicant submitted that the services of the applicants were regularised w.e.f. 1-7-92. Sri N.V. Ramana, Standing Counsel for the respondents stated that ^{he had} no information/instructions with regard to the same ~~is not received~~. In view of ^{the order} such statement for the applicants no directions need be given for the period from 1-7-92; but relevant claim for the period earlier to ¹⁻⁷⁻⁹² this O.A. is dismissed. No costs.


(R. Rangarajan)
Member (Adm.)


(V. Neeladri Rao)
Vice Chairman

Dictated in Open Court
Dt.16-11-1993


Deputy Registrar (Judl.)

Copy to:-

1. Secretary, Ministry of Defence, Union of India, New Delhi
DHQ PO-New Delhi-11.
2. The Chief of Naval Staff, NHQ, New Delhi.
3. The Flag Officer Commanding-in-Chief, Naval Base
Visakhapatnam, HQRS/ENC/Naval Base, Visakhapatnam.
4. The Officer-in-charge, Base Victualling yard, HQRS/ENC/
Naval Base, Visakhapatnam.
5. One copy to Sri. P.S.N.Murthy, advocate, XXX 58-1-305,
Buchirajupalem, Visakhapatnam-29.
6. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

*7/25/93
P.S.N.
7/25/93*

O.A - 924/90

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. ^{R. Ranga Rao} ~~A. B. GORTHE~~ : MEMBER(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER(A)

Dated: 16/11/1993

ORDER/JUDGMENT: _____

M.A/R.A/C.A.No.

O.A.No.

in

924/90

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

Central Administrative Tribunal
DESPATCH
7 DEC 1993
HYDERABAD BENCH.