

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 23.2.2001

O.A. No. 400/1995

Rajendra Kumar Sharma son of Shri Hari Narain Sharma, by caste Brahmin, aged about years, resident of Bilwa, Tehsil Sanganer, District Jaipur, now-a-days Class IV employee, P.M.G. Office, Ajmer.

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Government of India, Department of Posts and Telegraphs, Government of India, New Delhi.
2. The Post Master General, Rajasthan Northern Region, Ajmer (Raj.).

... Respondents.

Mr. S.K. Jain, Counsel for the applicant.

Mr. K.N. Shrimal, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. N.P. Nawani, Administrative Member

: O R D E R

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for grant of temporary status and regularisation on group 'D' post to the applicant with effect from 1986, and further to grant full salary to him right from 1986 on the basis of 'equal pay for equal work'. The applicant seeks a further direction that he shall be paid leave salaries, bonus, national holidays allowance, house rent allowance, C.C.A, dearness allowance and additional D.A. etc. since 1986, on par with the regular employees. He also prays for arrears of salary with 24% interest.

R/R

2. It is the second round of litigation. Earlier also, the applicant had filed another O.A. No. 229/88 before this Tribunal, contending that he was engaged in 1986 on casual basis and his oral termination in 1988 was illegal. That application being allowed, the department preferred an S.LP. before Hon'ble the Supreme Court, and Hon'ble the Supreme Court remanded back the matter to this Tribunal vide its judgement and order dated 23.2.93, by observing as under:-

"We are of the opinion that the matter should go back to the Tribunal for a decision afresh. Neither the decision of this Court in Daily Rated Casual Labour nor the proceedings of the P&T Department issued on February 10, 1988, say that the casual labourers are entitled to be paid even on the days they do not work. The approach of the Tribunal that since the aforesaid proceedings of the P&T Department does not provide otherwise, the respondent is entitled to be paid even for the days he did not work (i.e., Saturdays, Sundays and Gazetted Holidays) does not appear to be sound. Whether there is any other basis upon which the respondent is entitled to such payment has not been examined by the Tribunal. So far as the second aspect is concerned, the Tribunal has observed that the P&T Department is an 'Industry' without a full and proper discussion. The Tribunal first refers to the decision of the Ahmedabad Bench of the Tribunal holding the department to be an industry as defined in the Industrial Disputes Act and then says that the counsel for the department did not contest the said position. We are, however, of the opinion that having regard to the importance of the question and the consequences flowing therefrom, it would have been better if the Tribunal had discussed the said issue on merits. Accordingly, the Tribunal's order has to be and is set aside. The matter is remitted to the Tribunal for a decision on the questions arising in the O.A. afresh, in accordance with law. No costs.

If the respondent has already been reinstated in pursuance of the order of the Tribunal, he shall be continued subject to the result of his O.A. but he shall not be paid the back wages for the period he was out of service, unless, of course, he has already been paid. If he has not been reinstated, he shall not be reinstated hereinafter. The Tribunal shall, however, dispose of the matter as expeditiously as possible in the circumstances of the case."

3. After remand, this Tribunal vide its judgement and order dated 11.05.94 in OA No. 229/88, passed the following order :-

"14. In view of the above discussion, we allow this application partly and direct that the applicant shall immediately be reinstated. He will also be paid full wages for the period since his retrenchment on 3.5.88 till his reinstatement, on his furnishing an affidavit to the satisfaction of the respondents

that he was not gainfully employed during this period, within three months of his furnishing such an affidavit. The claim of the applicant for regularisation shall also be considered by the respondents in accordance with the provisions of the Scheme for absorption of the casual labour that may have been prepared or may be prepared in future in accordance with the direction of the Supreme Court in writ petition Nos. 302, 373 of 1986, Daily Rates Casual Labour employed in Posts and Telegraphs Department vs. Union of India & Ors., decided on 27.10.87 [1988 (1) SLR 214]. Parties to bear their own costs."


4. It is submitted by the respondents that in pursuance of the directions of this Tribunal dated 11.5.94 in OA No. 229/88, they have reinstated the applicant vide Annexure R/1 dated 14.8.95, and the applicant also was granted temporary status with effect from 15.12.94 and he has also been paid full wages since his retrenchment on 3.5.88 and they further stated that the applicant would be considered for absorption in accordance with the directions of Hon'ble the Supreme Court and the Scheme framed by the Government for the purpose. On the basis of Annexure R/1, the department contended that the applicant has been given all the benefits flowing from the judgement and order of this Tribunal dated 11.5.94 in O.A. No. 229/88, and the reliefs prayed for in this application, are unsustainable.

5. Both from the pleadings as well as from Annexure R/1, it is clear that the applicant has been given temporary status with effect from 15.12.94, and he has also been paid the entire arrears of wages right from the date of his retrenchment on 3.5.88 to the date of passing the order at Annexure R/1 dated 14.8.95. If that is so, the prayer of the applicant that he shall be granted temporary status does not survive for consideration. Admittedly the applicant was appointed on casual basis in the year 1986 and he was retrenched in the year 1988. This Tribunal in OA No. 229/88 has already directed the respondents to accord temporary status and also to consider him for regularisation in terms of the Scheme issued by the Government.

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Annexure A/1A dated 12.4.91. It is also brought to our notice that a Contempt Petition was filed before this Tribunal, and this Tribunal dismissed that C.P. by holding that the order of this Tribunal dated 11.5.94 passed in O.A. No. 229/88, has been fully complied with. If that is so, the applicant got the reliefs, whatever that has been granted to him vide order dated 11.5.94 in O.A. No. 229/88. However, the learned counsel for the applicant strenuously contended that the applicant has not been paid full wages, like a regular employee. He invited our attention to Annexure A/1 statement prepared by the applicant, contending that the applicant has been paid wages wrongly for 20 days, 18 days, 21 days etc. from the month of February, 1991. The learned counsel for the respondents contended that the applicant being a casual labour has been paid, whatever he was entitled to under the Scheme vide Annexure A/1A. They have also stated that the number of days per month are calculated excluding the Saturdays and Sundays and holidays, as per the scheme and he has been paid daily wages on the basis of the pay scale applicable to other employees. Therefore, the applicant was not entitled to any arrears. They contended that the applicant being casual worker, is not entitled to salary, like regular employee. Otherwise, there is no distinction between the daily rated employee and the regular employee. There is substance in this argument of the respondents. From the judgement of this Tribunal dated 11.5.94 passed in O.A. No. 229/88; we find that in paragraph 13, the applicant did not press the claim for payment of wages for the intervening Saturdays and Sundays and holidays. We think it appropriate to extract the said portion of the judgement, as under:-

"13. The learned counsel for the applicant has stated that he does not wish to press the claim for payment of wages for the intervening Saturday, Sundays and holidays."



6. From the above statement made by the counsel for the applicant in the earlier O.A., it is clear that the applicant did not press the claim for payment of wages for the intervening Saturdays, Sundays and holidays. By recording this statement of the applicant, this Tribunal further directed that the applicant shall be paid full wages between his retrenchment on 3.5.88 till his reinstatement, on his furnishing an affidavit that he was not gainfully employed elsewhere during this period. There was a further direction that the regularisation of the applicant shall also be considered in terms of the Scheme vide Annexure A/1A, and as per the directions of Hon'ble the Supreme Court. As per the Scheme, under which the applicant has been granted temporary status, it is provided as under:-

"1. 'Temporary status' would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five day's week).

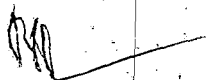
2. Such casual workers engaged for full working hours viz. 8 hours, including half hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group 'D' official including DA, HRA & CCA."

7. The scheme also provides that the conferment of temporary status does not automatically imply that the casual labourers would be appointed as a regular Group 'D' employee within any fixed time frame. Appointment to Group 'D' vacancies is required to be done as per the extent recruitment rules, provide by giving preference to eligible E.D. employees, that too, after the casual labourer completes three years' continuous service after conferment of temporary status. From this Scheme, it is clear that the casual worker engaged for a period of 240 days (206 days in the case of offices observing five days' week), would be entitled to temporary status and such casual labourers engaged on full working days, will be paid at daily rates on the basis of th

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minimum of the pay scales of a regular Group 'D' official, including DA, HRA and CCA. The respondents stated in the counter, that the applicant has been paid full wages at daily rates on the basis of the minimum of the pay scale of a regular Group 'D' employees, including DA, HRA and CCA. If that is so, the applicant has got all the reliefs that he was entitled to, as per the directions of this Tribunal dated 11.5.94 in OA No. 229/88. The applicant cannot reagitate the matters, regarding casual employment, temporary status and payment of arrears right from his retrenchment on 3.5.88 to the date of his reinstatement. These are the matters concluded by the judgement of this Tribunal dated 11.5.94 in OA No. 229/88. From Annexure R/1, it is clear that whatever the reliefs the applicant was entitled to, has been granted to him, and recording compliance of the judgement/order dated 11.5.94 in OA No. 229/88, this Tribunal dismissed the Contempt Petition in that case. Moreover, it is not in dispute that the judgement/order passed by this Tribunal in OA No. 229/88 dated 11.5.94, has become final, and as such, the applicant cannot reagitate the matter, which were already concluded by the said judgement/order, and that judgement is being fully implemented already.

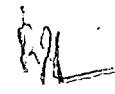
8. Vide Annexure R/2, we find that the Government has clarified that a casual employee working in an administrative office observing 5 days week would not be entitled to the facility of paid weekly off. At any rate, he has given up his claim for wages regarding intervening saturdays, sundays and holidays in O.A. No. 229/88. By recording this statement of the applicant only, this Tribunal directed the respondents to pay full wages as per the Scheme. Therefore, the applicant now cannot contend that he should be paid full wages and CCA, DA on the basis of 30 days in a month. In this view of the matter, the applicant could not have any grievance. His case for regularisation would be the one separately required to be considered by the



department in terms of the Scheme. In fact, the respondents in para 4 of the reply statement, have specifically stated that "after completion of three years of service after granting temporary status, his regularisation will be considered on its own merits." This O.A. is filed in the year 1995, immediately after the conferment of the temporary status to him, as per the directions of this Tribunal in O.A. No. 229/88. Therefore, the cause for regularisation did not arise as on the date of filing the present application. In this view of the matter, this application is liable to be dismissed. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances,
without costs."


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.