CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.063/00364/2018 Orders pronounced on: 07.12.2018
(Orders reserved on: 17.10.2018)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

...

1. SHAKUNTLA DEVI aged about 26 years W/o Sh. ISHWAR DUTT posted at R.P. NIWS, SHIMLA H.P. R/o BILASPUR HOUSE SUMMER HILL SHIMLA H.P. 171005.
2. SARASWATI aged about 45 years W/O Sh. PREM CHAND posted at SHIMLA CIRCLE (HQ) H.P. R/o ANNEXI HOUSE NO. A4 NEAR ALL INDIA RADIO AMBEDKAR CHOWK SHIMLA H.P. 171004.
3. SHERU aged about 28 years S/o HIRA LAL posted at R.P. NIWAS, SHIMLA H.P. R/o NIRMAIN NIWAS (GF) TARA DEVI HP 171010.
4. LATA THAKUR aged about 37 years W/o RAJ THAKUR posted at SHIMLA CIRCLE (HQ) H.P. R/o TREEL GARKAHAN BASANTPUR SHIMLA H.P. 171018.
5. ISHAN SHARMA aged about 30 years S/o Sh., RAKESH SHARMA posted at SHIMLA CIRCLE (HQ) H.P. R/o SHANKAR KUTTIR, NEAR LAKKAR BAZAR SHIMLA H.P. 171001.
6. SURESH aged about 32 years S/O SH. LAL SINGH posted at SHIMLA CIRCLE (HQ) H.P. R/o SHIV RAM NIWAS LOWER KANGNA DHAR PH-3 NEW SHIMLA H.P.
7. REKHA BAKSHI Aged about 41 years D/O SH. R.P. BAKSHI posted at SHIMLA CIRCLE (HQ) H.P. R/o ELLISIUM LODGE LAKKAR BAZAR SHIMLA H.P. 171001.
8. MOHINDER SINGH aged about 48 years S/o SH. JALAM INGH posted at R.P. NIWAS, SHIMLA H.P. R/o AGRWAL DHARMSHALA, ELLISIUM LODGE LONG WOOD SHIMLA H.P. 171001.
9. JAI RAM aged about 30 years S/o Sh. RIJHU RAM posted at MANI MAHESH TEMPLE BHARMOUR CHAMBA HP, R/o KUDEVA, CHAMBA H.P. 176314.
10. TEK SINGH, aged about 39 years S/o SH. SHREE DHAR posted at Shri SHAKTI DEVI TEMPLE CHAMBA H.P R/o W.No. 4 PO BREHI CHAMBA H.P.
11. PANJU RAM aged about 49 years S/o Sh. MAN SINGH posted at CHAMPAWATI TEMPLE, CHAMBA HP R/o BADDUNA CHAMBA H.P.
12. SURJAN SINGH aged about 39 years S/o Sh. RAJ MAL posted at Narsingh Temple Chamba HP, R/O GHARER BHARMOUR CHAMBA H.P. 176315.
13. SANJEEV KUMAR aged about 38 years S/o Sh. PUNNU RAM posted at Shri SHAKTI DEVI TEMPLE CHAMBA HP. R/o LAPO PO KUNR CHAMBA H.P.
14. RAJINDER KUMAR aged about 40 years S/o Sh. ASHA RAM POSTED at LAXMI DEVI TEMPLE BHARMOUR CHAMBA HP; R/o BHARMOUR CHAMBA H.P.
15. CHHABO RAM aged about 26 years S/o Sh. GIAN CHAND posted at SHRI CHAMUNDA DEVI TEMPLE CHAMBA HP R/o KUNDBAG, PO BAAT CHAMBA HP.

16. TRIPASH aged about 31 years S/o Sh. DHARO RAM posted at GANESH TEMPLE BHARMOUR CHAMBA HP R/o WNO 7, P.O. SUNARA CHAMBA H.P
17. CHAMAN SINGH aged about 32 years S/O SH. KAILASH CHAND posted at LAXMI NARAYAN TEMPLE CHAMBA HP R/o KIDDA, CHAMBA HP 176311.
18. AJEET KUMAR aged about 24 years S/o Sh. DHARAM CHAND posted at Shri SITA RAM TEMPLE MOHALLA HATTNALA CHAMBA HP R/o Vill DHARU PO SAHO CHAMBA 176314.
19. KEWAL aged about 41 years S/o PRITHVI RAJ posted at Shri SHAKTI DEVI TEMPLE, CHHATRARI, CHAMBA HP. R/o CHHATRARI CHAMBA HP.
20. SUSHEEL KUMAR aged about 28 years S/o BHINDER SHARMA posted at Sub Circle ASI CHAMBA R/o MOHALLA SURARA CHAMBA HP 176310.
21. HARISH KUMAR aged about 47 years S/o SH. KHEM CHAND posted at TRILOKINATH TEMPLE, MANDI H.P. R/o #36/8 DHARMYANA MOHALLA MANDI H.P. 175001.
22. JASVINDER KAUR aged about 44 years W/o JOGINDER PAL posted at HADIMBA TEMPLE, MANALI DISTT. KULLU HP R/o WNO:-5 NEAR MEAT MARKET MANALI DIST. KULLU H.P.
23. FATEH CHAND aged about 45 years S/o Sh. DUNI CHAND posted at BAJOURA DIST. KULLU HP. R/o VPO SACHANI, THE BHUNTAR DIST. KULLU H.P.
24. JEEVAN KUMAR aged about 43 years S/o MILKHI RAM posted at HADIMBA TEMPLE MANALI DIST. KULLU H.P. R/o 89/1 MAHAL NAUGJA KANGRA H.P.
25. ASHISH KUMAR aged about 34 years S/o Sh. SURESH KUMAR posted at JAGAT SUKH, MANALI, DIST. KULLU HP; R/o JAGAT SUKH, MANALI, DISTT. KULLU H.P.
26. SUNITA DEVI aged about 44 years W/o Late Sh. HANS RAJ posted at TRILOKINATH TEMPLE, MANDI H.P. R/o # 171/5, PALACE COLONY MANDI H.P. 175001.
27. SUNIL KUMAR aged about 29 years S/o Smt. PUSHPA DEVI posted at TRILOKINATH TEMPLE, MANDI HP. R/o # UVA, SADAR MANDI, MANDI HP. 175124.
28. NAVEEN KUMAR aged about 40 years S/o Sh. BELI RAM posted at TRIKOLI NATH TEMPLE, MANDI H.P. R/o # 86/4, RAVI NAGAR, SUHARA MOHALLA MANDI H.P. 175001.
29. BODH RAJ aged about 36 years S/o Sh., RAM CHAND posted at BAIJNATH TEMPLE, DIST. KANGRA, H.P. R/o VPO, BAIJNATH, KANGRA H.P.
30. RAJ KUMAR aged about 29 years S/o SH. SUSHIL KUMAR posted at NURPUR FORT KANGRA H.P. R/o VILLAGE LANGOTIAN, PO MIRAN SAIB, JAMMU, JAMMU & KASHMIR.
31. RAJNISH KUMAR Aged about 34 years S/o RAM SINGH posted at KATOCH PALACE TIRA SUJANPUR HAMIRPUR R/o WARD NO. 7, VILLAGE ROPARI, TEH. GHUMARWIN, KOTHI, BILASPUR H.P. 174021.
32. Smt. CHERING DOLMA aged about 36 years D/o Sh. ANGRUP TANZIN posted at PHOO GANPHA, TABO, LAHAUL & SPITI HP R/o TABO, LAHAUL & SPITI H.P.
33. TASHI PALDAN aged about 42 YEARS W/O SH. YESHE PHUNCHOG POSTED AT PHOO GANPHA, TABO, LAHAUL & SPITI H.P. R/O TABO, LAHAUL & SPITI H.P.

34. TASHIYA @ TASHI PUNCHOK aged about 35 years S/o PALDAN DORJE posted at BUDDHIST MONASTRY, TAB, LAHAUL & SPITI HP R/o TABO, LAHAUL & SPITI H.P.
35. ANJU BODH aged about 31 years S/o KUNZANG YESHY posted at BUDDHIST MONASTRY, TABO, LAHAUL & SPITI HP R/o TABO, LAHAUL & SPITI H.P.
36. KASANG DOLKAR aged about 36 years S/o CHHULDIM NORBA posted at BUDHIST MONASTRY, TABO, LAHAUL & SPITI H.P. R/o TABO, LAHAUL & SPITI H.P.
37. SONAM TANDUP aged about 31 years S/o DORJE MINGUIR posted at BUDDHIST MONASTRY, TABO, LAHAUL & SPITI H.P. R/o TABO, LAHAUL & SPITI H.P.
38. ZANGMO BUTITH aged about 52 years W/o GIZIN DORJE posted at BUDDHIST MONASTRY, TABO, LAHAUL & SPITI HP R/o TABO, LAHAUL & SPITI H.P.
39. DORJE RAPTAN aged about 40years S/o CHERING RAPTAN posted at BUDDIST MONASTRY, TABO, LAHAUL & SPITI H.P. R/o TABO, LAHAUL & SPITI H.P.

.... Applicants

(**Argued by**: Mr. Ashwani Verma, Advocate)

Versus

1. Union of India through Secretary, Ministry of Human Resources & Development, Shastri Bhawan, Dr. Rajendra Prashad Road, New Delhi-110001.

2. The Director General, Archaeological Survey of India, Janpath, New Delhi 110011.

3. The Superintending Archaeologist, Archaeological Survey of India, Shimla Circle, C.G.O. Complex, Longwood Shimla Himachal Pradesh-171001.

4. The Conservation Asstt. Archaeological Survey of India R.P. Niwas, Shimla Himachal Pradesh 171001.

5. The Conservation Asstt. Archaeological Survey of India Sub Division, Laxminarayan Chamba H.P.

6. The Conservation Asstt., Archaeological Survey of India Sub Division, Mandi, Mandi H.P.

7. The Conservation Asstt., Archaeological Survey of India Sub Division, Kangra Fort, Kangra Himachal Pradesh 176001.

8. The Junior Conservation Asstt., Archaeological Survey of India Buddist Monastery, Tabo District Lahul & Spiti, Himachal Pradesh.

…. Respondents

(By: **Mr. Sanjay Goyal, Advocate**)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicants have filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the orders dated 29.1.2018 (Annexure A-1 coolly), dated 7.6.2017 and 30.6.2017 (Annexure A-2 Colly), vide which their claim for grant of minimum of pay scale as wages has been declined and for issuance of direction to the respondents to grant them 1/30th of the pay, at the minimum of the relevant pay scale plus dearness allowance, for working 8 hours a day, for the same nature of work being done by them as regular staff like MTS etc.

2. The facts, which led to filing of this case, are that the applicants were employed as unskilled casual workers since 2004 onwards. The work and conduct performed by them is stated to be satisfactory. Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, issued O.M. dated 7.6.1988, regarding grant of minimum wages to the casual workers and in that behalf, a decision has been taken to grant such staff payment @ 1/30th of the pay of the minimum of the relevant pay scale, plus dearness allowances for work of 8 hours, a day. They submit that their colleagues upto Sr. No.1 to 43 have been granted 1/30th of relevant pay scale w.e.f. 1.10.2010 onwards. Their names were to found in the order issued in that behalf at Sr. No. 43 onwards. But they have been denied such benefit without any basis.

3. The applicants further submit that as per notification dated 31.1.1997 issued by department, the applicants are performing same nature of duties and responsibilities, as other staff, but they are being denied the wages which is discriminatory, despite issuance of notification dated 11.5.2009 (Annexure A-7) by respondent department

itself for grant of minimum wages to such like employees. The casual workers, who have worked for at least 240 days for each year for 3 years or more, become eligible for grant of ad-hoc bonus, as per notification dated 28.8.2009. The regular posts are available with the department but the department has not regularized them. The applicants submitted representations), which have been rejected vide impugned orders dated 29.1.2018 (Annexure A-1 Colly) and 7.6.2017/30.6.2017 (Annexure A-2 Colly). The other Circles have made payment @ 1/30th of pay at the minimum of the relevant pay scale to employees. The respondents have admitted in their communications that applicants are working as casual workers for annual repairs, watch and ward and other works at different places – centrally protected monuments and sites in view of acute shortage of manpower for running and managing the essential work in these places. The colleagues of applicants were getting wages @ 1/30th of pay of the minimum of the relevant pay scale + Grade pay + D.A. It is admitted that applicants who are doing same nature of work, have requested for grant of same relief and it was recommended that applicants be also granted payment on similar basis. Hence, the O.A.

4. The respondents have filed a reply. They submit that the applicants were engaged based on availability of work and funds and are not working continuously anywhere from any time. They work on DC rates and on muster rolls. As and when work is available, the services of the applicants are engaged and they are paid accordingly. As per O.M dated 7.6.1988, persons on daily wages should not be recruited for work of regular nature and recruitment of daily wagers can be made only for work which is casual or seasonal or intermittent nature or for work which is not of full time nature for which regular posts cannot be

created. Thus, they claim that applicants could not be appointed against regular nature of work.

5. The applicants have filed a replication reiterating the averments made in the O.A. and claiming that the respondents are trying to defeat their rightful claim of minimum of the pay scale, claimed by them.

6. We have heard the learned counsel for the applicants at length and examined the material on file.

7. Learned counsel for the applicants vehemently argued that since the applicants are performing regular nature of work and are being paid regularly on muster roll basis and as such it cannot be said that they are working against intermittent work and as such they are entitled to the salary minimum of the scale for relevant post whereas this was vehemently opposed by learned counsel for the respondents stating that Scheme of 1988 is very clear that staff cannot be engaged against regular nature of work and as such question of payment of salary prayed for by the applicants does not arise, at all.

8. We have considered the submissions on both sides and have gone through the material on file minutely, with the able assistance of the learned counsel for the parties.

9. The arguments in this case were heard along with O.A. No. 063/01526/2017 titled **SHAKUNTLA DEVI & OTHERS VS. UNION OF INDIA ETC**. which has been allowed vide order dated 4.12.2018. The facts of this case are similar to the facts of that case and as such this O.A. also deserves to be allowed and disposed of in same terms. The relevant paras of the order are reproduced as under:-

> 9. It is, thus, clear that where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day. In this case, the working of the applicants is not even disputed by the respondents. There are specific averments in the O.A. as well as in the replication filed by the

applicants that they are performing regular nature of work and not that of intermittent. However, the reply does not specifically deny these specific averments and recites only routine denials typical in nature, which is hard to believe. In these circumstances, we have no hesitation in accepting the plea of the applicants that they are working against regular nature of work and as such they are entitled to the pay at the rate claimed by them. The issue raised in this case is no longer res-integra and stands settled in a number of cases. Our own Hon'ble Jurisdictional High Court, while dealing with similar claims, has settled the issue vide order dated 21.4.2017 in **CWP-14887-2013 titled SWARNA SINGH AND OTHERS VS. PEPSU ROAD TRANSPORT CORPORATION, PATIALA AND ANOTHER,** in the following words:-

"10. The argument that the petitioners are mere commission agents and not contractual employees, not working against a definite post and would thus not be entitled to equal pay for equal pay, is an argument not sustainable. It is the admitted case of the respondent corporation that the petitioners are working on a contract basis. The respondents herein have full effective control over the working of the petitioners as has been noted herein above. The payment made to them is as per the number of tickets sold, but what cannot be ignored is that work hours have been fixed as per clause 9 of the agreement to be between 4.30 a.m. to 10.30 p.m. Remuneration is in the form of commission based upon the number of tickets sold, which depends upon the volume of the traffic on a particular day on the particular sector. The volume of traffic or the number of persons buying tickets is not in the realm of control of the petitioners. Why should 5 of 10 the petitioners be put at disadvantage only on account of the fact they are getting commission instead of a regular salary/ wage especially when they are putting in equal number of hours and performing duties of a regular employee? The term 'commission' has several meanings and as per the Cambridge Advanced Learners Dictionary Fourth Edition the term 'Commission' has been defined to mean : "a payment to someone who sells goods that is directly related to the amount of goods sold, or a system that uses such payments". The term salary /wage would mean payment for the work done. In the given circumstances, when the Corporation is having an effective control over the working of the petitioners and they are bound by the terms of the contract entered into, the term 'commission' would also be interchangeable in the instant matter as payment for work done. It is to be appreciated that the petitioners though employed on contract and on commission discharge the duties of Ticket Vendors of the Corporation and without their valuable input passengers would be hardly ticketed or put to great inconvenience.

11. As regards the argument raised that there are no comparable sanctioned posts for Advance Booking Agents and, thus, no comparison can be made, this court places reliance upon a judgment rendered by Hon'ble Supreme Court in State of Haryana vs Tilak Raj 2003 (6) SCC 123 wherein it was held :

"11. A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a 6 of 10 relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one.

12. "Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula."

But, despite holding that the petitioners in the case aforesaid would not be entitled to "equal pay for equal work", the Supreme Court did direct the State of Haryana to pay minimum wages as prescribed for such workers. In the instant case, though there is nothing on the record to show that the petitioners have counter parts working against a regular post and drawing a particular salary, there are no doubts, the petitioners are working as Advance Booking Clerks since 2003 against regulars hours and cannot be denied minimum wages by holding them to be mere commission agents."

10. Not only that, the Hon'ble Apex Court in **STATE OF PUNJAB AND OTHERS VS. JAGJIT SINGH AND OTHERS**, 2017 (1) SCC 148, has held that if one set of temporary employees are discharging similar duties and responsibilities as are being discharged by regular employees holding the same/corresponding posts, they would be entitled to the same minimum pay scale. The Hon'ble Court has delineated upon the law as settled regarding the principle of "equal pay for equal work" and came to hold as under:
"Having traversed the legal parameters with reference to the 7 of 10 application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad- hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were 8 of 10 being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

11. The matter does not end here. The Cuttack Bench of this Tribunal in O.A. No.340 of 2013 titled **BIDYADHAR BARIK &**

OTHERS VS. UOI ETC. decided on 29th April, 2016, relating to the same department, has crystallized the issue. It has been held, while examining the Instructions of 1988, that applicants therein were entitled to and consequently, respondents were directed to pay them, 1/30th of pay at the minimum of the relevant pay scale of a Group D plus DA, as has been paid to the counterpart employees of the applicants (therein) etc, and non payment of same was to invite interest also.

12. The law as laid down in the indicated decisions is applicable to the case in hand also, as applicants are, admittedly, casual employees and discharging duties of a regular employee. In view of the above, once the law is settled in this regard that those persons who are daily wager/ad hoc and even contractual employees and the likes of them would be entitled to the minimum pay, the same would be also applicable to the applicants as well.

13. A perusal of the pleadings do indicate that the applicants were engaged and paid on muster roll basis and the nature of work against which they have been engaged is regular one. It appears that the respondents are taking shelter under the guidelines issued in 1988, to oppose the claim of the applicants. No doubt, there is advice in that Scheme that persons should not be engaged against regular nature of work but it is equally true that the applicants are performing regular nature of job and have been paid on muster roll basis in the past, though an attempt is now being made to project as if they are going to the engaged through contract on job basis. It is not in dispute that earlier, recommendation was made for grant of minimum of the wages to them at par with their counter parts but that has not seen light of the day till now. In these circumstances, we are of the considered opinion that the applicants in the instant case are also legally entitled to the similar treatment and pay in the similar circumstances of the case under Articles 14 and 16 of the Constitution of India, in view of the law laid down by Hon'ble Apex Court in cases **MAN SINGH VS. STATE OF HARYANA AND OTHERS** AIR 2008 SC 2481 and **RAJENDRA YADAV VS. STATE OF M.P. AND OTHERS** 2013 (2) AISLJ, 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals are to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

14. Therefore, it is held that the applicants are also entitled to the similar treatment and the ratio laid down in the indicated judgments is mutatis mutandis applicable to the present controversy.

15. In the light of aforesaid prismatic reasons, the instant O.A. is allowed. The impugned orders are quashed and set aside. The respondents are directed to grant the applicants pay in similar terms as granted to similarly placed persons i.e. 1/30th of pay at the minimum of relevant pay scale and other related benefits available under the policy. However, the arrears shall be restricted to 3 years, prior to the date of filing of this O.A. which happens to be 22th March, 2018. Needful be done within a period of 3 months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

10. For the parity of reasons given in the aforesaid extraction, this O.A. is also allowed in the same terms by quashing the impugned orders 29.1.2018 (Annexure A-1 Colly) and 7.6.2017/30.6.2017 (Annexure A-2 Colly). Accordingly, the respondents are directed to grant the applicants pay in similar terms as granted to similarly placed persons i.e. 1/30th of pay at the minimum of relevant pay scale and other related benefits available under the policy. However, the arrears shall be restricted to 3 years, prior to the date of filing of this O.A. which happens to be 22th March, 2018. Needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

11. However, the parties are left to bear their own costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: DECEMBER 7, 2018

HC*