

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00537/2013

Date of CAV : 11.09.2018
Date of Order : 10.10.2018

Between :

R. Brahma Chary S/o late R.Komaraiah,
Aged about 53 years, Working as Security Guard A,
IC No.1825, EM Civil, HMP(M) Colony-Civil,
Manuguru, Khammam District.

....Applicant

AND

1. Union of India, Department of Atomic Energy,
Rep : by its Secretary to Government,
Anushakthi Bhavan, CSM Marg, Mumbai.
2. Union of India, Department of Personnel & Training,
Rep : by its Secretary, North Block, New Delhi.
3. Union of India, Ministry of Finance,
Rep : by its Secretary, North Block,
New Delhi.
4. The Chief Executive, Heavy Water Board,
CS Marg, Mumbai, Maharashtra.
5. The Chief Administrative Officer,
Heavy Water Plant, Manugur,
Khammam District.
6. The Administrative Officer.III,
Heavy Water Plant, Manugur,
Khammam District.
7. The Asst. Personnel Officer (R),
Heavy Water Plant, Manugur,
Khammam District.
8. K.C.Pullaiah, I.C.No.1853,
Working as Security Guard,
Heavy Water Plant, Manugur,
Khammam District.

...Respondents

Counsel for the Applicant: Mr. Meherchand Nori
Counsel for the Respondents : Mr. V. Vinod Kumar, Sr. CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, to call for the records relating to the proceedings of the 7th respondent No.HWP(M)/Admn (R)/2011/241, DATED 11.10.2011 AND CONFIRMED BSY THE 6TH Respondent in his proceedings No.HWP (M)/Admn (R)/Pay 2013, dated 4.4.2013 and set aside the same as discriminatory and violative of Article 14 and Article 39 (d) of the Constitution of India and consequently direct the respondents to give step up the salary of the Applicant on par with his junior (R8) and rectify the anomaly in fixation of his pay on his regularization in Group 'D' Post on par with his junior (8th respondent) and is pay be fixed as per the admissibility and do justice to him and pass such other or further orders as are deemed fit and proper.

2. The brief facts of the case are that the applicant joined as a Casual Labour (skilled) on 4.1.1985 in the Heavy Water Plant, Manugur, Khammam district and worked as such till 8.7.1999. Thereafter he was granted temporary status with effect from 1.9.1993 in the scale of Rs.2610-60-3540. He earned increments from time to time and reached the basic pay of

Rs.2790/-. It is averred in the application that as per the directions of the Hon'ble High Court, the Casual Labourers were regularized in a phased manner and the applicant was appointed as a Security Guard on 8.7.1999 fixing his pay at Rs.2550/- at the minimum of the pay scale without taking into account the earned increments and current basic pay of Rs.2790/-. As per the instructions contained in DoPT OM No.49014/4/207/Estt (c), dated 9.5.2008, pay of Casual Labour (TS) who were absorbed into Group-D posts in identical grades and whose pay was fixed at the time of the scales have been revised after taking into account of the earned increments. Accordingly, all the Casual Labourers were regularized in Group-D posts and they have got pay protection, except the applicant. The applicant brought the same to the notice of the management and requested several times for his pay protection, but in vain. The applicant also brought to the notice of the 4th respondent, vide representation dated 20.12.2010, that one K.C. Pullaiah (Respondent No.8) who is junior to him was also appointed under the same category as Security Guard. During the pay fixation, the 8th respondent's pay was fixed at Rs.2720/- with pay protection, whereas the pay of the applicant was fixed at Rs.2520/-. The 8th Respondent's basic pay in 1994 was Rs.750/- and the applicant's basic pay in 1994 was Rs.750/-. In 1999, the 8th Respondent's basic pay was fixed at Rs.2720/- whereas the applicant's basic pay was fixed at Rs.2550/-, at that time his basic pay was Rs.2790/-. The applicant again made a representation dated 18.10.2011 to the 5th Respondents requesting for pay protection. In reply to the above representations, the 7th Respondent, vide letter dated 11.10.2011 informed the applicant that HWB has taken up the matter with Department of Atomic

Energy which in turn consulted the Department of Personnel & Training and Ministry of Finance, Govt., of India, which did not accede to his request for pay protection. The applicant also submitted application to the Public Information Officer, Heavy Water Plant, Manuguru on 25.7.2012 and received reply dated 24.8.2012 stating that as per the DoPT Order No.49014/4/2007-Estt(C), dated 9.5.2008 with effect from 9.8.1999, the pay of Shri K.C. Pullaiah has been protected whereas the benefit of fixation of pay under VI CPC was not extended to the applicant vide OM No.49014/4/2007-Estt (C), dated 9.5.2008 after taking into daily raters (Temporary Status) on regularization. This was given to all other 33 employees both senior and juniors to him.

3. The applicant contends that the order passed by the Appellate Authority does not deal with various contentions raised by him in the Appeal Petition. The factual / legal contentions raised by him in his Appeal were not dealt with by the Appellate Authority. In fact the Appeal has been submitted to the 4th Respondent on 21.3.2013 through proper channel and another copy was sent to the Appellate Authority through registered post. But the 6th Respondent passed orders rejecting his request for pay protection on par with his junior. The applicant also contends that the impugned order is a non-speaking order. Hence this application.

4. The Respondents have filed reply statement stating that the applicant had joined in HWP(M) on 08.07.1999 as Security Guard in the scale of pay

of Rs.2550-55-2660-60-3200 on regular basis. Prior to his joining on regular basis, the applicant was working as a Daily Rated Casual Labour (Skilled) with effect from 01.01.1985 and conferred with Casual Labour (Temporary Status) with effect from 01.09.1993 in the scale of pay of Rs.2610-60-3540. He earned increments from time to time as Causal Labour (Temporary Status) and his pay was Rs.2790/- at the time of regularization ie on 08.07.1999. As per the provisions of the OM No.49014/4/2007-Estt.(C), dated 09.05.2008, the pay on regularization of the applicant as on 8.7.1999 against Group-D post could be fixed at the minimum of the pay scale of the relevant Group-D post and the pay of the applicant who had been regularized in the post of Security Guard (Group-D) post at the minimum of relevant pay scale ie Rs.2550-55-2660-60-3200, as the pay scale under which he was regularized is not identical to the pay scale held by him as Casual Labour with Temporary Status.

5. The Respondents further state that, DAE vide OM No.8/3/2011-SCS/8851, dated 10.08.2011, requested DoPT to review its decision communicated vide its OM No.49014/4/2007-Estt.(C), dated 21.3.2011 highlighting the analogous situation in which 11 CLTS employees of the Department have been placed on their regular appointment. This was done as the DoPT vide OM dated 09.05.2008 decided that the pay of CLTS on their regularization against Group D posts in identical grades will be fixed after taking into account the increments already earned by way of wages as CLTS.

6. In the reply statement, it is further submitted that, the applicant's contention that due to non-implementation of pay fixation, his juniors drawing more pay than him is incorrect as he has been informed to the applicant the non-applicability of the DoPT OM dated 09.05.2008 in his case as this OM pertains to fixation of pay of CLTS on their regularization against Group D posts in identical pay scales, after taking into account the increments already earned by way of wages as CLTS. However the Applicant was drawing the pay in the higher scale while working as CLTS and his services were regularized in lower pay scale.

7. The Respondents further state that, the 8th Respondent had joined in HWP (M) on 9.8.1999 as Security Guard in the scale of Rs.2550-55-2660-60-3200 on regular basis and prior to his joining on regular basis, he had been engaged as Daily Rated Casual Labour (Skilled) with effect from 8.4.1986 and conferred with Casual Labour (Temporary Status) with effect from 1.9.1993 in the scale of Rs.2550-55-2660-60-3200. The 8th Respondent earned increments from time to time and his pay rose to Rs.2720/- at the time of regularization i.e. on 9.8.1999. It is submitted that the applicant was engaged on Casual Labour Temporary Service in a different scale of pay i.e. Rs.2610-60-3540 with effect from 1.9.1993 whereas the 8th Respondent with whom the applicant has drawn comparison was engaged in the pay scale of Rs.2550-55-2660-60-3200 and regularized in identical scale of pay, for which protection of pay was extended under DoPT

OM No.49014/4/2007-Estt.(C), dated 09.05.2008. The pay of the applicant is not permissible for protection as clarified by DoPT vide OM dated 21.03.2011.

8. It is also stated in the reply that the applicant has submitted an appeal No.01/1825/2013, dated 21.3.2013 and the same is being examined with reference to the orders issued by nodal Ministry and rules applicable, the applicant in the meantime has filed the present OA. With these submissions, the Respondents pray for dismissal of the OA as the same is devoid of merits.

9. The applicant also filed rejoinder reiterating the pleadings raised in the OA. The applicant also stating that the 8th Respondent who was engaged on Casual Temporary Service in the scale of Rs.2550-3200 was regularized in the identical scale of pay with pay protection, whereas he was working in higher scale of pay ie Rs.2610-3540 was not granted pay protection. Learned counsel for the applicant also relied upon various judgments of the co-ordinate Benches of this Tribunal in support of his contentions.

10. We have heard Mr. Meherchand Nori, learned counsel for the applicant and Mr. V. Vinod Kumar, learned Sr Central Govt., Standing Counsel for Respondents.

11. Learned counsel for the applicant, in support of his contentions, relied upon the following decisions :

(i) S.Santhanam Vs. UoI & Ors, in OA No.224/1993, dt. 13.4.1994 of CAT, Bombay Bench, NO.241 of Swamy's CSase Law Digest 1994/1;

(ii) R.Sambandam & 4 Ors Vs. UoI & Ors, in OA No.250/1993, dt. 1.11.1993, CAT, Madras Bench, No.243 of Swamy's CaseLaw Digest 1994/1;

(iii) P.Kunhiaman Nair v. UoI & Ors, in OA No.541/1994, dt. 20.1.1993, CAT, Madras Bench, No.266 of Swamy's Case Law Digest 1996/1;

(iv) R.N.Udupa & Orsv. UoI & Ors, OA No.572/1993, dt. 13.10.1995, CAT, Mumbai Bench, No.266 of Swamy's Case Law Digest 1996/1 and several other decisions.

12. In para-3 of the application it has been pleaded by the applicant that although Respondent No.8 is junior to the applicant and is working in the same cadre and under the same controlling authority, the applicant is entitled for stepping up of his pay on par with his junior. The applicant has also contended that although the appeal has been submitted to the 4th Respondent on 21.03.2013 vide Annexure-II to OA, the 4th Respondent did not pass any order on the appeal but 6th Respondent passed the order on the appeal petition. The said order is cryptic one and also not reasoned one. The same has also not dealt with the grounds raised by the appellants. The 6th Respondent is not competent to dispose of the appeal of the applicant. In the above circumstances, in fitness of things, it will be in the interest of justice to give scope to the applicant to furnish a fresh representation to the 4th Respondent and the later shall dispose of the said representation by reasoned / detailed order in accordance with law within a period of three months from the date of receipt of the said representation. Therefore the decisions as relied upon by the applicant need not be further discussed in this case.

13. Accordingly the Original Application is disposed of with no order as to

costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)
JUDICIAL MEMBER ADMINISTRATIVE MEMBER

Dated : 10th October, 2018.

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