

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/73/2019

Date of Order: 16.09.2019

Between:

M. Ali Basha
S/o Khaza Hussain
Aged 50 years
Night Watchman
O/o Prakash Nagar Sub-Post Office
Prakash Nagar
Kurnool.

.... Applicant

And

1. The Union of India rep., by its Secretary
Ministry of Communications and IT, Dept. of Posts
Dak Sadan, Sansad Marg, New Delhi.
 2. The Director General Posts, Govt. of India, Dak Sadan
Sansad Marg, New Delhi.
 3. The Chief Postmaster General, Andhra Pradesh Circle
Abids, Hyderabad.
 4. The Post Master General, Southern Region
Kurnool, Andhra Pradesh.
 5. The Superintendent of Post Office, Kurnool Division
Kurnool.
 6. The Post Master, Head Post Office, Kurnool. ... Respondents
- Counsel for the Applicant ... Mr. P. Ramachandra Rao proxy of
Dr. P. B.Vijaya Kumar.
- Counsel for the Respondents ... Mr. D. Satyaveer, Addl. CGSC

CORAM:**Hon'ble Mr. B.V. Sudhakar, Member (Admn.)****ORAL ORDER**

2. The OA is filed assailing the action of the respondents in not disbursing the pay and allowances as per respondents letter dated 22.01.2015.

3. Brief facts of the case are that the applicant joined the respondents organization as Night Watchman (Group D) on 02.01.2007, as per the respondents' order dated 29.12.2006. He was paid Group D pay and allowances from January, 2007 to September, 2010. Accordingly, the pay disbursed to the applicant in September 2010 was Rs.6,617/- Subsequently, pay of the applicant has been reduced and it was paid based on the local rates fixed for wages to be disbursed to local labourers, by the District Collector, Kurnool. The applicant stated that he worked for more than 8 hours and, therefore, as per respondents letter dated 27.04.1999, his working hours have to be properly worked out keeping in view the fact that he performed duties in the night hours. The wages of applicant are also to be revised based on the 6th Central Pay Commission. Against the reduction of wages, applicant represented on 01.10.2010 and

03.02.2011 but in vain. Consequently, applicant filed OA 833 of 2011 which was disposed of directing the respondents to pay wages to the applicant for 7 ½ hours per day based on the rates fixed by the concerned District Collector. Simultaneously, applicant filed OA 832 of 2011 seeking regularization of services which was dismissed by the Tribunal on 24.10.2013. Applicant carried the matter to the Hon'ble High Court in Writ Petition No.9759/2014 wherein it was directed to maintain status quo. The respondents are not revising the wages of the applicant stating that the matter is sub-judice before the Hon'ble High Court. Aggrieved, OA has been filed.

4. The contentions of the applicant are that the respondents have not issued any notice while reducing his pay. Respondents letters dated 22.01.2015 and 1.5.2015, permit payment of Group D salary to the applicant. The Writ Petition filed before the Hon'ble High Court was in regard to regulation of his services and not in regard to revision of wages. This Tribunal in OA 833 of 2011 has acknowledged the fact that the applicant was appointed as Part Time contingent employee. The action of the respondents is against rules and the observation of the Tribunal in the cited OA. Applicant has also cited the verdict of the Hon'ble Ahmedabad Bench of this Tribunal, passed in OA No.214 of 2003, in regard to paid

weekly off for casual workers, and subsequent Government of India instructions on the subject, to buttress his cause. Applicant has cited the Judgement of the Hon'ble Supreme Court in **Sabha Shanker Dube v. Divisional Forest Officer & Others** (Civil Appeal No.10956 of 2018 dated 14.11.2018), in support of his contentions.

5. Respondents in their reply statement have stated that the post of part-time contingent worker was created vide letter 21/22.11.2006. Applicant was indeed appointed as a Part-time Contingent Sweeper cum Night Watchman with working hours from 09.30 pm to 5 am and he joined on 2.1.2007. However, as there was a ban on recruitment of contingent workers/casual labourers as per DoPT OM, dated 7.6.1988, engagement of the applicant as Part-time Contingent Sweeper cum Night Watchman was terminated vide memo dated 19.02.2007. Later, a post of Departmental Night Watchman in the cadre of Group D was created by re-deployment of one post of Group D, to the office in which the applicant is working, vide Memo dated 24.04.2007. One Shri D. Rangaiah, GDSMP was directed to hold additional charge of the Group D Night Watchman post, who in turn, arranged the applicant as substitute in the post of Group D as Night Watchman on his own responsibility. The pay and allowances were paid as Group D substitute from May, 2007 to September, 2010, but from

October, 2010 onwards, due to an audit objection, wages were drawn at Rs.154-68 per day, based on local rates fixed by the District Collector. Consequently, applicant filed OAs 833/2011 and 832/2011 to restore the pay and allowances from October, 2010 and to regularise his services as Group D respectively. As per the orders of the Tribunal in OA 833/2011, the applicant is being paid wages for 7 ½ hours duty as per the rates fixed by the concerned District Collector. Applicant was also paid an amount of Rs.1,97,786/- towards arrears of wages on 14.02.2017. Further contention of the respondents is that the applicant is working in the vacant Group D post as an outsider but not in contingent post. Hence, orders contained in letter dated 22.01.2015 of the respondents are not applicable to the applicant. Moreover, applicant is neither a casual labour nor a contingent worker and is not employed against any post of the department by following any recruitment rules. Applicant is working as outsider in a departmental Group D vacant post, and continued to do so on the basis of the interim orders of the Hon'ble High Court. The other OA No.832/2011, when dismissed by the Tribunal, the same, on being carried to the Hon'ble High Court in Writ Petition No.9759/2014, the Hon'ble High Court ordered to maintain status quo. Respondents banal arguments are that the DoPT and Directorate letters apply to full time and part time casual labourers, who

were employed prior to the ban on recruitment by the Government of India, i.e. from 29.11.1989 and upto 10.09.1993. The applicant being neither a Casual Labour nor the post in which he is working is a contingent post, he is ineligible for the wages sought. Consequently, observations of the Hon'ble Supreme Court in the case cited by the applicant, would not be applicable to the applicant.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The issues for which the applicant has approached the Tribunal are in regard to revision of pay and also in regard to regularization of his services rendered in the respondents organization. Applicant filed OA 832/2011 for regularization of services, which when dismissed by the Tribunal was taken up with the Hon'ble High Court in Writ Petition No.9759 of 2014, wherein it was ordered to maintain status quo till the disposal of the Writ Petition. The second OA No.833/2011 was in regard to revision of pay of the applicant, wherein this Tribunal has ordered to pay wages for 7 ½ hours a day instead of 5 ½ hours, based on the rates fixed by the District Collector. Accordingly, the applicant was paid wages which were far less than what he was getting when he was working in the post of Part Time Contingent Night Watchman for the period from January, 2007 to September, 2010 by discharging the duties associated with Group D post.

The main grievance of the applicant is that since he is discharging duties of Group D post, he is necessarily to be paid wages as are to be paid to the Group D employees, who are discharging similar duties.

(II) Respondents contend that the applicant is neither a Casual Labour nor he was working in any contingent post. In this regard, Tribunal has perused the different orders issued by the respondents. To begin with, respondents have issued a speaking order dated 22.11.2016 rejecting the claim of the applicant stating that the applicant was engaged on outsourcing basis by the respondents for the period June, 2007 to September, 2010. Inadvertently, they have paid wages to the applicant on pro rata basis in the scale of Group D. Respondents state that the applicant was engaged on outsourcing basis in the said post. In the speaking order, it was emphatically stated at para 3 that the services of the applicant were utilized in the vacant Group D post as an outsider. Respondents vide their letters dated 17.05.1989 and 17.06.2016 have given the definition of a Casual Labour, which is extracted herein under:

“2. It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSD's/MMS under different designations (mazdoor, casual labourer, contingent paid staff, daily wager, daily rated mazdoor, **outsider** are to be treated as casual labourers. Those casual labourers who are engaged for a period of 8 hours a day should be described as full-time casual labourers. Those casual labourers who are engaged for a

period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.”

As per the said definition, applicant being engaged as an outsider, as admitted by the respondents, has to be considered as a Casual Labourer. The applicant, as per the said clarification, comes under the category of a Part Time Casual Labourer. For Part Time Casual Labourer, respondents have issued letter dated 22.01.2015, wherein it is clearly stated as under:

“(ii) So far as Part Time Casual Labourers are concerned, their wages would be calculated on pro-rata basis, in terms of hours of duty put in, with respect to the minimum of Pay Band-1 (Rs.5200-20200) i.e. Rs.5200 plus a Grade Pay of Rs.1300/- and Dearness Allowance as admissible from time to time. In addition, the benefit of merger of 50% of dearness allowance would also be admissible in terms of DoPT OM No.49014/5/2004-Estt (C) dated 31.05.2004.

2. The revision as aforesaid in sub paras (i) to (ii) will take effect from 01.01.2006.”

Therefore, as per this order, the applicant is eligible for a minimum pay, i.e. Rs.5200/- in the Pay Band-1 plus Grade Pay of Rs.1300 and Dearness Allowances as admissible from time to time. The respondents have categorically ordered vide letter dated 01.05.2015 to implement the directions laid down in letter dated 22.01.2015. The Hon'ble Ahmedabad Bench of this Tribunal in OA No.214 of 2003 has directed that Casual Labourers be paid one day weekly off. Respondents have implemented the

order of the Ahmedabad Bench of this Tribunal vide letter dated 12.09.2016.

(III) Thus as per the above clarification(s), applicant is to be paid eligible Group D post. However, respondents in the reply statement, take one another objection claiming that the nomenclature of the post held by the applicant is under contest in Writ Petition No.9759 of 2014 before the Hon'ble High Court. Therefore, revision of wages cannot be undertaken. In this context, 1st Respondent, vide letter dated 28.06.2016 has succinctly clarified as under:

“In this regard, it is to inform that the WP No.9759/2014 filed by Sri M. Ali Basha challenging the order dated 24.10.2013 of the Hon'ble CAT, Hyderabad is filed seeking for the regularization of his services as Group-D whereas the present representation dated 11.01.2016 of the applicant relate to the payment of wages as per the instructions contained in the Dte. Lr. No.2-53/2011-PCC dated 22.01.2015. Hence, the question of sub-judice may not arise in the subject matter.”

Therefore, the 1st Respondent has made it abundantly clear that the Writ Petition filed before the Hon'ble High Court has no relation to the payment of wages sought in the present OA, and that the issue is not sub-judice. Despite 1st Respondent's clarification relief was not forthcoming. Left with no other alternative, applicant went on representing. In response, 1st Respondent took a U' turn by intimating on 17.09.2018 that since the case

is pending before the Hon'ble High Court in Writ Petition No.9759/2014, which was filed by the applicant against the order passed by this Tribunal in OA No.832/2011, the revision of wages will be taken up only after the Writ Petition is disposed. It appears that the respondents are dealing with the representations of the applicant without application of mind. They are issuing orders in an inconsistent manner as has been observed above. It is well settled that any order which lacks application of mind is invalid. Without any valid reasons respondents are changing their decisions. Such an approach tantamount to arbitrariness.

(IV) Moreover, a clear reading of the Hon'ble High Court order would make it axiomatic that the applicant has to be paid wages in the post he is working. The order of the Hon'ble High Court was based on the Writ Petition filed by the applicant, wherein he has prayed as under:

“to direct the respondents to continue him as Night Watchman and pending disposal of the above Writ Petition No.9759 of 2014”.

In response to the said prayer, the Hon'ble High Court has ordered, vide order passed in the year 2014 reads as under:

“Status quo as on today shall be maintained.”

Status quo would mean that the applicant is working as Night Watchman in the Group D post created by the respondents. Therefore, he is eligible for wages for discharging duties of Group D. By not paying the wages of

Group D, the respondents have violated the orders of the Hon'ble High Court.

(V) It is not out of place to state that the respondents being a model employer should not exploit the employees who are in a weaker position to bargain for the legitimate due. The legitimate aspiration of employee should not be ignored by exercising power in an arbitrary manner. To every employee hope is precious and a model employer should not belie it but assess the hope with sensibility, sincerity and seriousness, it deserves. More so, the need for a responsible decision becomes paramount, when semi-literate and illiterate employees from the lower rung of the bureaucracy approach the respondents for legitimate relief. Such an endeavour is woefully absent in the present case. De-facto, Hon'ble Supreme Court in regard to the model employer has observed as under:

In **Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors**, [CIVIL APPEAL NOS.8514-8515 OF 2012, decided on 30.11.2012, the Hon'ble Supreme Court observed as under:

"53. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be

deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.”

Thus, based on the above observation of the Hon’ble Apex Court, respondents should not have denied the Group D pay due, since respondents have extracted the work of a Group D employee, from the applicant. Further, having extracted work as a Group D employee from the applicant, respondents can ill afford to pay him wages less than what is due to him, as per Hon’ble Supreme Court direction in **Sabha Shanker Dube** (supra), which reads as under:

“10. The issue that was considered by this Court in Jagjit Singh (supra) is whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj (supra) and Surjit Singh (supra), this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.”

As per the said judgment, the applicant is fully eligible to the minimum pay in Pay Band 1 of the Group D post.

(VII) It is not out of place to state that this Tribunal while disposing of OA 833/2011 did not have the opportunity to consider the different OMs issued by DoPT and respondents organization, dated 5.8.2013, 5.11.2014, 17.6.2016, 19.7.2016, etc. which are later to the judgement of the Tribunal in regard to payment of wages. Therefore, the Tribunal could not, at that juncture of time, issue any order other than payment of wages for the hours the applicant worked as per District Collector rates.

(VIII) Respondents reply statement has a plethora of self contradictions, as is evident from the fact that the 1st Respondent changing his stand in regard to payment of wages vis-à-vis Writ Petition filed in Hon'ble High Court, respondents equate an outsider as a casual labour but speak differently in the speaking order, do not heed to the legal advise of Shri D. Madhava Reddy, Addl. CGSC, CAT, Hyderabad in regard to the appointment of the applicant as brought out in Annexure VII, para 4 but take a stand which is legally untenable. Decision taken are contrary to rules framed by themselves. Respondents may have to be uniform, consistent and fair in their approach, by following rules and regulations laid down. Hon'ble Supreme Court has not taken to kindly in regard to violation of rules in a catena of Judgements as under:

- a) The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K.Nayyar** (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules".
- b) Again in **A.N.Sehgal & Anr. v. Raje Ram Sheoran & Others**, (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed."
- c) In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules"

Serious violation of rules as pointed out in the previous paras was observed in the present case, thereby, going against the letter and spirit of the Hon'ble Apex Court directions cited supra.

(IX) Lastly, it must be adduced that the applicant having discharged the functions of a Group D, it would be his legitimate expectation to seek pay as is associated with the said post. Due weight need to have been given to the legitimate expectation of the applicant before denying the relief he sought, and by not doing so it has amounted to abuse of power questioning the bona-fide of the decision. A reasonable legitimate expectation may not be a right but by not taking cognizance of the same, in arriving at a decision adverse to the applicant, would certainly infringe the principle of non-arbitrariness. Arbitrariness is manifested in the decision of the respondents by denying a benefit to the applicant for which he was

entitled as per law and rules. Tribunal taken support of the direction of the Hon'ble Supreme Court in Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries (1993) 1 SCC 71, as under, while making the observation cited supra:

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: A public authority possesses powers only to use them for public good. This impose the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in

this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.”

(X) To sum up, as can be seen from the above, respondents have violated their own rules and acted against the judgement of the superior judicial forums. In particular, they have not acted in accordance with the interim order of the Hon’ble High Court, passed in the year 2014. Consequently, applicant has made out a case, which fully succeeds. Therefore, respondents are directed to consider as under:

a) to pay the applicant as per the minimum pay of the pay scale in the Group D post, in which he is presently working along with Grade Pay of Rs.1300 plus DA admissible, as per the Directorate letter dated 22.01.2015.

b) Arrears of pay and allowances be paid from the date due, i.e., October, 2010, based on (a) above, after deducting the amounts already paid towards wages.

c) The time allowed to implement the order is 3 months from the date of receipt of a copy of this order.

d) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 16th day of September, 2019