

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1185 of 1999

New Delhi, this the 30th day of July, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Munna Lal Sonakiya S/o Shri Dhrub Ram
R/o C/o Shri Shiv Ram Thekedar,
E-41 Ganesh Nagar,
Pandav Nagar Complex,
Delhi-110 092.

-APPLICANT

(By Advocate: Shri D.P. Sharma)

Versus

1. Union of India
Through Secretary,
Min. of Communication,
Department of Tele-Communication,
Sanchar Bhawan,
New Delhi.
2. The Telecom District Manager (TDM)
Civil Lines, Mathura.
3. The Divisional Engineer Phones (E-10-B),
Dampier Nagar, Mathura.
4. The Sub-Divisional Engineer (E-10-B),
Dampier Nagar Mathura.

-RESPONDENTS

(By Advocate: Shri R.P. Aggarwal)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

This is an application filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 whereby he is praying that a direction be given to the respondents to re-engage the applicant as a temporary status casual labour from the date of completion of 240 days of service in a year, i.e., from August, 1992 and thereafter he may be regularised against a vacant post.

2. Facts, as alleged by the applicant are that he had joined as a full time casual labourer of AC and Generator Operator Telephone Exchange Mathura in December, 1991 under the respondent No. 4 where he worked

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upto December, 1992 and was being paid a sum of Rs.1050/- per month as a casual labour on a paying receipt. Thereafter he was engaged in March; 1993 as a full time casual labour for the work of the nature of Group 'D' under the respondent No.4. He was paid Rs.1500/- per month on a paying receipt and since then he has been continuously working as a casual labourer and had worked upto 24.4.98 and his services had been terminated w.e.f. 25.8.98 so the applicant claims that since he has rendered service as a casual labourer from December, 1991 to 24.8.98 on a meagre sum of Rs.1500/- per month so he is entitled for status of a temporary worker from the date he has completed 240 days and be regularised in accordance with the scheme of the Telecom Department. 23

3. The respondents are contesting the OA and pleaded that the applicant has never been engaged as a casual or regular employee in Mathura Telecom. He had been called to attend the AC unit as and when required as he was knowing the repair work of AC plant and his services were being hired on purely temporary contract basis and he was never been given payment on monthly/weely/daily basis nor has any commitment been made by the respondents to absorb him casually or permanently, hence no question of terminating his services arise.

4. Rejoinder to this was also filed. In the rejoinder the applicant has reiterated that he had worked as a casual labourer in E-10 Section of Telephone Exchange Mathura on the basis of monthly payment at a

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daily rate basis as a casual labourer. It is also stated by him that the main log book and general log books which was signed by him were checked from time to time by the JTO and Assistant Engineers and he has also annexed along with the rejoinder, the photocopies of the same log books. It is denied that he had worked under a contractor or had been appointed by the contractor.

5. A reply to this rejoinder was also filed by the department. It is again denied that the applicant has never worked as a casual labourer in E-10-B Exchange Telephone Exchange, Mathura rather it is stated that the section where the applicant alleges to have worked is, in fact, the name of Electronic type of Exchange and no casual labourer is or was needed in E-10B Section even for cleaning. The A/C Plant is needed to maintain the temperature of the Exchange at a optimum temperature as the AC Plant is being run round the clock. It is also submitted that the documents relied upon by the applicant placed on record do show that the applicant was employed by a contractor to look after the maintenance of AC plant but had never worked as a casual worker.

6. Additional reply was also filed whereby certain documents has been placed on record which show that lump-sum payment was made to the applicant for the work which he was performing in the A/C plant but had never been called to work on a daily rated basis or on casual labour basis.

7. The respondents have also placed on record certain documents i.e. the contract which was entered into between a contractor and the respondents and in the said contract applicant has signed the same as a witness to the contract/agreement as a witness of contractor. 25

8. I have heard the learned counsel for the parties and gone through the records.

9. The short question in this case is whether the applicant had been engaged as a casual labourer or had been working as a employee of the contractor for doing certain repairing jobs. The fact that the applicant had ever worked as a casual labourer is not supported by any document by the applicant, though the applicant has placed on record certain log books which show that the same bears the signatures of JTOs and Assistant Engineers but that does not show that the applicant had been engaged as a casual labourer on daily rated basis. The fact that the applicant had worked is not denied by the respondents because the respondents themselves have stated that the applicant was employed by a contractor and the contractor was assigned the work of maintenance of AC plant etc. and it is admitted that the applicant worked there during the period 1992-93.

10. The main emphasis of the applicant is on the documents filed by the respondents along with the additional reply which are certain receipts on the basis of which certain payments were received by the applicant. The applicant claims that he has been employed on monthly basis as a casual worker but whereas the claim of the

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respondents is that these payments were being made as and when the applicant was called upon to do certain repair jobs. I have gone through these receipts and I may mention that the applicant cannot be said to have worked continuously from December, 1992 upto 24.8.98. Even the receipts relied upon by the applicant are also not for continuous periods but are for broken periods. These receipts in categorical terms state that the payments have been made to the applicant on account of work done in the A/C plant on contract basis and since these receipts are also not for continuous periods so this also goes to show that the applicant had been called from time to time to do the work in the A/C plant on contract basis. Hence no reliance can be placed on the same, to hold that applicant worked as a casual worker on daily wage basis.

11. The counsel for the applicant has also referred to a judgment in the case of Aswar Rajnikant Karsanbhai vs. U.O.I. and Others, reported in 502 Swamy's CL Digest 1995(1) wherein it was held as follows:-

" On the consideration of above facts and legal position, we come to the conclusion that the basis of recruitment of the applicant through contract, as is envisaged in Annexure A-1, is illegal and violative of Article 14 of the Constitution of India and is, therefore, quashed. We hold that the applicant shall be deemed to have been engaged as casual labourer to discharge the same duties which are also discharged by the regular employees. He is, therefore, entitled for regularisation and for the same pay scale which is available to similarly situated casual labourers or the employees on regular side. We, therefore, direct that the applicant shall be regularised with the department of the respondent within a period of three months on the basis of the Rules meant for the purpose. If there are no Rules, then regularisation shall be made on

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the basis of guide-lines which had been prescribed by the Hon'ble Supreme Court in the case of State of Haryana and Others VS. Piara Singh and Others (1992) 4 SCC 118. Here we would also like to direct the respondents about the payment of wages as are given to the regular employees. We shall base our conclusion in this respect on the formula adopted by the Hon'ble Supreme Court in the case of R.K. Panda and Others Vs. Steel Authority of India, 1994 SCC (L&S) 1078. In this case the question of absorption and of payment of wages of the contracted labourers was involved. Their Lordships directed that all such labourers should be absorbed but they would not be entitled to the difference in their contractual and regular wages till the date of his absorption. It was, however, held that after absorption as regular employees they should be paid wages, allowances, etc. on par with their counter-parts working as regular employees with the respondents. We, accordingly, direct that the wages of the applicants shall be given from the date of absorption/regularisation and he shall not be entitled to be difference of his contractual and regular wages till such date of absorption".

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12. This judgment does not apply to the present facts of the case. In that case an employee was engaged to perform the job of Class-IV employee. There is no specification of the job mentioned in the said case rather the employee was performing the duties of class-IV whereas in the present case the employee was looking for the specific job of repairing of AC plant and an individual doing such type of work can be said to be engaged in the on contract basis, so I find that there is nothing on record to substantiate that the applicant had ever been engaged on daily rate wage basis or casual basis. This court has also held in OA Nos. 195/2000 and 1739/99 that the applicants employed through contractor cannot be regularised.

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13. In view of the above I do not see any reason to differ with the judgments given in OA 195/2000 and 1739/99. Thus I hold that the OA has no merits and the so the same is hereby dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh