

(16)

Central Administrative Tribunal
Principal Bench

O.A. 942/99

New Delhi this the 3rd day of April, 2000

Hon'ble Smt. Lakshmi Swaminathhan, Member(J).

Sunil Pal,
S/o Shri O.P. Pal,
R/o House No. WP-134E, Shakarpur,
Ganesh Nagar,
Delhi.

... Applicant.

Applicant in person.

Versus

1. Union of India through
its Secretary,
Ministry of Communication,
Department of Telecommunication,
Sanchar Bhawan, New Delhi.
2. Chief General Manager,
Telecom Project North Zone,
Kidwai Bhawan, Janpath,
New Delhi.
3. General Manager,
Telecom Project, Department of
Telecom, Lucknow.
4. Director Telecom Project,
IV Floor, Tax Bhawan,
Agra.
5. Divisional Engineer,
Telecom Project,
Ground Floor, Tax Bhawan,
Agra.

... Respondents.

None for the respondents.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the action of the respondents in dis-engaging him from service, without giving him any retrenchment notice or compensation in violation of the provisions of Section 25 F of the Industrial Disputes Act, 1947 and in neither conferring temporary status nor absorbing him in service.

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2. A preliminary objection has been taken by the respondents that the issues raised in this case do not fall within the jurisdiction of the Principal Bench, as the permanent address of the applicant is House No. 30/130, Park Road, Raja Mandi, Agra, which is also given in paragraph 4.1 of the O.A. In the affidavit filed by the applicant, who is present in court today, he has stated that after his disengagement from the services of the respondents in February, 1999, he has been residing in Delhi with his uncle Shri Lalit Pal at House No. WP-134E, Shakarpur, Ganesh Nagar, New Delhi. He has received a registered AD letter sent by Shri Rajiv Bansal, learned counsel for the respondents, at the aforesaid address and he has attached the registered AD envelope with the affidavit. Taking into account these facts and circumstances, the preliminary objection raised by the respondents regarding the territorial jurisdiction of the Tribunal, Principal Bench, is rejected.

3. The brief relevant facts of the case are that the applicant states that he was initially engaged as a casual driver after screening in April, 1994 with the respondents. According to him, he was engaged on 27.11.1996 as casual driver under Respondent 4 at the rate of casual labourer employees. He has submitted orally today that he was being paid @ Rs.124/- per day as a casual labourer and sometimes, he was required to drive the departmental vehicle and ^{at times} the other times he was required to do other work assigned by the departmental ^{officers.} According to the applicant's averments in the O.A. he has continuously discharged his duties satisfactorily from 27.11.1996 and has completed 240 days of continuous service in each year. He has, therefore, prayed

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that he should be granted temporary status and regularisation under the relevant Scheme issued by the respondents/Department of Telecommunication which came into effect from 1.10.1989. He has submitted that on the contrary, the respondents have disengaged him from service in ^{an} arbitrary and illegal manner. During the hearing held earlier when Mrs. Rani Chhabra, learned counsel, was present on behalf of the applicant, she had submitted that she does not press the reliefs arising under the provisions of the Industrial Disputes Act. It was in that context that on the preliminary objection taken by the respondents initially on the jurisdiction of this Tribunal, Principal Bench, to deal with the case, directions were issued on 22.2.2000 to the applicant to bring on record some reliable documents to controvert the averments made by the respondents.

4. In the reply filed by the respondents, they have submitted that the applicant was engaged in service as a daily wager on the basis of the need of work of the respondents in discharging the functions in the Telecom project work. They have also submitted that as and when the project work is completed, the services of the casual employees are also liable to be terminated. They have shown the break up of the work done by the applicant from 27.11.1996 till 23.1.1999. However, they have submitted that the applicant has not furnished any proof of the alleged screening in April, 1994 to November, 1996, but this is a matter which the respondents should have verified from their records and denied, if they had, in fact, not held any screening as alleged by the applicant. The respondents have also submitted that the applicant has never worked for a year and even otherwise he has not completed 240 days of

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continuous service. They have also submitted that in any case he is not covered under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1989, as the said Scheme is applicable to casual Mazdoors and not to casual driver as the post of driver is a Group 'C' post and separate rules exist for recruitment of drivers.

5. The applicant has relied on the order of the Tribunal in Ashok Kumar Vs. Secretary, Ministry of Communication and Others (OA 166/1997), decided on 26.8.1998 (copy placed at pages 31-40 of the paper book). The respondents have submitted that the decision relied upon by the applicant has no relevance to the facts of the present case. It is, however, seen that in that case also the applicant was working as a driver who was also aggrieved by the action of the respondents in not regularising his services though he has been working in the same capacity for more than three years. In the present case, the applicant has submitted that he has been paid as a casual labourer sometime for working as a driver and at other times in any job assigned to him for which he has been paid as a daily wage labourer at Rs.124/- per day. The respondents have also not denied the fact that he had been working as a Lorry driver from time to time between 27.11.1996 to 23.1.1999 in the project work. It is not clear from the reply filed by the respondents whether by engaging the applicant as a driver they have actually paid him the salary attached to the Group 'C' post or have only paid him on ^adaily wage post @ Rs.124/- per day, as submitted by the applicant. This is a matter of record which will be for the respondents to verify. The Scheme issued by the Department of Telecommunication in 1989 refers to casual labourers employed by them and deals with

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illiterate casual labourers and others. The contention of the respondents that the Scheme formulated by them in 1989 does not apply to Group 'C' but only to Group 'D' category of staff has been considered by the Tribunal in Ashok Kumar's case (supra). In the order dated 26.8.1998, the Tribunal had also referred to another Scheme of the Ministry of Communication dated 10.9.1991. In the order, the Tribunal, therefore, held that the applicant's claim for consideration of temporary status/regularisation cannot be denied in terms of the above Scheme. The contention of the respondents that the Tribunal's order dated 26.8.1998 has no relevance to the facts of the present case, cannot be accepted as the facts are indeed similar. The respondents have submitted that they have been engaged as daily wagers on the basis of the need of work and have been discharged whenever the project work is completed.

6. In the circumstances of the case, as observed in the earlier case disposed of by order dated 26.8.1998, it is for the respondents to check up whether the applicant possesses the requisite qualification and experience for considering him for regularisation or grant of temporary status in terms of the rules and provisions of the aforesaid Scheme issued. It is not the case of the respondents that the judgement of the Tribunal in O.A.166/97 has either been set aside on appeal or they have not implemented that order. The applicant has controverted the submissions made by the respondents in their reply that he had left the work on his own but has stated that in fact after 6.2.1999 he was not allowed to work. The respondents have not stated whether

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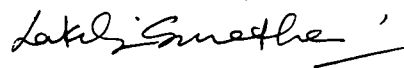
they have any on going project in which they could reconsider engaging the applicant in accordance with the rules and instructions.

7. In the circumstances, this O.A. is disposed of with the following directions:

(i) Respondents shall verify their records in terms of their own Schemes issued in 1989 and 1991 and in case the applicant satisfies the terms and conditions laid down therein, he may be granted regularisation and other benefits. This shall be done within a period of two months from the date of receipt of a copy of this order by a reasoned and speaking order with intimation to the applicant,

(ii) In case the respondents have any work of the nature the applicant was doing earlier as a daily wager with them, and in case the applicant makes an application for being considered for re-engagement, they may consider re-engaging him as a daily wager in preference to outsiders and freshers;

(iii) It is, however, made clear that during the period he has been disengaged, the applicant shall not be entitled to any back wages or continuation in service. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'