

Central Administrative Tribunal  
Principal Bench

(7)

J.A. No. 1455/95  
PT No. 198/95

New Delhi, this the 13th day of Feb., 1996

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)  
Hon'ble Shri R.K.Ahooja, Member (A)

1. Jagdish Prasad Mishra,  
s/o Shri S.N. Mishra,
2. Rama Prasad Mishra  
s/o Shri Ram Sadam Mishra,
3. Anil Kumar Mishra  
s/o Sh.Rameshwar Prasad Mishra.
4. Shambhu Nath Pal  
s/o Shri Ram Das Pal.

All residents of Telecom Centre,  
Rudrapur, Nainital Distt.(U.P.)

...Applicants

(By none)

Versus

1. Union of India,  
through its Secretary,  
Ministry of Communications,  
Sanchar Bhawan, Ashok Road,  
New Delhi.
2. The Chief General Manager,  
Department of Telecom,  
UP Circle,  
Lucknow.
3. The T.O.M. Head Office,  
Haldwani,  
Distt. Nainital,  
Uttar Pradesh.
4. Sub Divisional Engineer,  
Telecom Centre,  
Rudrapur, Distt. Nainital,  
Uttar Pradesh.

...Respondents

(By Shri M.M.Sudan, Advocate).

ORDER (Oral )

(8)

By Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

1. The applicants, four in number, were engaged during the year 1986, 1987 and 1988 under the second respondent and thereafter they remained without being engaged. Since they were not engaged, they filed O.A. No. 2172/88 and when the above case came up for hearing, it was disposed of directing the respondents that the applicants, shall, as far as possible, be considered for regularisation in accordance with their length of service/seniority and the vacancies available. It was also observed that the respondents should follow the principle of 'last come first go' in the event of non-availability of enough vacancies to accommodate all the applicants as casual labourers. It is alleged in the application that pursuant to the above order, the Chief General Manager, UP Circle, Lucknow passed an order dated 21.12.1993 for settlement of the dispute and pursuant thereto on 8.2.1994 an order was passed by the respondent No. 3 directing reengagement of all the four applicants in the department and stating that they were allowed to be engaged as casual labourers under Nainital Sub Division subject to the condition that they produce satisfactory proof of age, work days etc. Therefore, pursuant to this order, the applicants were re-engaged in February, 1994.
2. The grievance of the applicants arose when their services were terminated by order dated 21.7.1995 on the

(9)

ground that for want of work they are being retrenched. It is alleged in the application that the impugned order dated 21.7.1995 effecting retrenchment of the applicants is unsustainable in law since the requirements of Section 25-F of the Industrial Disputes Act have been totally ignored by the respondents as no notice or **said** compensation as required under **the** provision, has been given to the applicants. The applicants, therefore, seek **all** to quash the impugned order with/ the consequential benefits and have also prayed that the respondents may be directed to continue the applicants in service and to consider them for regularisation in accordance with the Scheme.

3. The respondents in their reply contended that the applicants remained absent for a number of years as intimated in the reply and that since the applicants were not in service on the date on which the Scheme for grant of temporary status and regularisation was introduced, the applicants are not entitled to the reliefs, prayed for. However, they have stated in the reply that the order of retrenchment has been recalled and orders for re-employment of the applicants have already been issued.

4. Since none appears for the applicants, though called twice, we have perused the pleadings available on record and heard Shri M.M.Sudan, counsel for the respondents. The contention of the respondents that the applicants are not entitled to be considered for the grant of temporary status and for regularisation on the ground that they remained absent for a number of years is unsustainable.

....4....

M

10

When the applicants were kept out of service, they filed O.A. No. 2172/88 and it was pursuant to that order the applicants were re-engaged in the service in Feb., 1994. In the order in O.A. No. 2172/88 there was a direction that the applicants should be considered for regularisation. Therefore, the case of the respondents that the applicants remained absent and that therefore, are not entitled to the reliefs, has to be rejected. Since, even according to the respondents, the applicants were re-engaged in service w.e.f. Feb., 1994, the impugned order dated 21.7.1995 without conforming to the provision of Section 25-F, Industrial Disputes Act amounts to illegal retrenchment and, therefore, it is liable to be set aside. There is no case for the respondents that the respondents have complied with the mandatory provision of Section 25-F of the Industrial Disputes Act. Any retrenchment without compliance with the above said provision is unsustainable in law and is liable to be struck down.

5. The fact that the respondents have also issued orders for re-engagement of the applicants cancelling the order of retrenchment does not affect the applicants' relief viz declaration that the order dated 21.7.1995 is invalid in law.

6. In the <sup>light of</sup> ~~re~~ what is stated above, we set aside the orders dated 21.7.1995 issued by the respondents, on the ground that it is in violation of the mandatory provisions contained in Section 25-F of the Industrial Disputes Act. Since the applicants have already been re-engaged, we direct the respondents to continue them in

...5...

W

(V)

engagement and to consider them for grant of temporary status and regularisation in accordance with the Scheme and in accordance with Rules and instructions. If on account of long gap in the engagement of any of the applicants relaxation by the competent authority is required we direct that considering the fact that gap was caused by respondents not engaging the applicant the competent authority shall grant the required relaxation. The respondents shall continue the applicants in engagement subject to availability of work and if for any reason their retrenchment becomes inevitable, it should be done only in accordance with law. There is no order as to costs.

Ahobja  
(R.K.Ahobja)  
Member(A)

A.V.Haridasan  
(A.V.Haridasan)  
Vice-Chairman(J)

na,