

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

DA No.143/94, with DA 444/94, DA 1442/94,  
DA 1443/94, DA 1659/94 and DA 1873/94

New Delhi, this 4<sup>th</sup> day of August, 1999

Hon'ble Shri A.V. Haridasan, Vice-Chairman (J)  
Hon'ble Shri S.P. Biswas, Member (A)

DA 143/94

1. Umesh Chand Giri  
F-86, Sector 40, Noida
2. Lokesh Kumar  
342, Jatwara, Ghaziabad
3. Ramesh Chand  
C-64, Sector 40, Noida
4. Sushil Kumar  
86, Sewa Nagar  
Meerut Road, Ghaziabad
5. Bhup Dutt Sharma  
86, Sewa Nagar  
Meerut Road, Ghaziabad

.. Applicants

(Through Shri B.K. Aggarwal, Advocate)  
- Shri Rajeev Bansal, Proxy  
Vs.

Union of India, through

1. Chairman  
Telecom Commission  
New Delhi
2. General Manager  
Dept. of Telecommunications  
Raj Nagar, Ghaziabad

.. Respondents

(Through Shri K.R. Sachdeva, Advocate)

DA 444/94

Tej Singh  
Maharani Bagh JTO  
New Delhi

.. Applicant

(By Smt. Rani Chhabra, Advocate)

Vs.

Union of India, through

1. Secretary  
Dept. of Telecommunications  
New Delhi
2. DET (NCC)  
9th Floor, West Wing  
Chandralok Building, Janpath  
New Delhi
3. Assistant Engineer (NCC)  
Chandra Lok Building  
Janpath, New Delhi

.. Respondents

OA 1442/94

Ramesh Chand  
Village Kajalpur  
P.S. Barla, Dt. Aligarh

.. Applicant

(By Smt. Rani Chhabra, Advocate)

Vs.

Union of India, through

1. Secretary  
Dept. of Telecommunication  
New Delhi
2. General Manager Telecom  
Ghaziabad
3. Asstt. General Manager (A)  
Telecom Dt. Ghaziabad
4. Sub-Divisional Officer  
Telegraphs, Bullahshahr

.. Respondents

(By Shri K.R. Sachdeva, Advocate)

OA 1443/94

Ram Kawar  
C/104, Sector 23  
Dt. Ghaziabad (UP)

.. Applicant

(By Smt. Rani Chhabra, Advocate)

Vs.

Union of India, through

1. Secretary  
Dept. of Telecommunication  
New Delhi
2. General Manager Telecom, Ghaziabad
3. Asstt. General Manager (PCM)  
Raj Nagar Telephone Exchange  
Dt. Ghaziabad

.. Respondents

OA 1659/94

Jagvir Singh Rathi  
Vill. Pondari, PO Shahari Nagar  
Dt. Bullahshahr

.. Applicant

(By Smt. Rani Chhabra, Advocate)

Vs.

Union of India, through

1. Secretary  
Dept. of Telecommunication  
New Delhi
2. General Manager Telecom  
Raj Nagar, Ghaziabad
3. Asstt. General Manager (A)  
Telecom Dt. Ghaziabad
4. Sub-Divisional Officer  
Telegraphs, Bullahshahr

.. Respondents

(By Shri K.R. Sachdeva, Advocate)

OA 1873/94

Rohtas Kumar  
E/128, Mohammedpur  
R.K.Puram, New Delhi .. Applicant

(By Smt. Rani Chhabra, Advocate)

versus

Union of India, through

1. Secretary  
Dept. of Telecommunication  
Sanchar Bhavan, New Delhi
2. Assistant Engineer Phones(XM)  
SHE L-86 Exchange  
Shahdara East Division, Delhi
3. Sub-Divisional Officer Phones II  
Noida Division, Noida .. Respondents

(By Shri K.R.Sacdeva, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The issues raised and the reliefs claimed for in these six Original Applications are identical and hence they are being disposed of by a common order.

2. In order to bring out the legal issues involved on sharp focus, we consider it appropriate to indicate the brief background facts in all these OAs.

OA No.143/94

3. All the five applicants were initially engaged as daily rated casual Drivers on various dates between 3.11.87 and 5.9.88. As they completed 240 days of work (206 days in case of office observing 5-days-a-week), they have approached this Tribunal seeking reliefs in terms of issuance of directions to the respondents to regularise their services as Drivers from the date vacancies were available. While the OA was pending decision, it is seen that out of 5 applicants, services

5. of as many as four applicants have been regularised vide order dated 30.6.94 as per counter reply filed by the respondents on 6.12.94. Services of only one candidate namely, Ramesh Chand (No.3 in the OA) could not be regularised since he could not qualify in the required test for the job of Driver. (3)

OA 444/94

4. The applicant was recruited as casual Motor Driver in February, 1992 and continued to work in the said capacity upto March, 1994. Following his sickness, there has been break in service after March, 1994 but the applicant claims to be in employment till date although in the records of the respondents, he has been shown as having been retrenched. As per applicant he continues to be in employment but the payment is being made to him in the name of some other person. Despite repeated requests, respondents did not even confer on him temporary status. Applicant continues getting payment @ Rs.71.10 per day, although works as a Driver. Here again, the reliefs prayed for relate to directing respondents for regularisation of his services as Motor Driver.

OA 1442/94

5. This OA has been filed by one Shri Ramesh Chand, who in fact was one of the applicants in OA 143/94 also. He had failed in the driving test on account of which temporary status could not be granted. Although the reliefs prayed by him are identical like those of the applicants in two OAs aforementioned, we are not required to adjudicate his claim since he had not come with clean

hands by filing a separate OA, when the other one is still pending. That apart, the learned counsel for the respondents submits at the bar that he had since expired. This OA has, thus, become infructuous.

(X)

OA 1443/94

6. The applicant was initially engaged as daily rated casual Lorry Driver in 1988 on being sponsored by the Employment Exchange. He claims to be in possession of necessary qualifications for the post and has also completed more than four years by 1994. Accordingly, he applied for regular appointment as Lorry Driver but could not come successful in the test that he undertook alongwith 14 others. Applicant alleges discrimination on account of juniors having been engaged as casual drivers ignoring his superior claim as senior.

OA 1659/94

7. The applicant was recruited as Motor Driver on 1.11.90. He has been continuously working for more than 3 years without any break and still continues in employment. He continues to receive payment on ACG-17 basis. After receiving application forms from several candidates, respondents conducted written examination which was followed by interview. The applicant appeared in them but failed to qualify in the test.

AB



8. The applicant was initially recruited as casual Lorry Driver under the respondents in July, 1991. He continued working for more than 3 years and was retrenched with effect from August, 1994 without any notice. Applicant alleges inaction on the part of the respondents in not regularising his services in Group 'C' category though he is qualified for the job. Respondents have submitted that the applicant herein is absconding since August, 1994 and hence action in the matter could not be taken.

9. Mrs. Rani Chhabra, learned counsel for the applicants came up with the following grounds in favour of her pleas for regularisation of the applicants in the capacity of Lorry/Truck/Motor Drivers in Group C.

Learned counsel drew our attention to the judicial pronouncements of the apex court in the case of Daily Rated Casual Vs. UOI & Ors. (1998) 1SCC 122 to highlight that applicants' claim for conferment of temporary status as well as regularisation are well covered by the aforesaid order. She has also challenged retrenchment/dis-engagement of some of the applicants as Drivers on the plea that the actions of the respondents are in violation of Section 25(F) of the Industrial Disputes Act, 1947 inasmuch as no notice was served on the applicants and even compensation was not paid as per provisions of the aforesaid Act. Department of Communication being declared as an Industry, respondents' action in terminating the services of some of the applicants after utilising their services for more than 240 days is void ab-initio in terms of section 25(F) of the ID Act.

Q.P.

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10. Learned counsel for the applicants drew our attention to the orders of this Tribunal in OA 166/97 decided on 26.8.98. That was the case where the applicant therein had the experience of working for 4 years as casual driver and fulfilled all the conditions necessary for permanent absorption. To add strength to her submissions that such directly recruited temporary/casual drivers in group 'C' category could be regularised, she cited the decision of Madras Bench of the Tribunal in B.Srinivasan & Ors. Vs. UOI & Ors. reported in ATR 1992(2) CAT 89 decided on 28.1.92.

11. In the counter, the counsel for the respondents has taken the plea that the Scheme of the Department of Telecommunication called "Casual Labourer (grant of temporary status/regularisation) Scheme, 1989 which came into force on 1.10.89 does not apply in the present cases since the applicants are in Group 'C' category. In other words, 1989 scheme of the respondents herein is applicable to Group 'D' category staff engaged in the capacity of casual labourers. Learned counsel for the respondents cited the decision of this Tribunal in the case of Dhirender Singh Vs. UOI (OA 2/97) decided on 24.9.97 to advance his contentions that applicants being Drivers come in Group 'C' and the Scheme referred to by the applicants is entirely meant for Group 'D'. Shri Sachdeva also drew our attention to the order of this Tribunal in OA 410/98 decided on 2.7.99. That was the case where Computer professionals and skilled workers working as casual data entry operators had prayed for temporary status/regularisation in 'C' category. The

applicants' claims therein were denied since they were found to have been engaged against project work having been hired for a specific period and work.

12. The issue that falls for determination is whether an employee appointed as casual lorry/motor driver on daily wage basis in category C, like the applicants herein, could be considered for regularisation straightaway in group 'C'. We find that all the issues raised herein stand examined in a number of OAs by different Benches of this Tribunal. These are OA 166/97 decided on 26.8.98 and OAs No.78, 264, 1354, 1443/99 decided on 23.7.99. However, determination of this issue need not detain us any longer in the background of the judgement of the apex court in the case of V.M.Chandra Vs. UOI JT 1999(2) SC 594. The appellant therein was initially engaged as a Technical Mate on daily rate of Rs.6.70 w.e.f. 23.8.76. She attained temporary status in 1981. When the appellant represented that she has not been regularised status in Group C, the Chief Engineer took the plea that she was not entitled to be employed in Group C category. The Tribunal had earlier examined the case and found it difficult to give relief and dismissed the application filed by the appellant. The apex court noted that "considering the long period of service the appellant had put in and the qualification possessed by him namely Diploma in technical subject, it would certainly entitle her to be absorbed as skilled Artisan in Grade III in the scale of Rs.950-1500 against the post available in respect of direct recruitment quota. If this aspect has been taken by the Chairman/Railway Board, we do not think that he would have rejected the case of the appellant". The apex court allowed the appeal, set aside the order of

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attained temporary status or are due for temporary status in terms of respondents' Scheme of 1989. We also find that the respondents therein have also appointed Drivers directly in grade 'C' by resorting to direct recruitment but confining the selection only to SC/ST candidates as a measure of filling up of backlog. It is not denied that respondents do have a provision for filling up the posts of "Drivers" in grade C for certain percentage of posts against promotional quota. In fact, they did carry out such an exercise in June, 1994 when four such casual drivers were regularised by means of promoting them against departmental promotional quota. We do not find any reason as to why those eligible candidates could not be offered similar reliefs.

133. In the background of the aforementioned details, we dispose of these OAs with the following directions:

(i) Those of the applicants who have failed in the requisite Driving/trade test or do not fulfill the necessary qualifications will have no claim for regularisation. Based on this, OA Nos.1443/94 and OA 1659/94 deserve to be dismissed and we do accordingly.

(ii) OA 1442/94 is dismissed for having become infructuous on account of the reported death of the applicant as well his action in filing a second application when the earlier one is pending decision in this Tribunal.

(iii) Claims of applicants in OA 143/94 do not require any adjudication since the reliefs have

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already been provided to four of them. In respect of applicant No.3 the decision at sub-para (ii) aforesaid shall hold good;

(iv) Based on the position of law and instructions available on the subject, OA Nos.444/94 and 1873/94 merit consideration. We allow them partly. Applicants therein, if continuing with respondents, shall be considered for grant of temporary status/regularisation alongwith others in terms of the Scheme of 1989 subject to their passing the driving test and fulfilling other necessary qualifications. Till such regularisation is allowed, applicants therein shall be ~~subject to availability of work~~ re-engaged/allowed to continue and shall be paid <sup>^ hand</sup> remuneration as per rules. While considering so, their earlier experience shall be taken into account and relaxation of age, if any, shall be provided in deserving cases. For the purpose of casual engagement, they shall have preference over freshers and newcomers.

(v) All the OAs are disposed of as aforesaid, but without any order as to costs.

  
(S.P. Biswas)  
Member(A)

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

/gtv/