



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.762 /2000

New Delhi this the 13th day of October, 2004

Hon'ble Mr. S.K. Malhotra, Member (A)

Krishan Kumar,
S/o late Shyam Bihari Lal,
R/o Satyavati Bhawan,
Raghuvir Puri,
Aligarh.

.... Applicant.

(By Advocate Shri Surat Singh)

Versus

1. Union of India,
through its Secretary,
Ministry of Communication,
Department of Telecommunication,
Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom
Dept. of Telecommunications,
Windless Complex Rajpur Road,
Dehradun.
3. General Manager, Telecom
Dept. of Telecommunications,
Pahasu House, Near Tasvir Mahl,
Aligarh.
4. Telecom District Manager,
Dept. of Telecommunication, Aligarh.
5. Divisional Engineer Phones,
Civil Ist,
Main Telephone Exchange,
Aligarh.

.... Respondents.

(By Advocate Shri M.M. Sudan)

ORDER

Shri S.K. Malhotra, Member (A).

This O.A. has been filed by the applicant with the prayer that the respondents may be directed to confer temporary status upon him, in accordance with the relevant Scheme from the date he became eligible, and grant him all consequential benefits.

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2. The facts of the case, in brief, are that the applicant was initially engaged in the respondent Department i.e. Department of Telecommunication in April, 1993 as Group 'D' casual labour and was assigned the duties of a peon. He claims to have worked upto January, 1996, completing 206/240 days in each year. In January, 1996, his services were disengaged on the ground that there was no work. He claims that he was re-engaged in July, 1997 and was continuously working till filing of the OA in March, 200 . It has been pleaded that the Department of Telecommunications had formulated a Scheme known as 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme in 1989 which came into effect on 1.10.1989 (Annexure A-2). He was eligible for grant of temporary status under the Scheme. Para (5)(i) of the said Scheme which outlines the condition for grant of temporary status reads as under:

"Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week). Such casual labourers will be designated as temporary Mazdoor".

The applicant has claimed that since he had continuously worked from April, 1993 to January, 1996 and again from July, 1997 onwards completing 240/206 days in each year, he is fully entitled to be conferred temporary status in accordance with the above Scheme. However, the respondents have not taken any step for conferment of a temporary status upon him, despite several reminders. On the other hand, he has been threatened that his services will be terminated.

3. The respondents have filed a short reply in which they have taken the stand that the applicant had not been working with them. In order to derive undue advantage, he has appended only one document in support of his claim as Group 'D' employee. This document is the Identity Card. According to them, no identity card is issued to the casual labourer. It is alleged that the Identity card produced by him is a forged document. The applicant has not been able to produce any other document in support of his claim of having worked in the department. It has been stated by them that whenever any person

works as casual/daily rated worker, he is issued the working days certificate by the authority. In this case, no such certificate has been filed by the applicant. The application, therefore, deserves to be dismissed.

4. The applicant has filed rejoinder with which he has appended some additional documents in support of his claim that he has been working in the department. Those documents include a letter written by him to Department of Telecommunications that he should be issued a Working Days Certificate for the period he worked in the department (Annexure RA-3). He has also appended a copy of prescription slip of the Dispensary (Annexure RA 2). Certain photocopies of the peon book entries have also been appended in which he has tried to prove that he has been receiving dak on behalf of the office where he has been working as Peon.

5. The OA No.762/2000 earlier filed by the applicant was considered by the Tribunal and vide order 21.12.2000 the same was dismissed on the ground that the applicant had failed to furnish sufficient material to establish that he had been in the engagement of the respondent Department. The applicant had filed RA against the aforesaid order of the Tribunal which was also dismissed vide order dated 3.2.2003.

6. The applicant approached the Hon'ble High Court of Delhi. The Hon'ble High Court vide its order 7.4.2004 set aside the order dated 21.12.2000, and also the review order dated 3.2.2003 passed by the Tribunal and remanded back the case to the Tribunal with the direction that the Tribunal will pass a fresh orders in the light of the documents filed by the applicant, including the identity card and determine whether he is entitled to be conferred the temporary status, within six months. The respondents have filed additional affidavit in which they have raised preliminary objection stating that the present application is not maintainable as it is barred by jurisdiction in view of the OM dated 30.9.2000 issued by the Government whereby the business of providing Telecom Services in the Country previously provided by the Department of Telecom Service (DTS) and the Department of Telecom Operation (DTO) has been transferred to Bharat

Sanchar Nigam Limited (BSNL) w.e.f 1.10.2000. It has been stated that this Tribunal has no jurisdiction to entertain the applications against BSNL as it is a company incorporated under the Companies Act and the Central Govt. has not issued any notification under Section 14(2) of the Administrative Tribunal Act to confer jurisdiction on this Tribunal in the matter concerning employees in BSNL. The present application, is, therefore, barred by jurisdiction and is liable to be dismissed on this ground itself.

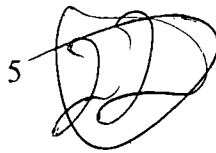
7. As regards the documents furnished by the applicant in support of having worked in the respondents' department since April, 1993, the respondents have reiterated that the copy of identity card produced by the applicant is a forged document. The dispensary card was also never issued to the applicant. Annexure RA- 2 is not the photocopy of the dispensary card but is only the prescription slip. The applicant had never worked with the respondent Department nor was he required to receive letters on behalf of the respondent Department. The photocopies of the certain documents produced by him and annexed with the rejoinder are also forged and fabricated one. Various discrepancies have been pointed out in these documents by the respondents' which are apparent on record. None of these documents prove the fact that the applicant was at any time employed with the respondents.

8. I have heard Shri Surat Singh, learned counsel for the applicant and Shri M.M.Sudan, learned counsel for the respondents and have also gone through the pleadings and other materials on record.

9. As directed by the Hon'ble Delhi High Court in the order dated 7.4.2004, I have perused the various documents filed by the applicant, including the original identity card produced by him in support of his claim of having worked in the department. During the course of arguments in which the applicant also participated, it was mentioned by the applicant that the identity card was issued some time in 1996. The validity of this identity card has been shown as upto 31.3.2000. The identity card does not, however, indicate the date of issue. However, from the averments made by the applicant and his counsel, it is

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observed that this identity card is valid for four years. It is highly improbable that any department would issue a Photo Identity Card to a Casual Labour for a long period of four years. Normally, the Photo Identity Cards are issued to adhoc/permanent employees working in the Govt. department. All those who are employed on daily rated/casual labourers are normally issued simple Identity Cards which are valid for a few months. This is done because they are engaged for a limited period and their services are likely to be disengaged at any time after the work for which they were engaged does not exist. I am, therefore, inclined to accept the contention of the respondents that this Identity Card could be a forged document.

10. The respondents have also brought to my notice certain documents which appear to be fabricated and forged. For example on page 11 of the reply by the applicant to the short reply filed by the respondents, the applicant is shown to have received a letter in the Peon Book dated 2.8.94 but he has signed it on 1.8.94. Again on page 17 in the Peon Book dated 21.1.95, he has been shown to have received a letter on 17.1.95 i.e., four days before it was actually received. These are such discrepancies apparent on the face of record in the documents furnished by the applicant. He has not been able to produce even one document which would indicate that he was in the employment of the respondent Deptt. The only document which he has produced is the certificate issued by the Assistant Divl. Engineer, Telecom to the effect he has worked as casual labour from January, 1994 to May, 1995. The applicant has failed to produce any other document of the respondent department in support of his contention that he had worked since April, 1993, as claimed by him.

11. After perusing the documents produced by the learned counsel for the applicant and hearing the rival contentions of both the parties, I am not satisfied that the applicant had worked in the respondent Department from April, 1993 till January, 1996 and again from July, 1997 onwards as claimed by him. He might have worked for sometime during 1994-95. But he has not been able to produce any reliable documentary evidence in

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support of his contention. During the course of the arguments, the learned counsel for the respondents also brought to my notice that the applicant was presently involved in a criminal case. This fact was conceded by the applicant himself, although he claimed that he was innocent. Notwithstanding the above, the fact remains that the applicant or his counsel has not been able to prove that the applicant had been in the service of the respondent Department for the period, which makes him eligible for conferring temporary status. On the other hand, the learned counsel for the respondents categorically stated that the documents, including the identity card produced by the applicant were fabricated one which cannot be relied upon. Taking an overall view of the facts and circumstances of the case, I am inclined to agree with the stand taken by the respondent Department.

12. Apart from the above, the operations of Department of Telecommunication have since been transferred to BSNL w.e.f. 1.10.2000 which is a company incorporated under the Companies Act and the Tribunal has no jurisdiction over the service matters of its employees, as no notification under Section 14(2) has been issued by the Govt. conferring its jurisdiction to the Tribunal. The services of all Group 'C' and 'D' employees have since been transferred to BSNL and they are no longer the employees of the Department of Telecommunication. The Chandigarh Bench of this Tribunal in its judgment dated 5.5.2003 in OA No.1116/CH/2002 in the case of **Phuleshwar Prasad Singh Vs. Union of India & Ors.** has held as under:

"II. The persons directly recruited, appointed and absorbed by/in BSNL are in fact the employees of BSNL and, in the absence of a Notification under section 14(2) of the Act, this Tribunal has no jurisdiction, power or authority to entertain the adjudicate their disputes with regard to their service matter even though it pertains to the period prior to their absorption. This category of the employees undoubtedly falls beyond the ambit of the jurisdiction of this Tribunal."


13. Since the applicant is supposed to have been absorbed in BSNL and the claim pertains to the year 1993 onwards, the Tribunal has no jurisdiction over the issue



involved in the present OA in terms of the above decision. The applicant has to approach the appropriate legal forum for redressal of his grievances.

14. Considering all the relevant facts and circumstances of the case, the OA turns out to be devoid of any merit and deserves to be dismissed. However, as the Tribunal has no jurisdiction over the employees who are absorbed in BSNL, the applicant is at liberty to approach the appropriate legal forum for redressal of his grievances.

15. The OA is accordingly disposed of in the light of observations made above. No costs.


(S.K. Malhotra)
Member (A)

New Delhi
13.10.2004
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