

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 457 of 2018**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Japi Bhue, aged about 50 years, W/o Late Trilochan Bhue, At-Bhoipura, PO/PS- Atabira, Dist.-Bargarh, at present working as Casual Mazdoor Group-D, O/o Sub divisional Engineer (G/E) BSNL, At/PO- Atabira, Dist.-Bargarh.

.....Applicant

VERSUS

1. Chief Executive Officer, Bharat Sanchar Nigam Limited, Mandi House, New Delhi – 110001.
2. Chief General Manager, Telecom, Odisha Circle, At/PO-Bhubaneswar, Dist.- Khurda – 751009.
3. General Manager, Telecom District, Sambalpur, At/PO/Dist-Sambalpur – 768001.
4. Deputy General Manager, O/o General Manager, Telecom District, Sambalpur, At/PO/Dist.-Sambalpur – 768001.
5. Sub Divisional Engineer (G/E) BSNL, At/PO-Atabira, Dist.-Bargarh-768027.

.....Respondents

For the applicant : Mr.D.P. Dhalsamant, Counsel

For the respondents: Mr.K.C. Kanungo, Counsel

Order reserved on: 03.11.2020

Order on : 12.11.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

The applicant in the present OA has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:

- “8.1 That the order dated 23.05.2017 (A/15) and 05.08.2017 (A/16) be quashed.
- 8.2 That the respondents be directed to regularize/confirm the service of the applicant w.e.f. 30.12.2004 in Gr. D post with all consequential service benefits.
- 8.3 And further be pleased to pass any order/order(s) as deem fit and proper to give complete relief to the applicant.”

2. In this OA, originally the Secretary, Department of Telecommunication was impleaded as respondent no.1. After considering the MA No.370/18 filed by the respondents to delete the respondent no.1, the said MA was allowed vide order dated 12.7.2019. The applicant's counsel has deleted the respondent no.1 without renumbering rest of the respondents. Hence, the respondents were re-numbered after deletion of the respondent no.1.

3. The facts as per the OA are that the applicant's husband while working as a Gr-D employee under the respondents expired on 9.12.1996 and the applicant was appointed on compassionate ground to the post of casual mazdoor Gr-D by the respondent no. 4 under the respondent no. 5 vide order dated 27.12.2004 (Annexure-A/2 of the OA) and she joined in that post on 30.12.2004. She was allotted the employee no. 9137 and was allowed pay of Rs. 5996/- per month with basic pay of Rs. 4000/- as per the pay slip for February, 2005 (Annexure-A/4). It continued till July, 2007 as per the pay slip at Annexure-A/5. From August, 2007 no pay slip was issued to her. Vide letter dated 17.10.2007 (Annexure-A/6), the respondent no.4 requested respondent no.3 to approve regularization of the applicant as Temporary Status Mazdoor (in short TSM). Another letter dated 20.11.2009 (Annexure-A/7) was issued by respondent no.3 to respondent no.2 to approve regularization of the applicant as Casual Mazdoor as she has completed 3 years of service. The applicant submitted representations dated 27.6.2009, 11.5.2015 and 16.3.2017 (copy at Annexure-A/8, A/9 & A/12 respectively) for regularization in Gr-D post. The respondent no.2 requested the respondent no.1 in his letter dated 28.3.2017 (Annexure-A/13) to accord permission for grant of temporary status treating the applicant as a casual mazdoor.

4. It is further averred in the OA that the respondent no.2 informed the respondent no.3 vide his order dated 23.5.2017 (Annexure-A/15) that conferment of temporary status to the applicant is not permissible in view of the judgment dated 10.4.2006 of Hon'ble Supreme Court in the case of State of Karnataka & others vs. Umadevi & others [reported in 2006 (4) SCC1] and judgment dated 16.1.2009 in the case of BSNL vs. Teja Singh [in Civil Appeal No. 292 of 2009] due to which the Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1989 of the BSNL has become untenable. Respondent no. 3 intimated this decision to the applicant vide order dated 5.8.2017 (Annexure-A/16). Being aggrieved by the orders at Annexure-A/15 and A/16, the applicant has filed this OA.

5. The applicant has also filed the MA No. 285/2018 for condoning the delay of about 10 days in filing the OA treating the order dated 5.8.2017 (A/16) by which the rejection of the applicant's claim was communicated to her to be the cause of action. The respondents have filed an Objection to the MA stating that the applicant had never raised any objection to the order of her appointment dated 27.12.2004 appointing her as a Casual Mazdoor purely on temporary basis and suddenly after 14 years, she has filed this OA which is barred by limitation. The period of delay has not been specified in the MA. Hence, it is urged that both the MA and the OA are liable to be dismissed in the light of the

judgments of Hon'ble Apex Court in a number of cases as cited in the Objection.

6. Counter has been filed by the respondents with the averment that the applicant's husband expired on 9.12.1996 while in service as a TSM under the Department of Telecom (not as Gr-D as claimed in the OA) and after his death, his wife (the applicant) was given compassionate appointment as a Casual Mazdoor vide order dated 26.6.2004 of the respondent no.2 (CGM, BSNL) and the applicant was issued the appointment order dated 27.12.2004 (Annexure-A/2) by respondent no. 4. The issue of delay as stated in the Objection to MA was reiterated stating that the applicant had never challenged her appointment as Casual Mazdoor nor objected to it.

7. It is further averred in the Counter that the applicant's case was forwarded by Odisha Circle (respondent no.2) to BSNL Corporate Office (respondent no.1) for grant of temporary status in letters dated 22.11.2008, 8.6.2010 and 28.3.2017 (copy of letter dated 28.3.2017 is at Annexure-A/13 of the OA). The matter was considered by respondent no.1 and rejected vide letter dated 3.5.2017, which was communicated vide the impugned orders dated 23.5.2017 (A/15) and 5.8.2017 (A/16). It is averred that the rejection of her case is just and proper and not arbitrary in view of the law laid down by Hon'ble Apex Court. It is averred that the applicant was not appointed as Gr-D as claimed but as a Casual Mazdoor and she was wrongly issued salary slips till July, 2007 when the pay slips were being prepared manually. After computerization from August, 2007 no salary slip was issued to the applicant as it was not possible to generate it for the Casual Mazdoors from the computerized system. Her wage bill was thereafter being paid by supplementary pay bills on the basis of the absentee statement from the controlling officer. The working days for the Casual Mazdoors are calculated after excluding Sundays and holidays and their wages are calculated as per the guidelines of the BSNL Corporate Office. She was wrongly paid wages calculated on the basis of the basic pay of Rs. 4000/-.

8. Rejoinder has been filed by the applicant stating that she was appointed as Casual Mazdoor Group-D on compassionate ground in the pay scale of Rs. 4000-120-5800 plus usual allowances vide order at Annexure-A/2. In the said order it was specified that the applicant was liable for transfer to other unit which shows that she was not appointed as a casual mazdoor as claimed in Counter. It is further stated that the office of the respondent no.2 (Odisha Circle office) had recommended her case for temporary status instead of regularization of her service. Regarding delay, it is stated that there is delay of 10 days in filing the OA for which the MA has been filed.

9. The respondents have filed Additional Counter enclosing a copy of the DOPT OM dated 9.10.1998 (Annexure-R/3) on compassionate appointment stating that the applicant's husband was a TSM at the time of death and hence, as per the OM dated 9.10.1998, applicant was not entitled for compassionate appointment as her deceased husband was not a government servant for the purpose of compassionate appointment as per the OM dated 9.10.1998. The case of the applicant was wrongly considered for compassionate appointment after approval of the Circle High Power Committee (in short CHPC) and she was appointed on compassionate ground wrongly in violation of the OM dated 9.10.1998. It is further averred that there is no post called Casual Mazdoor Gr-D in which the applicant was appointed vide order dated 27.12.2004 (Annexure-A/2).

10. Heard learned counsel for the applicant who reiterated the averments in the pleadings of the applicant. Besides submitting that the applicant's husband was a TSM at the time of his death, he also submitted that as per the circular dated 7.5.1991, which has been referred to in the letter dated 28.3.2017 (Annexure-A/13) issued by the respondent no. 2 to the respondent no.1 recommending grant of TSM status to the applicant, the applicant has been rightly considered for compassionate appointment as a Casual Mazdoor Gr-D vide order dated 27.12.2004 (A/2).

11. Learned counsel for the respondents was heard. He submitted that there is a delay of about 14 years since the applicant had not challenged the order dated 27.12.2004 as casual mazdoor and said appointment has not been challenged in this OA though the applicant claims regularization since the date of joining as per the said order. It was further submitted that she was engaged intermittently and the pay scale was wrongly allowed to her. Learned counsel for the respondents also referred to the DOPT OM dated 9.10.1998 to state that the applicant was wrongly allowed compassionate appointment as the scheme was not permissible to her as per the OM dated 9.10.1998. The judgments in the case of Umadevi (supra) and Teja Singh (supra) were also relied on by him for respondents' case.

12. On request of the learned counsel for the applicant to file written note of submissions and citations after conclusion of hearing, it was allowed. In his written note of submissions besides reiterating the points in applicant's pleadings, reliance is placed on the judgments in the case of State of Orissa vs. Mangalam Timber Products Ltd. reported in AIR 2004 SC 297, State of Punjab & another vs. Jagjit Singh & others reported in 2017 (1) SCC (L&S) page-1 and Sabha Shankar Dube vs. Divisional Forest Officer and others reported in 2019(2) SCC (L&S) 652. It is also stated that the applicant is entitled for grant

of TSM status as recommended in letter dated 28.3.2017 citing the circular dated 7.5.1991, copy of which has been enclosed in the written note. It is also stated the judgment in the case of Umadevi and Teja Singh cited by the respondents are not applicable to the present case.

13. The pleadings on record and the submissions as well as the judgments cited on behalf of both the parties have been considered by us. Some of the documents and circulars enclosed by the applicant's counsel in his written note of submissions have not been considered since those were not part of the pleadings. Before considering the matter on merit, it is necessary to consider the MA No. 285/2018 filed by the applicant for condoning delay of about 10 days in filing the OA. The respondents have on the other hand have stated that the delay is more than 14 years as the applicant did not raise any objection or challenge to her appointment as Casual Mazdoor on purely temporary basis vide order dated 27.12.2004 (A/2). The relevant question is whether the issue of the order rejection of her case for regularization as claimed by the applicant or for grant of TSM status as recommended by the respondent no.2 in his letter dated 28.3.2017 (Annexure-A/13 of the OA) is to be treated as the cause of action for the applicant or it is the order of her appointment vide order dated 27.12.2004 (Annexure-A/2). The appointment order dated 27.12.2004 has not been challenged by the applicant at any point of time and her claim of regularization is subsequent to the said order of appointment.

14. Further, it is an admitted fact that the applicant is continuing in service as Casual Mazdoor though her status (whether she was appointed in Gr-D or as casual mazdoor on purely causal/temporary basis) is perceived to be different by the applicant and respondents. It is also noticed that there was no direction of this Tribunal or any Court of law to consider the case of the applicant, which was considered by the authorities on their own and rejected the same vide order dated 23.5.2017 (A/15) which was communicated to the applicant by the order dated 5.8.2017 (A/16). Considering the factual circumstances of the case, we are of the opinion that the rejection of the applicant's case by the orders at Annexure-A/15 and A/16 will be the cause of action for the applicant and not the appointment order dated 27.12.2004. Hence, the limitation will be calculated from the dated 5.8.2017. The OA was filed on 17.8.2018, implying that there was a delay of about 12 days. In this factual background and in the interest of justice, the objections to the MA raised by the respondents have no merit and the grounds furnished in the MA are considered to be satisfactory. Hence, the MA No. 285/18 is allowed and delay in filing the OA is condoned.

15. Regarding merit of the OA, it is clear from the averments of both the parties that the following issues need to be resolved in this OA:-

- (i) Whether the respondents' contention that the applicant was wrongly appointed initially on compassionate ground is tenable.
- (ii) Whether rejection of the applicant's claim for regularization is tenable only on the ground of the judgment of Hon'ble Apex Court in the case of Umadevi (supra) and Teja Singh (supra).

16. Regarding the issue at para 15(i) above, the respondents have taken the plea that the decision to appoint the applicant on compassionate ground was a mistake in view of the DOPT OM dated 9.10.1998 under which the benefit of compassionate appointment will be applicable to a government servant and it was not applicable to the applicant's husband who was not a government servant. It is further contended by the respondents that the applicant has been wrongly allowed a scale of pay and was issued salary slips from the date of her appointment till July, 2007 when the mistake was detected and the slips were stopped. The case of the applicant for grant of TSM status was recommended by the respondent no.2 in his letter dated 28.3.2017 (Annexure-A/13) to respondent no.1, stating therein as under:-

“Sub : Grant of Temporary Status to Smt. Japi Bhue, Casual Mazdoor.

Kindly refer to this office letters of even number dated 22.11.2008, 22.10.2009 and 08.06.2010 on the subject cited above. In this connection it is to intimate that Smt. Japi Bhue was appointed as Casual Mazdoor on Compassionate Ground in Sambalpur SSA of BSNL Odisha Circle pursuant to DOT letter No. 263-365/88-STN dated 07.05.1991. Date of her joining as Casual Mazdoor is 30.12.2004. Details of engagement from the date of joining is as mentioned below.

Sl.No.	Year	Days engaged	Sl.No.	Year	Days engaged
1	2004-05	76	7	2011-12	290
2	2005-06	293	8	2012-13	290
3	2006-07	290	9	2013-14	290
4	2007-08	288	10	2014-15	290
5	2008-09	290	11	2015-16	290
6	2009-20	290	12	2016-17	Engaged till date
7	2010-11	290			

As per DOT New Delhi Letter dated 07.05.1991 mentioned above and subsequent clarification vide 269-60/98-STN-II dated 13.08.1998, the Casual Mazdoors appointed under Compassionate Ground will be eligible for conferment of Temporary Status and Regularization against Group-D posts as per the Casual Labourers-Grant of Temporary Status and Regularization Scheme and orders issued from time to time in this regard. Hence it is requested to accord permission for grant of TSM status to Smt. Bhue, Casual Mazdoor of BSNL Odisha Circle.”

17. It is clear from the letter dated 28.3.2017 that the applicant was appointed on compassionate ground as Casual Mazdoor in pursuance to the DOT letter dated 7.5.1991 and it was stated that as per the DOT letters dated 7.5.1991 and 13.8.1998, she will be eligible for conferment of temporary status and regularization against Group-D posts. From the engagement details of the applicant it is seen that the applicant was engaged on almost all working days after her appointment. Further, her appointment has been approved by the CHPC as averred in para 4 of the Additional Counter. No document/guidelines or rules has been furnished by the respondents in their pleadings to show that after issue of the DOPT OM dated 9.10.1998, the DOT letters dated 7.5.1991 and 13.8.1998 regarding compassionate appointment benefit extended to TSM casual mazdoors, as contended in the letter dated 28.3.2017 (Annexure-A/13) of the respondent no.2, have been withdrawn by the respondent no.1/BSNL.

18. In the circumstances, we are unable to accept the respondents' contention in Additional Counter that the applicant was wrongly appointed under compassionate appointment in violation of the DOPT OM dated 9.10.1998, particularly since the contents of the letter dated 28.3.2017 (A/13) regarding applicant's entitlement for temporary status and regularization under the DOT's letters referred therein have not been specifically contradicted by the respondents in the impugned order of rejection at Annexure-A/15 and in their pleadings on record, except for referring to the judgment of Hon'ble Apex Court in the case of Umadevi (supra) and Teja Singh (supra) while rejecting her claim.

19. In the judgment in Umadevi case, it was held by Hon'ble Apex Court that all appointments in Government have to be done as per the Constitutional norms and rules and bye-passing these norms by engaging causal or ad-hoc engagements is not permissible. The judgment also provides for one time measure for regularization of casual or ad-hoc or temporary employees subject to fulfillment of conditions as stipulated in the judgment. In the judgment in Umadevi case, it was held as under:-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee....."

The applicant in this case has been appointed on compassionate ground as per the DOT letter dated 7.5.1991 as stated in letter dated 28.3.2017 (Annexure-A/13). Approval of the CHPC has been obtained before appointing the

applicant. Generally, CHPC considers the case of all eligible candidates for compassionate appointment before recommending a case on the basis of the applicable norms. Hence, the applicant's appointment cannot be considered to be irregular or illegal in view of the discussion in paragraphs 16, 17 and 18 above of this order.

20. In view of the above discussions, the respondents' contention that the applicant's initial appointment on compassionate ground was wrong is not tenable and the issue at para 15(i) of this order is answered in negative.

21. Regarding the issue at para 15(ii) of this order as discussed earlier, the judgment in the case of Umadevi will not be a bar to consider the case of the applicant who was appointed as per an existing circular/scheme as mentioned in the letter dated 28.3.2017 (A/13) and it cannot be said that the applicant's initial appointment on compassionate ground as per the DOT circular and with approval of CHPC was irregular or illegal. The respondents' attempt to cite the DOPT OM dated 9.10.1998 in Additional Counter to state that the applicant's initial appointment on compassionate ground is not tenable in view of the discussions in paragraphs 17 and 18 of this order.

22. The respondents have cited the judgment in the case of Teja Singh (supra). In the said judgment, the employee Teja Singh was regularized on 11.8.1986 and superannuated on 30.8.1989. After his superannuation, he was engaged on daily wage basis till his service was terminated in 1993. The controversy in that case related to Teja Singh's claim of gratuity and other retirement benefits. His claim was rejected for not fulfilling the required qualifying service of 10 years. The OA filed before Tribunal was allowed on the ground that under the regularization scheme of 1989, he should have been given a permanent status. Hon'ble High Court upheld this view of the Tribunal. However, Hon'ble Apex Court set aside the orders of the Tribunal and Hon'ble High Court by applying the judgment in Umadevi case. The cited judgment is factually distinguishable since the applicant's initial appointment cannot be treated as irregular or illegal as discussed earlier unlike the case of Teja Singh as revealed from the cited judgment.

23. In view of the above discussions, the judgments in the case of Umadevi (supra) and Teja Singh (supra) will be of no assistance to the respondents' action to reject the applicant's claim for regularization only on the ground of the aforesaid judgments and the issue at para 15 (ii) of this order is answered in negative against the respondents' contentions.



24. As a result, we are of the considered opinion that the applicant's case deserves reconsideration by the respondents in the light of the applicable rules. Hence, the impugned order dated 23.5.2017 (Annexure-A/15), which was communicated to the applicant vide the letter dated 5.8.2017 (Annexure-A/16) is set aside and the matter is remitted to the respondents no.1 to reconsider the applicant's case in the light of the circulars referred in the letter dated 28.3.2017 (Annexure-A/13) of the respondent no. 2 and pass a reasoned and speaking order copy of which is to be communicated to the applicant within four months from the date of receipt of a copy of this order. The OA stands allowed accordingly with no order as to cost.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

I.Nath