

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 34 of 2017

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

1. Mitrabhanu Naik, aged about 34 years, s/o Khedu Naik, At/P.O. Tudalaga, P. S. Badagaon, Dist. Sundargarh.

.....Applicant.

VERSUS

1. Bharat Sanchar Nigam Limited, (A Government of India Enterprise), represented through its Chief Managing Director, Corporate Office, 102-B, Statesman House, New Delhi – 110001.
2. Union of India, represented through its Secretary, Ministry of Communication, New Delhi.
3. Chief General Manager, Telecom, Bharat Sanchar Nigam Ltd. Orissa Circle, At/P.O. Bhubaneswar, Dist. Khurda.
4. General Manager, Telecom, Rourkela, At/P.O. Rourkela, Dist – Sundargarh.
5. Divisional Engineer, Telecom, Sundargarh, At/P.O./District. Sundargarh.
6. Sub-Divisional Officer, Telecom, Sundargarh, At/P.O./Dist Sundargarh.

.....Respondents.

For the applicant : Mr. A. Swain, Advocate.

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

Heard & reserved on : 15.01.2021

Order on :25.02.2021

O R D E R**Per Mr. Swarup Kumar Mishra, Member (J)**

The applicant had filed Writ Petition No. 9778/2004 before Hon'ble High Court which was transferred to this Bench vide order of Hon'ble High Court vide order dated 05.07.2017. The applicant had prayed for following prayers:-

- (i) *Under the above facts, circumstances and contentions this Hon'ble Court graciously be pleased to admit this writ application, call for the records and after hearing the counsel for the petitioner please to issue notice to the opposite parties under rule Nisi as to why the prayer made in the writ application shall not be made absolute in case of non-filing of show cause or filing of insufficient show cause;*
- (ii) *And further be pleased to issue a writ of mandamus or any other suitable writ/writs by directing to the opp. Parties to regularise the services of the petitioner as casual labourers like left out cases after quashing Annexure – 4;*

(iii) *And/or pass any other order/orders, direction/directions as deem just and proper as per the circumstances of the case.*

2. The case of the applicant as inter alia averred in OA is that he was engaged as daily rated mazdoor under SDO Telegraph Sundargarh for the period 1.10.1986 till 30.04.1989 and he has attached copy of the muster roll as Annexure 1 to that effect. Thereafter the department of telecommunication vide office order dated 27.05.88 (Annexure 2) retrenched some of the daily rated Mazdoor and their name were directed to be removed from muster roll w.e.f. 30.06.1986 and it was ordered that the retrenched employees may be called back when their service will be required. It is submitted by the applicant that his name was reflected along with the retrenched list in the year 1986. The applicant submitted that after being retrenched he received all the arrears from the department as he worked from 01.10.1986 till 30.06.1987. Thereafter he had submitted a representation dated 25.08.2003 (Annexure 3). The

applicant further submitted that in the year 2003, Department of Telecommunication proposed to take back retrenched employees to their department for regularization as casual labourers and CGMT, BSNL, Orissa Circle was directed vide order dated 01.10.2003 (Annexure 4) to consider the case of left out casual labourers for regularization of left out casual labourers for regularization who are 455 in number and bio data were called vide letter dated 15.10.2003 (Annexure 5) from respective candidate but name of the applicant was left out. Hence the OA.

3. The respondents in their counter inter alia averred that TA is barred by limitation as it has been filed after a lapse of about 16 years in 2004. The respondents submitted that the applicant has not submitted any documents on his engagement as casual labourer during 1986-87 in DOT period and has also not stated the names of his juniors who have been regularized in service. The respondents further submitted that the reliefs claimed by the applicant has become redundant since the list of 455 casual labourers related to Annexure

4 of the TA is no more holding the field and is closed in view of judgement in Civil Appeal No 3595-3612/1999 dated 10.04.2006 pronounced by the Constitution Bench of the Hon'ble Supreme Court in State of Karnataka and others versus Umadevi and others and subsequent judgment dated 16.01.2009 (Annexure R/2) in SLP (C) No. 7803 of 2006 in BSNL Vs. Teja Singh. The respondents submitted that process of regularization was kept in abeyance vide letter dated 04.03.2004 (Annexure R/1) and was later closed in view of the law pronounced by the Hon'ble Apex Court and reasoned orders dated 05.10.2012 and 20.06.2015 (Annexure R/6 series) were passed by BSNL rejecting claims for regularization in various similar matters in obedience of the order of the Tribunal dated 29.06.2012 in OA No. 195/2011 and dated 07.01.2015 in OA No. 982/2014.

4. We have heard the learned counsels, carefully gone through their pleadings, written note of submission and citations relied upon. It was inter alia submitted by learned counsel for the applicant vide Annexure A/2 that the applicant's name was removed from muster roll with

effect from 30.06.1986 by giving one month notice with further intimation that he will be called as and when required.

5. It was inter alia submitted by learned counsel for the respondents that the name of the applicant was not mentioned in the muster role vide Annexure A/2 which was maintained by Department of Telecommunication (DoT). It has been claimed by the applicant that he has served for a period of about 7 months in the year 1986. The BSNL came into being in the year 2000. The name of the applicant was not mentioned in the retrenched list of the DoT in spite of the attempt made by the concerned union before Hon'ble High Court of Odisha by filing W.P No. 2069/2009 and in spite of filing OA by some other claimant in OA No. 195/2011, they have failed to get any favourable order.

6. It was further submitted by learned counsel for the respondents that the identity of the applicant has not been proved to show that he had ever worked as daily rated mazdoor in the DoT at any point of time and no importance should be given to unsigned documents

being filed by the applicant documents. He has further stated that the undue delay of about 16 years in approaching the Hon'ble High Court having not been properly explained, this Tribunal should not entertain the case.

7. It is seen that the applicant has filed writ petition before the Hon'ble High Court in the year 2004 and the said petition has been transferred and numbered as TA 34/2017. The claim of the applicant that he has been discriminated against and there has been violation of article 14 of the constitution is not substantiated by the applicant by satisfactorily showing before this Tribunal that any similarly placed person has been absorbed or regularized by the respondents. The vague plea taken by the applicant that some other retrenched person have been absorbed by the respondents department cannot be sufficient enough without any supporting materials to show that any particular person similarly situated have actually been absorbed or regularized by respondents department.

8. The applicant has also not been able to show to the satisfaction of the Tribunal that his case is similarly situated at par with the other persons whose names were mentioned in the scrutinized list of 1437 candidates. It was submitted by learned counsel for the respondents that as one time measure some workers have been regularized as per DoT guideline for left out casual workers. The name of the applicant having not been mentioned in the said left out list of casual workers and not being mentioned in the muster role of the DoT and in the list of retrenched person, therefore there was no scope for regularization of the applicant in respondents department. The undue delay in pursuing the matter cannot also be overlooked in the circumstances.
9. Accordingly the OA being devoid of merit is dismissed but in the circumstances without order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

(csk)