

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00091/2019

HYDERABAD, this the 2nd day of February, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



K. Satheesh S/o Sri KSL Narayanappa,
Group 'C', aged about 45 years,
Occ : Telecom Technician, BSNL,
Gorantla, Ananthapuram.

...Applicant

(By Advocate : Mr. V. Venkateswara Rao)

Vs.

1. Union of India, Rep by its Secretary to
Government, Department of Telecommunications,
Ministry of Communications, New Delhi – 110001.

2. M/s Bharat Sanchar Nigam Ltd,
20, Ashoka Road, Sanchara Bhavan,
New Delhi – 110001, Rep by its
Chairman cum Managing Director.

3. The Chief General Manager, Telecom,
AP Circle, Bharat Sanchar Nigam Ltd,
Vijayawada.

4. The General Manager,
Bharat Sanchar Nigam Ltd,
Telecom District, Ananthapuram.

5. The Asst General Manager (Legal cell),
O/o Chief General Manager Telecom,
Bharat Sanchar Nigam Ltd, A P Circle,
Vijayawada.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC & Mrs. B. Geeta, SC for BSNL)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed for regularization of the services of applicant as Regular Mazdoor and fixation of pay in the Telecom Technician post by reckoning the service rendered as temporary status Mazdoor and (RM) Regular Mazdoor.

3. Brief facts are that the applicant was engaged as Casual Labour in the respondents organization on 18.3.1994. For grant of temporary status and regularization of services, applicant and ors filed OAs 1625/2000 and 1424/2001. In OA 1424/2001, vide orders dt.1.11.2001, a direction was given for conversion of the applicant as a full time casual labour (FTC) and then grant Temporary Status Mazdoor (TSM), if found eligible. Accordingly, applicant was converted into FTC on 26.12.2002 and granted temporary status on 1.1.2004 vide order dated 5.2.2004. However, the services of the applicant were not regularised. Later, applicant as TSM appeared in the LDC Exam for promotion to the post of Telecom Technician (TT) and got promoted vide order dated 8.5.2015 w.e.f. 25.4.2015 with pay fixed as Rs.9,020 – 17,430. While fixing the pay as TT, the services as TSM were considered, though the applicant was eligible to be treated as Regular Mazdoor (RM) from 1.1.2004 as per Dept. of Telecom (DOT) letter dated 29.9.2000. The General Manager of Telephone District (GMTD), Anantapur, citing the directions in the OAs referred to, sought the approval of the Chief General Manager (R-3), the competent authority, for regularisation of those eligible against 49 RM vacancies, vide

his letter dated 16.2.2004. Further, the Chief CGM wrote to the Managing Director, BSNL, (R-2) clarifying that the applicant and some others were working as Part Time Casual Labour (PTC) under the jurisdiction of Senior Supdt. Telegraph Traffic, Kurnool which included the districts of Cuddapah, Kurnool, Anantapur and Tirupati. By mistake, the GMTD, Anantapur has shown the applicant as contract labour, when information was sought by DOT. Consequently, the services of the applicant have not been regularised. The Tribunal in one another TA 1/2013 has directed the respondents to extend to the applicant similar benefits as were extended to the petitioners in WA No. 2560 of 2005 on 9.10.2014 as the applicant was found to be similarly placed. Applicant represented on 19.6.2018 and there was no reply nor relief granted and hence, the OA.



4. The contentions of the applicant are that the applicant is eligible for increments and EL as per order of the Tribunal dated 5.2.2004 w.e.f. 1.1.2004. As per DOT letter 29.9.2000, applicant is entitled to be regularised as RM after having been granted temporary status. The pay of the applicant in the cadre of Telecom Technician has to be re-fixed taken into consideration the fact that the applicant was granted TSM on 1.1.2004 and eligible to be treated as RM from 1.1.2004. The duties of PTC, FTC, TSM and RM are one and the same. Judicial orders are in his favour. Respondents have not replied to the representation submitted on 19.6.2018.

5. Respondents 2 to 5 filed a reply statement stating that as per Tribunal order in OAs 1625/2000 & 1424/2001, the services of the applicant and others were converted as PTC, FTC and granted Temporary status w.e.f. 1.1.2004 by fixing wages at the minimum of Time Scale of pay of Group D

of a Central Govt. The TSM scale is not in the regular establishment of the respondents Organisation and hence, TSM services were not counted. The revised pay scale of RM is Rs.7760 – 13320 w.e.f. 1.1.2007. In WA No.2560/2005, on 09.10.2014, it was ordered that the services of the appellants therein shall be deemed to have been converted from PTC to FTC and conferred with Temporary status w.e.f. 30.6.2004 and deemed to have been regularised w.e.f. 1.7.2007, with no arrears of salary to be paid and salary as regular employees w.e.f. 01.11.2014. Accordingly, regular salary was paid from 1.11.2014. The order in WA No.2560/2005 has been modified in Review WAMP No.190 of 2015 on 23.12.2016 by the Hon'ble High Court by setting aside regularisation of services from 1.7.2007. Hence, applicant is ineligible to be appointed as RM.



Respondent No.1 filed a reply stating that the applicant was absorbed in BSNL on 1.10.2000 and that the dispute relates to BSNL. Applicant filed a rejoinder to the reply of the respondent No.1 wherein he submits that the entire dispute revolves around the memo dated 29.9.2000 issued by DOT and hence, they cannot wash off their hands in regard to the dispute. Applicant has not been absorbed in BSNL and that is the reason he has been granted Central Govt. Scale. If the applicant were to be absorbed in BSNL, then he is entitled for IDA scales.

While responding to the reply statement submitted by R-2 to R-5, the applicant vide separate rejoinder asserts that direction of this Tribunal in OA 1424/2001 & direction of the Hon'ble High Court WA No. 2560/2005 were to convert services of the applicant as FTC and grant TS. The contention to regularize services from 1.1.2004 has not been answered. The

applicant is eligible for RM in the pay scale of Rs.7760 -13,320 w.e.f 1.1.2007 and accordingly, the pay of the applicant has to be revised in the Telecom Technician cadre. The Hon'ble High Court in the Review WAMP No.190 of 2015 has not laid down any embargo in regularising the services of the applicant.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard to revising the salary of the applicant in the Telecom Technician cadre to which post he was promoted w.e.f. 25.4.2015. Respondents admit that the applicant was granted TSM w.e.f. 1.1.2004 in compliance of the orders of the Tribunal in OA 1424/2001. The DOT issued orders dated 29.9.2000 to regularise services of the TSM who has completed 3 years service. Hence, the services of the applicant are to be regularised as on 1.1.2007. GMTD (R-4) approached CGM (R-3) on 16.2.2004 for regularising the services of the applicant to comply with the orders of the Tribunal in OA 1424/2001 & 1625/2001 against 49 RM vacancies. It could not be done as there was a mistake committed by the GMTD informing that the applicant along with the others were shown working as contract labour. The juniors to the applicant working in Kurnool SSA were regularized by R-3 (GMTD) based on the DOT letter 29.9.2000. The above contentions of the applicant have not been denied by the respondents in the reply statement. The matter of non-regularisation of the services of the casual labour working for the respondents was carried to the Hon'ble High Court in WA No.2560/2005 wherein it was declared on 09.10.2014 that the appellants therein are deemed to have been converted from PTC to FTC/TS w.e.f 30.6.2004 and their services regularised w.e.f.

1.7.2007 with no arrears of salary to be paid. Following the order of the Hon'ble High Court, this Tribunal has directed in TA 1/2013 & batch vide order dated 1.12.2014 to extend similar benefit as was extended to the appellants in WA No.2560/2005 vide Hon'ble High Court judgment dated 9.10.2014. Respondents contest the same by pleading that the Hon'ble High Court, on filing Review WAMP No.190 of 2015 in WA No. 2560 of 2005 by the Union of India, has set aside the orders of deemed regularization of services of the applicant from 1.7.2007. True, the orders of regularisation were set aside in the review petition, but in the same order, it was left open to the respondents to regularise the services of the petitioners as per law. The judgment of the Hon'ble High Court in Review WAMP No.190 of 2015 is extracted hereunder:



“The submission of the learned Senior Counsel is that though the review petitioners had specifically asserted in their counter affidavit, that they had rejected the request of the respondents-appellants for regularization, the Division Bench had erred in directing regularization of the services of the respondents-appellants; and the order of the Division Bench necessitated review.

While fairly stating that the Division Bench had directed regularization without taking note of the averments in the counter affidavit, Sri Vemuri Venkateswara Rao, learned counsel for the respondents-appellants, would submit that, in so far as conferment of temporary status on the respondents-appellants is concerned, the Division Bench was justified in direct the review petitioners herein to accord the appellants temporary status pursuant to the earlier orders passed by the Tribunal, which orders have attained finality.

We find considerable force in the submission of Sri Vemuri Venkateswara Rao that the order of the Division Bench, to the extent temporary status was directed to be granted to the respondents-appellants, does not necessitate review. The earlier order of the Division Bench, to the limited extent the appellants were deemed to have been regularized with effect from 1.7.2007, is set aside. It is made clear that the order shall not preclude the review petitioners from considering the case of the respondents- appellants, for regularization of their services, in accordance with law.

The review petition is disposed of accordingly.”

II. Hence respondents have to examine the regularization of the applicant as per law. There is no such examination done by the respondents.

For examining the issue, the relevant material is placed in the letter dated 29.9.2000 by DOT. As per the instructions contained in this letter, the services of the applicant are to be regularised from 1.1.2007, given the fact that the respondents have granted temporary status to the applicant on 1.1.2004 in compliance with the order of this Tribunal in OA 1424/2001.



The contentions of the applicant asserting that the mistake committed by the GMTD in communicating to DOT that the applicant was engaged as a contract labour, subsequent communication between R-3 and R-2 on the issue, juniors to the applicant having been regularized were not denied by the respondents. Further, it has been admitted by the respondents that the scale of RM has been revised to Rs.7760- 13320 w.e.f. 1.1.2007. It is this scale for which the applicant would have been eligible as per orders of the Tribunal in OA Nos. 1424/2001 & 1625/2000, TA 1/2013 and WA No. 2560/2005, had he been regularised w.e.f. 1.1.2007. However, applicant was selected as Telecom Technician w.e.f. 8.5.2015 by passing the limited departmental exam on being found eligible to appear in the exam based on the service rendered as TSM. Therefore, based on rules and the directions of the Tribunal, and the Hon'ble High Court, as discussed supra, the services of the applicant have to be regularised as RM w.e.f. 1.1.2007. However, now since the applicant is working in the cadre of Telecom Technician since 25.4.2015, his pay has to be re-fixed in the Telecom Technician cadre on notional basis by taking into consideration the fact that the services of the applicant are to be regularised as RM from 1.1.2007, in pursuance of the orders of the judicial fora cited supra. The respondents are,

therefore, directed to re-fix the pay of the applicant accordingly. No arrears of pay shall be paid to the applicant consequent to the re-fixation of pay in the Telecom Technician cadre as directed. Time allowed to implement the direction of the Tribunal is 3 months from the date of the receipt of this order.



III. With the above direction the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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