

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.51/2019
M.A. No.819/2019
M.A. No.866/2019**

Reserved on :09.10.2020
Pronounced on : 14.10.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Suresh Kumar Meena S/o Shri Bajrang Lal Meena, aged about 52 years, R/o Village & Post Khatehpura, Tehsil & District Jhunjhunu (Raj.). Designation – Casual Driver, BSNL (Presently the applicant is working on the post of Driver on Casual Basis in the office of GMTD, BSNL, Jhunjhunu – 3330008).

...Applicant.

(By Advocate: Shri Prahlad Singh)

Versus

1. Bharat Sanchar Nigam Ltd. through its Principal General Manager (Telecommunication), Sardar Patel Marg, C-Scheme, Jaipur-302008.
2. The General Manager, Telecommunications, office of GMTD, Bharat Sanchar Nigam Ltd. Jhunjhunu (Raj.)- 333008.

...Respondents.

(By Advocate: Shri Kapil Sharma for Shri T.P.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for a direction to quash and set aside the order of Respondent No.GMTD/JNN/E-103/2017-18/147 dated 21.12.2018 (Ann-A/1) as illegal and to pay the applicant salary at the rate of

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Rs. 21700/ per month under the Central Civil Services (Revised Pay) Rules, 2016, regularly, along with interest at the rate of 18%. The applicant has stated that he was appointed as Driver on temporary and daily rated basis with effect from 14.04.1985 by the Indian Posts and Telegraphs Department. His emoluments were revised following the 5th Pay Commission Rules and thereafter his pay was fixed at the minimum of pay scale under the 5th, 6th and 7th Pay Commissions. Now, all of a sudden, without any notice, an order has been passed on 21.12.2018 by which the fixation made under the 7th Pay Commission Rules has been withdrawn. The applicant was not given any notice or opportunity to show cause against such revision. The applicant is being kept on daily rated basis for the last 33 years and has not been regularized in service. His request for regularization is pending before this Tribunal (in the form of T.A.7/2012). The applicant has prayed for quashing the order dated 21.12.2018 on grounds that this action of the respondents is illegal, arbitrary, against the vested right of the applicant to get at least the minimum of the pay scale of a casual driver, and has been passed without following the principles of natural justice.

2. The respondents have filed a reply denying the claim of the applicant. It is stated that the applicant has not

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exhausted the administrative channels of remedy as he did not file any representation or appeal to the competent authority before filing this OA. They have justified withdrawing of the earlier fixation of the applicant's salary at the minimum of the basic pay, stating that it was erroneously done under 7th CPC Rules 2016, which are not applicable to the casual labour in BSNL. It is also submitted that "the applicant has been kept purely temporary on daily rated basis only just to meet out certain casual work arises in the office and his services can be disengaged on completion of work at any time without assigning any reason which is clear from the letter dated 15.04.1985....."

3. We have gone through the pleadings and have heard the arguments of the learned counsels of both the parties on video conference. The respondents have not denied that the applicant has been paid the minimum of the basic pay of driver under the 5th and the 6th Pay Commission Rules (Refer reply of respondents to the averment of applicant in para 4.4). They have also not categorically denied his averment in para 4.2 that he has been engaged as Driver on temporary and daily rated basis w.e.f 14.04.1985 and has been continuing in that service regularly and without any interruption. It is in reply to this paragraph that they have stated that the applicant's work is purely temporary just to

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meet out casual work and it can be disengaged on completion of work without assigning any reason. We fail to understand, by what stretch of imagination and logic can a work be called purely temporary and casual, which has taken 33 years (now 35) and is still not complete. We also do not find any satisfactory explanation of the sudden realization by the respondents about the need to treat him as a casual labour and not to pay him the minimum of the basis salary of a casual driver, as was done to him during the past decades. To substantiate the temporary and casual nature of the applicant's engagement the respondents are now quoting the last sentence of the order of his engagement in the year 1985, where it is stated that he is on a purely temporary basis and can be removed at any time without assigning any reason. They are conveniently overlooking the fact that they have continued this purely temporary basis for too long to be called temporary by any stretch of definition of the word temporary. The respondents have not taken any action to regularize the services of the applicant and that issue is a subject matter under consideration by this Tribunal under a T.A. (a Writ Petition of the applicant filed before the Hon'ble High Court of Rajasthan, Jaipur, transferred to the Tribunal). Whatever may be the outcome of that T.A., we do not think the respondents have provided any tenable explanation for the

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reduction in the applicant's emoluments, from what he was being paid treating him as a casual driver, engaged since 14.04.1985 (as noted in statement of fixation at Annex-5 of the OA). Doing so, without giving him even a chance to show cause against, is certainly a denial of principle of natural justice and therefore we have no hesitation in quashing the impugned order (at Annex-1) as arbitrary and illegal. The respondents will continue to pay the applicant at the rate of the minimum of the basic pay for the scale of the driver, till they take a decision on the matter of his regularization/discontinuance.

4. The OA is disposed of accordingly. No orders as to costs.

5. MA No.819/2019 and MA No.866/2019 are disposed of accordingly.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/