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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Original Application No:1618/93

NEW DELHI, THE 8th DAY OF MARCH, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Balwinder Singh
S/o Late Ch.Harbans Singh
r/o 1228,Pratap Nagar
Paharganj,
New Delhi.

Applicant

BY ADVOCATE MRS.RANI CHHABRA.

VS.

1.Union of India
through its Secretary
Ministry of Communication
Department of Telecommunication
Sanchar Bhawan
New Delhi.

2.Sub Divisional Officer
Phones, Batala

3.Divisional Engineer,
Telegraphs
Pathankot

4.General Manager
Punjab Telecom Area
335 Shaheed Udham Singh Nagar
Jalandhar City-144001 . . .

Respondent

BY ADVOCATE SHRI P.P.KHURANA

ORDER

JUSTICE S.K.DHAON:

In this OA, the material averments are these. The applicant was sponsored as a casual worker in the department of Telecom on 16.3.1982. He worked continuously in that capacity till May, 1988. He was sent on deputation to Telcom Consultant India Limited. Thereafter, he was sent to Saudi Arabia to work in the cable project concerned. He worked in Saudi Arabia from 1.6.1988 to 29.1.1990. He was repatriated to his parent department vide letter dated 29.1.1990 with the direction to report there for duty. He was assigned work for a period of one month during June 1990 and thereafter, his services were terminated.

2. The relief sought is that the oral order passed by the respondent No.2(Sub Divisional Officer Phones,Batala) terminating the services of the

the applicant being contrary to the law laid down by the Supreme Court should be ignored and the respondents should be directed to take him back to work and confer upon him temporary status under the Scheme known as Grant of Temporary Status and Regularisation Scheme and allow him all the benefits and absorb him permanently in the department.

3. A counter-affidavit has been filed on behalf of the respondents. Therein, the material averments are these. The applicant was conferred with temporary status as a casual mazdoor with effect from 1.10.1989 under Casual Labourer(Grant of Temporary Status and Regularisation) Scheme, 1989. He worked with TCIL for the period from 1.6.1988 to 29.1.90. His application dated 22.3.1990 for re-engagement as casual mazdoor was received in the office of respondent No.3 on 3.10.1991 from respondent No.2 vide his letter dated 26.9.1991. He was allowed to work from 1.6.1990 to 3.6.1990. He remained absent from 4.6.1990 to 7.6.1990 and then again worked from 8.6.1990 to 12.6.1990. Thus he worked for a period of 8 days only and thereafter remained absent and his whereabouts were not known to the respondent department. He remained absent without any intimation with effect from 13.6.1990. He himself did not report for duty from 13.6.1990. He submitted an application dated 26.9.1991 along with a medical certificate dated 25.9.1991 for the period from 21.5.1990 to 25.9.1991 from a private doctor. He submitted a representation dated 29.1.1993 for reinstatement in service. A communication dated 20.4.1993 was issued to the applicant directing him to submit documentary evidence of his illness or any information given to respondent No.2 about his absence from duty on the ground of not feeling

well. The applicant submitted an explanation on 1.5.1993 which was duly considered while disposing of his representation. A perusal of the explanation given by the applicant will reveal that he has not given any reason for not informing respondent No.2 about his absence from duty which inter-alia, constitute a misconduct on the ground of wilful absence. In accordance with para 9 of the Scheme, if a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. Therefore, after giving a thoughtful consideration to his case, his absence from 13.8.90 to 25.9.91 was considered a wilful absence from duty and his representation dated 29.1.1993 was rejected by respondent No.3 vide order dated 19.10.1993. Even otherwise also, his absence beyond one year did not merit consideration in view of the D.O.T.Order No.269-3/92-STN dated 21.10.1992(Annexure R-5).

4. Annexure R-1 to the counter-affidavit is a copy of the letter dated 19.10.1993 sent by the Telecom.Distt.Manager to the applicant. In this letter, it is stated that his application dated 21.1.1993 has been given thoughtful consideration but it is regretted that since he remained absent wilfully with effect from 13.6.1990 and his whereabouts were not known to the department, this long break period of more than one year does not qualify as per rules vide DOT letter No.269-3/92-STN dt.21.10.1992 to consider his re-employment. We may at this stage, consider the aforesaid letter dated 21.10.1992, the true copy of which has been filed in the form of Annexure R-5 to the counter-

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affidavit. This letter merely concerns with the powers of the Divisional Engineer and the CGMS. According to this letter, a Divisional Engineer is empowered to condone the break in service upto one month for any reason. He is also empowered to condone the absence upto 6 months for sickness or non-availability of work provided the necessary medical certificates/details of lay-offs are suitably prechecked. The power of condonation of break in service upto one year has been conferred upon the Chief General Manager for any reasons on the merit of the case such as sickness, after checking details of the lay-off. The letter also emphasises that no condonation beyond one year is to be considered. Therefore, no case for condonation of break in service beyond one year, need be referred to the Telecom. Commission Head Quarter.

5. A close reading of the aforesaid document indicates that it really concerns with the condonation of the break in service. It has nothing to do with the reinstatement of a casual worker.

6. We may now consider the Scheme. Para 9 of the Scheme provides that if a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with. We have seen that it is the respondents' own case that the applicant was allowed to resume duty in June 1990 and, thereafter he disappeared after rendering service for 8 days in that very month. Thus it is apparent that the respondents condoned the absence of the applicant for the period prior to June 1990. It is not the case of the respondents that any inquiry was ever held against the applicant even though it is admitted in the counter-affidavit

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that they considered that the applicant had misconducted himself by remaining absent unauthorisedly. We are not satisfied that a reasonable opportunity was given to the applicant to explain his conduct of absence from duty. The applicant has categorically stated in the OA that having failed to get any redress of being taken back in service, he made a written representation on 29.1.1993 to respondent No.4 (General Manager, Punjab Telecom Area) praying for his reinstatement and thereafter he sent reminders on 23.2.93, 19.3.93, 6.4.93 and 23.4.93. True copies of the said representations have been filed along with the original application. We may again refer to Annexure R-1 to the counter-affidavit. In it, there is a reference to the application dated 29.1.1993 of the applicant. There appears to be a ^a typographical error as instead of 29.1.1993, 21.1.1993 has been typed out therein. The basis for rejecting the representation of the applicant in Annexure R-5 is contents of Annexure R-5 to which we have already referred to. The contents of Annexure R-5, as already indicated, have no relevance to the decision of the representation made by a casual worker who had acquired temporary status for being given reinstatement for the purpose of giving work. Annexure R-5 merely concerns with the condonation of break in service. The representation of the applicant, therefore, was not considered on merits and in accordance with law ^{but} on irrelevant ^{and} extraneous considerations. Even otherwise, merely because the applicant made some representation subsequent to the termination of his services, and that representation was disposed of on merits, the requirement of para 9 of the Scheme would remain unfulfilled. Para 9 emphasises

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that there should be an inquiry of the misconduct attributed to a casual worker who attains temporary status and in that inquiry the casual worker should be given a reasonable opportunity to defend himself. Clearly that was not done. We have no hesitation in recording the finding that the services of the applicant have been illegally terminated.

7. Learned counsel for the respondents has strongly urged that the applicant should not be granted any relief as he has abandoned his duty. Abandonment is a matter of intention. The subsequent explanation offered by the applicant that he could not attend to his duties on account of illness clearly shows that he(the applicant) had never intended to give up his job. It is not the case of the respondents that any notice was ever sent to the applicant and the same returned undelivered on account of the fact that the applicant was not found at the address on which the communication had been sent. Little or no advantage can be drawn by the respondents by merely asserting that the applicant had left without leaving any address. The respondents were not prevented from issuing a Public Notice calling upon the applicant to present himself to duty on a specific date and stating in the Notice that if he failed to do so on or before the specific dated it would be presumed that he has abandoned his job.

8. We dispose of this application with the following directions:

- (1) The respondents shall consider the applicant as a casual worker in the Telecom department

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with temporary status.

2 (2) The respondents shall assign work to the applicant, as and when a vacancy arises, on the footing that he holds a temporary status.

2 (3) The respondents shall consider the case of the applicant for regularisation of his services in accordance with the Scheme if and when he fulfils the requirement of the Scheme in that behalf.

(4) The respondents shall consider the case of the applicant on merits and in accordance with law for giving him continuity in service. For that purpose, the authority concerned shall give a fresh opportunity to the applicant to explain his absence from duty from June 1990 onwards.

9. There shall be no order as to costs.

B.N.Dhoudiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

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S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)