

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.697/2016

Dated this the 6th day of May, 2021

CORAM:

Hon'ble Mr. R.N.Singh Member (J)

Hon'ble Mr. Dr. A.K. Dubey, Member (A)

Dhirubhai Lagharbhai Makwana,
Age 52 years, Regular Mazdoor,
SDOT Bhavnagar,
Adult Hindu, Near Kanya Vidyalaya,
Satyanarayan Society, Near Dasama Temple,
Village, Valavad Taluka Sihore,
District Bhavnagar Pin-364 240.

Applicant

(By Advocate Shri X.Mascarenhas)

Versus

1. Union of India,
Notice to be served through the Director General,
Telecommunication Department,
Ministry of Communication, Parliament Street,
New Delhi 110 001.

2. Assistant General Manager, (Admn.)
Notice to be served through;
The General Manager,
Telecom District, BSNL, Bhavnagar,
Panwadi, Bhavnagar – 364 001.

3. The Sub Divisional Manager (Telegraphs)
Goghagate, Bhavnagar – 364001 Respondents

(By Advocates Shri Joy Mathew &
Shri H.D.Shukla)

ORDER (ORAL)**Per: R.N.Singh Member (J)**

1. The present original application has been filed under Section 19 of the A.T.Act, 1985. The order dated 09.06.2016 was purportedly passed in compliance of the directions of this Tribunal in order/judgment dated 15.07.2015 in OA No.319/2015 (Annexure-A/7). The version of the applicant is that order dated 09.06.2016 by which the pay fixation of the applicant had been done is not proper and hence the present original application.

2. In the original application, the applicant has approached this Tribunal seeking the following reliefs:-

- “1. *Your Lordships be pleased to quash the order dated 09.06.2016 Annex.'A1' and therefore declare that the fixation of pay by the respondent is not proper on the ground of wrong/incomplete fixation.*
- 2. *Your Lordships be pleased to direct the respondent to prepare complete statements of pay fixation showing due drawn amount of pay right from 01.10.1989 until this date (date of payment) within a period of two months with 18% interest from the date of expiry of 60 days from the date of order.*
- 3. *Your Lordships be pleased to pass order and grant relief or reliefs, along with the cost etc. that may be considered fit and proper in the facts and circumstances of the case.”*

3. The learned counsel for the applicant argued that during the pendency of the OA, the original applicant unfortunately expired and the

M.A.No.461/2020 was filed to bring on record the legal heirs of the deceased employee. The said MA was allowed by this Tribunal by its order dated 05.01.2021 and thus, the legal heirs of the deceased have come on record.

4. The learned counsel for the applicant argues that the deceased employee was appointed as Casual Labourer under the respondents in February, 1983 by an oral order and he worked till 30th November, 1988. However, his services were terminated on 30.11.1988 by the respondents through an oral order. The applicant challenged the said termination vide OA No.182/1994 and the said termination order of the applicant was set aside by this Tribunal by its order/judgment dated 23.03.1995. The respondents there in the said OA filed SLP No.23397/1995 before the Hon'ble Supreme Court and the same was dismissed on 08.01.1996. Consequently, the applicant was reinstated in service with backwages in pursuance of this Tribunal's order in OA No.182/1994 vide memo dated 18.04.1996. The applicant was accorded temporary status by the respondents with effect from 12.02.1999. Aggrieved by the order of the respondents granting temporary status from 12.02.1999 in place of 01.10.1989 the applicant approached this Tribunal by filing OA No.343/2002, which was allowed

by this Tribunal by vide order dated 29.12.2003. The operative portion of order dated 29.12.2003 of this Tribunal reads as under:-

“In view of what has been discussed above, the OA is allowed. The respondents are directed to fix the date of his temporary status having regard to the orders passed in the O.A. filed by Shri H.B.Chauhan and the OA filed by the applicant earlier. Consequential monitory benefits if any, shall be restricted to one year from the date of filing the O.A. This entire exercise shall be completed within three months from the date of receipt of a copy of this order.”

5. The applicant is stated to have challenged the said order of the Tribunal before the Hon'ble High Court of Gujarat through SCA No.21906/2005 and Hon'ble High Court vide its order dated 11.09.2013 ordered as under:-

“....Therefore we modify the order of the Tribunal to the extent that consequential monetary benefits shall not be restricted and shall be paid to the petitioner from the date of he completed 240 days of working as full time Casual Labour in a year, with all consequential benefits of Temporary Status accruing to him from the date of grant of temporary status.”

6. Respondents conferred Temporary Status to the applicant w.e.f. 27.12.1996 (Annexure R-1) on the ground that applicant had completed 240 days of working in that year and also paid the arrears of salary w.e.f 26.12.1996 to 12.02.1999. Again, the applicant approached this Tribunal by OA No.319/2014 and after considering the pleadings on records and submissions made on behalf of the parties, this Tribunal disposed of the said original application No.319/2014 by order/judgment

dated 15.07.2015 (Annex.A/7). Paras 18 and 19 of the said order/judgment dated 15.07.2015 read as under:-

“From the above, it is quite clear that for the purpose of reckoning of continuous service, it is not the calendar year that is to be taken into account, for this purpose the continuous employment in 12 calendar months is to be considered. The order of Gujarat High Court in SCA No.21906/05 is to be read together with the provisions of Section 25(B) of the ID Act for the purpose of determination of the year.

In view of the above, we hold that the applicant by virtue of continuously working as a full time causal labourer for more than 240 days in 12 calendar months starting from February 83 to January 84, has become eligible to grant TSM w.e.f. 1.10.89 in terms of DoT the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Department of Telecommunication 1989. We, therefore, allow the OA and order modification of the respondents impugned communication at Annexure A accordingly. We further direct the respondents to pay the consequential monetary benefits to the applicant within three months from the date of receipt of a copy of this order.

No order as to costs.”

The aforesaid order/judgment of this Tribunal have attained finality in view of the facts that none of the parties had challenged the said judgment. In pursuance of the directions of this Tribunal in order/judgment dated 15.07.2015 under reference, respondents have passed the order granting temporary status to the applicant w.e.f 01.10.1989 and have made the payment of admissible dues. Therefore, any claim of arrears with respect to the date other than 1.10.1989 is without any context. Learned counsel for the applicant does not dispute that while passing the order dated 15.07.2015, this Tribunal has taken

into consideration the order of the Hon'ble High Court dated 11.09.2013 in SCA No.2190/2015 and other factual matrix as brought on record on behalf of the applicant as well as on behalf of the respondents'.

7. He submits that infact a direction should be given to the respondents to consider grant of Temporary Status as the deceased employee had worked w.e.f. February 1983 and in no case w.e.f 01.10.1989. He submits that the direction of this Tribunal to grant temporary status w.e.f 01.10.1989 in order dated 15.07.2015 is perverse as facts as well as in law.

8. In response to the notice from this Tribunal, respondent Nos. 2 & 3 have filed their counter reply. No reply has been filed on behalf of respondent No.1. The learned counsel appearing for respondent No.1 submits that the Respondent No.1 is only a proforma party and no separate reply was found necessary on their behalf. Reply filed on behalf of respondent Nos.2 & 3 is sufficient on their behalf and the same has been adopted on behalf of the respondent No.1 as well.

9. In their counter reply the respondents have also annexed the "due and drawn statement" for the period 01.10.1989 to 30.09.2000 with the details of the arrears paid (Annexure R/1), due and drawn statement from 01.10.2000 to 31.12.2016 with details of arrears paid (Annexure R/II), and copy of pay fixation memo dated 14.11.2005 in respect of

fixation of pay from 01.10.1989 to 01.10.2005 in reply of (Annexure R/III), memo dated 29.01.2011 w.e.f 1.1.2007 as per 4th CPC pay scale (Annexure R/IV) and pay fixation memo dated 20.07.2011 regarding 1st upgradation under NEPP (Annex.R/V).

10. Learned counsel for the respondents 2 & 3 argued that this is the 4th OA filed by the deceased employee. The Tribunal had given direction in its order dated 15.07.2015 keeping in view the entire facts of the case as well as the order of the Hon'ble Gujarat High Court, referred to hereinabove, and if at all the applicant was aggrieved by order and directions dated 15.07.2015 in OA No.319/2014, proper remedy is not filing application under Section 19 of the A.T. Act but something else which may be review application or to challenge the same before the Hon'ble High Court.

11. We have heard the learned counsels for the parties at length and we have also perused the pleadings on records. From the aforesaid, it is evident that this Tribunal after considering the relevant facts and circumstances of the case had declared that the applicant became eligible for grant of Temporary Status w.e.f 01.10.1989 in terms of relevant scheme of Department of Telecommunication referred to hereinabove. If at all the applicant finds the same, perverse or bad in law, learned counsel for the respondent Nos.2 and 3 are correct in

saying that the appropriate remedy will be something else and this Tribunal shall not improve its own order dated 15.07.2015 in OA 319/2014.

12. Admittedly the directions of this Tribunal's order dated 15.07.2015 in OA No.319/2014 have been complied with by the respondents. In view of the aforesaid facts and circumstances, we are of the considered view that the OA is devoid of any merit. In view of the adjudication done by this Tribunal vide order/judgment dated 15.07.2015 in the aforesaid OA No.319/2014, the present OA suffers from *res judicata* a well.

13. In view of the aforesaid facts and circumstances, the present OA deserves to be dismissed. Accordingly, the OA is dismissed. In view of the facts and circumstances, no order as to Costs.

**(Dr.A.K.Dubey)
Administrative Member**

**(R.N.Singh)
Judicial Member**

SKV