

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. TA 19 of 2014

Present: Hon'ble Mr.Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T.Jacob, Member (A)

Prafulla Kumar Nayak, aged about 46 years, S/o Charan Nayak, Vill-Nimindiha, PO-Badalo, Dist-Dhenkanal, at present Nadhara, District-Dhenkanal.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Department of Telecommunication, New Delhi.
2. Director, Telecom, Bharat Sanchar Nigam Limited, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001.
3. Chief General Manager, Orissa Telecom Circle, BSNL, Bhubaneswar.
4. Telecom District General Manager, BSNL, At/PO/PS-Dhenkanal, Dist-Dhenkanal.
5. S.D.O., Telecom, Dhenkanal, At/PO/Dist-Dhenkanal.
6. Bana Bihari Hosta, aged about 40 years, S/o Sankarsan Hota, Joranda Telephone Exchange, Dhenkanal.
7. Bhagirathi Rout, aged about 42 years, S/o Dhusasan Rout, At/PO-Banasingh, At-Banasingh Exchange.

Respondent Nos 6 to 7 are working under Telecom District General Manager, BSNL, Dhenkanal (Respondent No.4).

.....Respondents

For the applicant : Mr.S.Mohanty, counsel

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

Heard & reserved on : 03.02.2021 Order on :23.04.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant had filed writ petition WP(C) No. 9781/2005 before Hon'ble High Court which has been subsequently transferred to this Tribunal and registered as TA 19/2014. The applicant has sought for the following reliefs in the present TA :

“Under such circumstances, it is humbly prayed that this Hon’ble Court may kindly be pleased to admit the case and issue notice to the opp. parties to file their show cause as to why the case of the petitioner shall not be allowed.

And after hearing the parties, the case of the petitioner be allowed and order passed by the opp. parties vide Annexure-15 dt. 6.7.2005 be set aside.

Thereafter the service of the petitioner be regularized and all other financial and consequential benefit be given to him within a stipulated period.

And/or pass any other order(s) which deems fit and proper for adjudication of this case.

And for this act of kindness, the petitioner shall be ever prayed."

2. The facts of the case in a nutshell are that the applicant was issued call letter dated 16.5.1984 (Annexure 1) to appear in the interview on 21.5.1984 in the office of Sub-Divisional Office, Telecom, Dhenkanal. The applicant was duly selected vide letter dated 22.1.1985 (Annexure-2) and joined the service. He was also issued Mazdoor Identity Card on 20.5.1985 (Annexure 3). After some time total 37 casual Mazdoors including the applicant were retrenched due to non-availability of construction work at that point of time. In the said order the authority mentioned that if any junior casual Mazdoor is in service and senior has been retrenched then the aggrieved one may prefer an appeal before the authority. In 1986 the respondents wanted to reinstate the casual Mazdoors retrenched, in order to fill up vacancies for construction work. In this process some of the junior casual Mazdoors those who have rendered less number of days' service were reinstated/re-engaged but the seniors like the applicant was not reinstated. In such reinstatement order dated 1.7.1986 (Annexure -5) it is seen that the names of casual Mazdoors appearing at Sl. No. 1 and 2 are junior to the applicant. The applicant made strong objection before the authority and he was given assurance by respondents No. 4 and 5 that his case will be considered in future. After some time when the applicant was not reinstated then he brought the matter to the notice of the higher authority and on the basis of allegation, communication went on between Dhenkanal, Bhubaneswar and Delhi office for years together. Asst. Director General, New Delhi intimated the Asst. Director, Telecom, BBSR that the case of the applicants i.e. casual Mazdoors cannot be considered for regularization on the ground that their names do not include in the casual register and at present they are retrenched casual labourers. The applicant made representation on 17.12.2003 and 26.12.2003 which yielded no result. When the applicant's case was not considered and the respondents were about to take steps for regularization of

the service of outsider, then the applicant along with other six persons of the list approached this Tribunal in OA 894/2004 which was disposed of on 28.10.2004 with a direction to the respondents to look into the grievances of the applicants therein and grant them necessary relief, due and admissible under the Rules. In compliance to this order, the respondents have passed an order dated 6.7.2005 (Annexure 15) stating that the applicant has not worked for 240 days in a calendar year during the period of his engagement as Casual Mazdoor and hence his case was rejected. The applicant approached Hon'ble High Court in the present writ petition which was later on transferred to this Tribunal and registered as TA.

3. The respondents have filed their Counter stating that the applicant joined in 1985 as a casual mazdoor at wages Rs.8.25/- per day and worked for 53 days in two months. In pursuance to the DOT letter dated 30.3.1985 (Annexure R/4), 31 casual mazdoors were retrenched due to non-availability of construction work at that point of time, but they were advised to appeal to SDOT, Dhenkanal individually in writing by 30.6.1985 if they notice that any casual mazdoor junior to them was allowed to continue in work. It is also submitted that the allegation of the applicant that his juniors were engaged is false and baseless because the casual mazdoors at Sl. No. 1 & 2 (annexure 5) and Sl. No. 17 and 18 (Annexure 4) worked for 87 days whereas the applicant worked only for 53 days. 10 more casual mazdoors from retrenched list having more number of working days against their names, were re-engaged to carry out certain urgent nature of construction works and no junior to the applicant was re-engaged. It is also submitted that letter dated 29.9.2000 of DOT is a circular for regularization of casual labourers as one time measure w.e.f. 1.10.2000 for those who were working as full time casual mazdoors at that time with 240 days per year or having TSM status. The applicant did not have any documentary proof in his favour of being engaged as full time casual mazdoors/TSM by DOT and therefore his name could not be sent to BSNL Corporate Office for further scrutiny and consideration. The respondents have submitted that since the applicant was never appointed by DOT/BSNL by

issuing any appointment letter and was not engaged against any sanctioned and vacant post. Therefore the present TA being devoid of any merit is liable to be dismissed.

4. We have heard both the learned counsels and have gone through the pleadings on record.

5. The applicant, as it appears at present is 63 years old. Even if, for the sake of argument it is accepted that he is entitled for regularization, still then taking into consideration his present age, the respondents cannot be directed to engage him in any job.

7. It is averred by the applicant that his name was sponsored by the Employment Exchange as per Annexure A/1 to work as Casual Mazdoor. The documents on record revealed that he served for about 53 days (Annexure A/2). He was intimated about his selection as Casual Mazdoor as per letter dated ee.1.1985 (Annexure 2).

8. Learned counsel for the applicant inter alia submitted that although some of the workers have been regularized there was discrimination against the applicant and he was not regularized for the reasons best known to the respondents. In this regard he has drawn attention of this Tribunal to the letter dated 7.9.1997 (Annexure A/6) wherein the name of the applicant is shown at Sl. No. 8 having worked for 96 days. The applicant is unable to show to the satisfaction of this Tribunal that any person who was subsequently engaged, after engagement of the applicant by the respondents, has been either conferred temporary status or regularized by the respondents. The mere fact that the possibility of some of the employees being conferred with temporary status or regularized, does not confer on the applicant any right to be regularized or conferment of temporary status. It is for the applicant to satisfy the Tribunal without any person junior to him has been conferred temporary status or regularized. No such material or averment has been put forth by the applicant for satisfaction of this Tribunal, although the learned counsel for the applicant tried his best by drawing attention of this Tribunal to DOT communication dated 1.7.1986 (Annexure A/5) by which two persons were

reinstated and a chart (Annexure A/6) showing the details of the casual labourers who were to be conferred with temporary status.

9. Of course, learned counsel for the applicant is able to show that the name of the applicant is at Sl.No. 8 of Annexure A/4 wherein the names of 31 casual mazdoors have been shown to be retrenched w.e.f. 14.5.1985 due to non-availability of work. The mere opinion of the department in the background and circumstances that, action is being taken to take all the mazdoors as shown in Annexure A/8 also does not entitle the applicant for relief of regularization. Although a faint attempt was made by the learned counsel for the applicant drawing the attention of this Tribunal to the letter dated 15.10.2003 at Annexure A/12, there is no such averment or acceptable and reliable documents to show that any junior to the applicant has been conferred temporary status or regularized.

10. The applicant had filed writ petition before Hon'ble High Court in 2005 being WP(C) No. 9781/2005 and subsequently it has been transferred to this Tribunal and registered as TA 19/2014. The fact remains that BSNL came into being w.e.f. 1.10.2000. The applicant and the concerned Union have been pursuing the matter of regularization and conferment of temporary status by filing cases before Hon'ble High Court and before the Industrial Tribunals as seen from Annexures R/6, R/7 and R/8. Inspite of the same, there is no specific direction from any such forum or by Hon'ble High Court which can be relied upon by the applicant for the purpose of claiming the relief in question in this case.

11. Accordingly the OA is dismissed being devoid of any merit. There will be no order as to costs.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)