

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 28th day of July 1998.

Original Application no. 742 of 1993

Hon'ble Mr. S. Dayal, Administrative Member.

Shri Hari Har Dutt, S/o Shri Satya Dev, R/o Mohalla/
Village Pali Post Office Pali Distt. Hardoi. Presently
working as CASUAL MAZDOOR under Sub-Divisional Officer
Telegraph Opposite, Tara Talkies, District Bareilly.

... Applicant

C/A Shri R.C. Pathak

Versus

1. Union of India through the Secretary, Telecommunication
Ministry of Telecommunication Govt. of India Sanchar
Bhawan, New Delhi.
2. The Director General, Telecommunications (DOT) Sanchar
Bhawan, 20, Ashok Road, New Delhi.
3. The Director of Telecommunication Establishments,
Sanchar Bhawan, 20, Ashoka Road, New Delhi.
4. The Chief General Manager, Telecommunications U.P.
Circle Hazratganj, Lucknow.
5. The General Manager Telecommunication (North) 40-A
Rajendra Nagar, Bareilly.
6. The Telecom Distt. Engineer, Central Telegraph office
compound Bareilly Cantt.
7. The Sub-Divisional Officer (Telegraphs) SDO(T) Distt.
Pilibheet (U.P.)

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8. The Sub-Divisional Officers (Telegraph) SDO(T) Distt. Bareilly (U.P.)

... Respondents

C/R Shri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant has sought the following reliefs in this application:-

- i. A direction to the respondents to regularise casual services of the applicant by granting him temporary status and pay and allowances and other benefits at par with regular mazdoor. He also seeks arrears of pay and allowances since 1978.
- ii. A direction to the respondents to grant the applicant the benefit of modal standing orders regarding regularisation of services of casual labours who had worked 180 days in the same organisation continuously and be given the pay and allowances and other benefits as other regular workman are getting in the department.
- iii. A direction to pay the cost of this application.

3. The facts as stated in the application are that the applicant was appointed as casual labour in the office

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of Sub-Divisional Officer (Telegraph) Pilibhit U.P. and worked w.e.f. 01.10.78 to 01.09.79 which mentioned as 126 days or nearly 5 months. Annexure A-3 which has been referred to by the applicant in this connection shows that the applicant had worked in broken periods for 31 days in October 1978, 12 days in November 1978, 24 days in July 1979, 29 days in August 1979 and 30 days in September 1979. It is claimed that the applicant remained sick from 02.09.79 to 30.04.89 and resumed his duty from 01.05.89 and was serving the department at the time he filed this application. The applicant claims to have worked for 15 years from 1978 to 1993. He claims that his juniors have been regularise and given temporary status with other benefits. The applicant claims that the modal standing orders framed under Industrial Employees (Standing orders) Act, 1946 provide under clause 15 that who have served for 90 days continuously were to be provided temporary status and given preference in regularisation. The applicant claims that he made a representation on 29.10.92, 22.04.93 for action on his earlier representation made in 1989.

4. Arguments of Shri R.C. Pathak learned counsel for the applicant and Shri N.B. Singh learned counsel for the respondents were heard. Pleadings of this record has been considered.

5. The respondents in their counter affidavit have been stated that the applicant initially worked in October 1978 and November 1978 for 43 days and then remained absent

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and was re-engaged for 83 days. There has been no engagement of casual labours after 1985 in accordance with orders of D.G. Telecom no. 269-10/89-STN dated 07.11.89. Since he had worked for less than 240 days in the year prior to March 1985 he was not eligible for temporary status. It is also mentioned that the applicant started working on 30.04.89 after a break of nearly 10 years from he worked last. It is also alleged that the applicant had submitted false medical certificate regarding injury on 11.12.78 and that the certificate submitted by him for the intervening of 7 months are from Doctor's at Hardoi and places other than Badaun and Bareilly. He claims to have contracted the injury in Badaun. In any case the applicant started working again from July to September 1979, his absence from October 1979 to April 1989 is not explained. Applicant cannot be given any benefits for this period of work from 1978 to 1979 because it was sporadic and because if any claim is made on the basis of such sporadic engagement prior to continuous engagement of the applicant from May 1989 onwards, such a claim would be barred by limitation. The applicant has not shown that he has continuity of engagement from 01.10.78 onwards.

6. The respondents have produced a copy of casual labours grant of temporary status and regularisation scheme circulated by their circular no. 269-10/89-STN dated 7.11.89 in which it has been provided that under the scheme which would come into effect from 01.10.89 onwards, vacancies in group 'D' cadre in various offices of Department of Telecommunication would be exclusively ^{filled up} ~~fully~~ by regularisa-

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tion of casual labours till the casual labourers are absorbed against group 'D' vacancies. They were to be granted temporary status who had rendered continuous services of at least 1 year of which 240 days was period of engagement of work. Such casual labours were to be designated as regular mazdoor. The engagement was to be on daily rated of pay and on need basis. The temporary mazdoor were also to be paid wages amounting the minimum of pay scale for group 'D' officials including D.A., H.R.A. and CCA. They were also to get increment after completion of 240 days or 240 days of work in a year. They were also entitled to leave of one day of every 10 days of work. 50% of service rendered under temporary status were to be counted for purposes of retirement benefits. They were to be made subscribers of G.P.F. after completion of 3 years of continuous services from the date of attaining temporary status. They were also to get productivity linked bonus as applicable to casual labours. A strictest application of this scheme on 01.10.89 would not entitle the applicant to grant of temporary status and regularisation because the applicant started working as casual labours again from May 1989, and on 01.10.89, he had completed nearly 5 months of continuous service. The applicant has, however, cited certain judgments of this Tribunal in support of his claim. The first of these is G.M. Ambrose Vs. Union of India in O.A. 1067 of 1992 of Madras Bench decided on 20.07.93. In this case the applicant was working as casual mazdoor from October 1980 to March 1983 and remained on leave due to T.B. up to April 1988. He was granted temporary status w.e.f. 01.10.89. Question which was raised here was whether a

mazdoor who had attained temporary status was entitled to regularisation in terms of condition contained in the order regarding regularisation of casual labours issued by the department. Question of completion of 10 years of continuous engagement for regularisation was also addressed and giving applicant the benefit of absence due to illness was considered but the orders of the Tribunal were passed to the effect that by the time the judgment was given the applicant had completed 10 years of qualifying service and, therefore, he could be considered for regularisation. The facts of this case can not, therefore, give any benefit to the applicant.

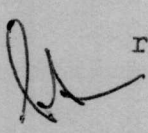
7. Second case cited by the learned counsel for the applicant is S.K. Indira Mohan & Ors. Vs. U.O.I. & Ors in O.A. 1575/93 decided on 30.12.93. The extract of judgment produced by the learned counsel for the applicant from Swamy's Case Law Digest 1994 shows that the applicant in that case were engaged between 1979 to 1983, were in employment on 29.11.89 and had completed 240 days on that day but were engaged against leave reserve vacancies and question was whether workman against leave reserve vacancies can be called casual labourers or not. The case was decided in favour of the applicants.

8. In Suresh Keshavrao Garad Vs. U.O.I. & Ors in O.A. 257 of 1990 decided on 29.06.84 by Mumbai Bench of this Tribunal, the issue was whether the applicant was appointed after March 1985 and had worked for 963 days in broken spell of which one was continuous engagement of 264 days could be given termination order on 06.03.89 without following due procedure of law. This termination was held to be irregular

and was set aside and the respondents were directed to consider him for temporary status and other benefits including regularisation. This judgment is not directly applicable to the case of the applicant as the applicant is still working, but ratio of this case regarding his entitlement for grant of temporary status and regularisation against group 'D' vacancies would be applicable to the applicant.

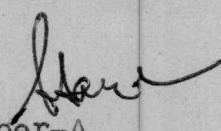
9. The last case cited by the learned counsel for the applicant is the judgment given in O.A. 2042 of 1994 and O.A. 2327 of 1993 between Ashok Kumar and Others Vs. Union of India and others and Robert & ors Vs. U.O.I. & Ors decided by common judgment on 28.11.97. Facts were that Shri Robert had completed 240 days of full time engagement in 1994, Shri Yogesh Pachori had completed 208 days in part time and full time work in 1994. Shri Ashok Kumar had completed 240 days of full time work between 1990-94 were considered to be eligible for grant of temporary status and for completion of qualifying period for conferment of benefit under the scheme of 01.10.1989. It was also held that the respondents could not be forced to engage them if work was not available.

10. I, therefore, find that the letter dated 07.11.1989, to which scheme of grant of temporary status and regularisation was annexed, contained in para 3.2 of the scheme the stipulation that if there were any cases of casual labours engaged after 30.3.1985 requiring consideration for conferment of temporary status, such cases would be referred to the Telecom Commission with relevant details. The simultaneous reporting of particulars regarding the action taken against the official under whose



authorisation/approval regular engagement/non retrenchment was resorted to would lead to delay in conferment of temporary status upon casual workers and would also be a deterrent to making further proposals to the Telecom Commission. These two will have to be delinked for expeditious disposal of the claim of the casual workers. I, therefore, provide that the applicant shall furnish details regarding his services as well as period of absence from duty to the respondents, who shall refer the matter to Telecom Commission, which shall consider the applicants ^{request} for grant of temporary status after completion of 240 days of continuous work after engagement in May 1989, and if the applicant is found entitled to and conferred such status, he shall also be entitled to all consequential benefits from the date of completion 240 days. The respondents are directed to take final decision within three months from the date of representation by the applicant, who shall annex a copy of this order.

11. There shall be no order as to costs.


Member-A

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