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CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH,  
ALIAHABADDated : Allahabad this the <sup>4<sup>th</sup></sup> day of April, 1996.CORAM : Hon'ble Mr. T. L. Verma, Member-J  
Hon'ble Mr. S. Dayal, Member-AORIGINAL APPLICATION NO. 748 of 1993.

1. Dinesh Kumar Mishra, aged about 33 years, son of Sri Laxmi Narain Mishra, resident of 31/5, Vishnupuri Colony, Nawabganj, Kanpur, presently employed at the office of the S.D.O. Phones-I, UPICA Bhawan, Sarvodaya Nagar, Kanpur under the GMT Kanpur.
2. Pradeep Yadav, aged about 35 years, son of Sri Ram Autar Yadav, resident of 127/6, Saket Nagar, Kanpur presently employed under the GMT Kanpur and posted under the Assistant Engineer, AC & Electrical, Office of the G.M. Telephones, The Mall, Kanpur.
3. Mehtab Ahmad, aged about 35 years, son of Shri Abdull Majid, Resident of 90/216, Phoolwali Gali, Iftikharabad, Kanpur, presently employed and posted in the office of the Assistant Engineer, Power Plant, Benajhabar Telephone Exchange, under the GMT Kanpur.
4. Ram Suresh aged about 39 years, son of Shri Bhagirath, resident of 16/7, New Idgah Colony, Kanpur, presently employed under the G.M. Telephones, Kanpur at the office of the Assistant Engineer, AC & Electridals, Office of the General Manager, Telephones, The Mall, Kanpur.

.....Applicants.

(THROUGH ADVOCATE SHRI N.K.NAIR &amp; SRI M.K.UPADHYAY)

## V E R S U S

1. Union of India through the Secretary, Ministry of Tele-communications, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom. U.P.Circle, Hazratganj, Lucknow.

3. General Manager, Telephones,  
The Mall, Kanpur.

4. Superintending Engineer, Civil Wing (Electrical) Habibullah  
Building, Habibullah Street, Hazratganj, Lucknow.  
.....Respondents.

(THROUGH ADVOCATE KM. SADHNA SRIVASTAVA)

O R D E R

(By Hon'ble Mr. T. L. Verma, Member-J)

In this application under Section 19 of the  
Administrative Tribunals Act, 1985 <sup>the applicant</sup> seeks a direction  
to the respondents to appoint the applicants as Skilled  
Worker and to grant to them pay-scale of Skilled Worker with  
retrospective ~~effect~~ date.

2. The applicants, who are holder of I.T.I.  
Diploma in Refrigeration and Airconditioning, were sponsored  
for being appointed on the post of A.C. Operators. They  
claim to have been appointed after being subjected to Viva-  
Voce test and joined the post on 6.9.1981, 15.4.81 and  
5.3.1982 respectively. They were deputed to work as A/C.  
Operators but, no formal appointment letters were issued.  
They, however, continued to be employed as A.C.Operators  
on daily paid basis. Payments, however, used to be made on  
month to month basis. At the end of 1984 the Air  
Conditioning and Refrigeration Equipments alongwith the  
staffs were transferred from the Civil Wing (Electrical) to  
the General Manager, Telephone, Kanpur by letter dated  
28.11.1984 (Annexure-A-6) with a request to absorb the  
applicants as A/C Operator of the Coaxial System Kanpur  
Telephone. The further case of the applicants is that on  
their transfer, they were absorbed under the General  
Manager Telephones, Kanpur as A/C Operators by letter  
dated 5.1.1985 (Annexure-A-6). The applicants made  
representation before and after their transfer to Kanpur  
for their regular appointment as A/C Operators without any



result.

3. The applicants not only submitted several representations also sought personal interview with the Superintending Engineer (Electrical) when he visited Kanpur some time in the middle of 1986 and requested him to take up the matter of their regularisation with the Telecom. Authorities of the Kanpur Telephone. He, thereafter, wrote letter dated 2.8.1986 (Annexure-A-10) to the Deputy General Manager (Admn) Kanpur Telephones, Kanpur requesting him to take necessary action to regularise and absorb the applicants.

4. Again in 1984, the applicants were called for interview for absorption against certain posts of Refrigeration Servicemen that had fallen vacant. They were interviewed and selected for regular appointment and were thereupon directed to appear for medical examination. However, no appointment letters were issued. They were, rather, transferred to units dealing with digging trenches and laying cables. The applicants refused to perform duty of digging trenches and laying cables. They were, it is stated, again assigned skilled work. The applicant Dinesh Kumar Misra submitted representation dated 10.12.1986 (Annexure-A-13) to the D.E. Phones, Lajpatnagar, Kanpur for issuing directions to A.E. Phones for making payment at revised rates admissible to skilled workmen. The efforts of the applicants in persuading the respondents failed to bear any result, an application for initiating conciliation proceedings was moved before the Assistant Labour Commissioner, (Central), Kanpur. The applicants and the departmental authorities were called for conciliation. The departmental authorities, it is stated, did not participate in the conciliation proceedings. The matter, therefore, was referred to Govt. of India. The Govt. of

India, thereafter made reference of the dispute to the Central Government Industrial Tribunal-cum-Labour Court, Kanpur for adjudication vide order dated 25.3.1988 (Annexure-A-20) . In the meanwhile, it is stated, a bench of the Central Administrative Tribunal, Allahabad ruled, in O.A.No.675 of 1987, that the posts & Telegraph Department is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The reference of the dispute made to the Central Govt. Industrial Tribunal-cum-Labour Court has become infructuous hence, this application for the reliefs mentioned above.

5. The action of the respondents in not regularising the services of the applicant as Skilled Worker /A.C. Operator is stated to be arbitrary, and unfair, Hence this application.

6. The respondents have appeared and contested the case. In the counter-affidavit, filed on behalf of the respondents, it has been stated that the petitioners were engaged as daily rated casual labour and that they have been performing the duties of casual labour ever since they were appointed. The further case of the respondents is that since there is no post of A/C Operator ~~xxx~~ in their establishment, the question of the regularisation of the applicants on the said post does not arise.

7. We have heard the learned counsel for the parties and perused the record. Admittedly formal letter appointing the applicants as A./C Operator was not issued. The fact that the names of the applicants were sponsored by the employment exchange has not been denied by the respondents. Photo copy of the letter dated 31.8.81



(Annexure-A-1) from Assistant Engineer to the applicant Sri Dinesh Kumar Misra also supports the fact that the names of the applicants were sponsored by the employment exchange. By letter (Annexure-A-1) applicant Dinesh Kumar Misra was informed that his name has been sponsored for appointment on the post of A/C Operator and that he has to appear for interview on 4.9.1981 at 3.00 P.M. Similar letters stated to have been issued to other applicants. The applicants were working as A/C Operator from different dates is borne out from the certificates (Annexures-A-1, A-3, A-14 and A-15) granted by the respective Officers under whom they were working. These certificates do establish that the applicants were utilised as A.C. Operators.

8. In view of the foregoing the second question that falls for consideration is whether the applicants were regular appointees as claimed by them or employed on casual basis as contended by the respondents, Certificates (Annexures-A-3 and A-4) indicate that the applicant Dinesh Kumar Misra and Pradeep Kumar Yadav were working on daily wage basis. Annexure-A-14 indicates that Ram Suresh was casual A/C Operator. The letter dated 17.12.1987 from the Establishment Officer Telecom. Department Kanpur to Assistant Engineer (Phones) (Annexure-A-16) seeking information from the Assistant Engineer as to the date from which the applicants have been placed in semi-skilled or skilled category. Letter dated 23.12.1987 from Deputy Divisional Officer(Phones), Lajpatnagar, Kanpur seeking information as to the date from which the applicant Shri Dinesh Kumar Misra has been placed in Semi-Skilled or Skilled category clearly suggest that till the issue of aforesaid letters in December, 1987, the applicants had not been enjoying the status in semi-skilled or skilled category. Annexure-A-19 order dated 21.3.1990 issued from the office of the Gen

General Manager (Telephones), District Kanpur also describe the applicants as Casual A/C Operators. The preponderance of evidence indicated above, leads to the conclusion that the applicants though were sponsored by the Employment Exchange, continued to work on casual basis.

9. The learned counsel for the applicant submitted that the contention of the respondents that regular appointment of the applicant on the post of A/C Operator has not been possible for availability of post, is not correct. It was submitted that as far back as in 1982, 7 posts of A.C and Refrigeration Serviceman were sanctioned and created and the applicants alongwith others were interviewed by a Committee of three members. The Executive Engineer (E) Post and Telegraph Electrical Division, Lucknow by his letter (Annexure-A-2) requested the Superintending Engineer (E) P & T Electrical Circle New Delhi to issue appointment letter to the candidates in the select list. No appointment letters, however, <sup>were</sup> ~~was~~ issued before the A.C. and Refrigeration Equipments alongwith the applicants were transferred to Kanpur vide letter dated 28.11.1984. The learned counsel for the respondents submits that the Govt. of India had imposed total ban on creation of post vide G.O. dated 20.1.1984. Therefore, creation of posts after 20.1.1984 was contrary to the said Govt. Order. Therefore, the sanction was illegal.. This contention of the learned counsel for the applicant in our opinion is not valid. Ban imposed on creation of new post was only an administrative direction. Therefore, creation of post contrary to the executive direction may be irregular but, not illegal. Be that as it may as appointment orders were not issued pursuant to the selection made on the posts so created, the same lost its relevance after A/C establishment at Lucknow was dismantled and the same was transferred to Kanpur alongwith the staff (the applicants). The




applicants started a new lease on their transfer to Kanpur, therefore, no direction to make appointment on the basis of posts sanctioned for Lucknow Division in 1984 can be passed.

10. The applicants, it is ~~stated~~ established from the material on record, have been working as Casual A/C Operators from 1981 till date. The fact that they have continued to work in that capacity for more than 14 years by itself is an evidence of the fact that there is requirement of persons for operating the Air Conditioning Plant. The need for the regularisation of their services was felt by the Officers of the department also as is clear from letter dated 2.8.1986 of the Superintending Engineer (Electrical) Postal Electrical Circle, New Delhi addressed to the Deputy General Manager (Administration), Kanpur Telecom. District (Annexure-A-10). The Superintending Engineer has in a very clear terms emphasized the need to absorb the applicants on regular basis in the department.

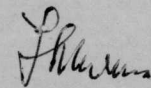
11. In this connection it may also be mentioned that the Ministry of Communications had approved the names of the applicants, on the basis of recommendation of the Committee which conducted interview/Trade Test, for the appointment as A/C Serviceman as would appear from letter (Annexure-A-10). The applicants are holders of diploma in Refrigeration from I.T.I. They have been working as A/C Operators though on casual basis for more than 14 years. They have, therefore, earned the right to be regularised on the said post or any other equivalent post. Seven posts of A/C and Refrigeration Serviceman were created way back in 1982 and appointment of the applicants on the said post was recommended after they were found suitable. We ~~xxx~~ therefore, see no reason why the post so sanctioned can now not be transferred to Telecom Division to Kanpur

District which has taken over the airconditioning plant after its transfer from Lucknow.

12. In view of the above, this application is allowed and the respondents are directed to regularise the services of the applicants on the post of A/C Operators or any other equivalent posts, for which they are eligible. In case posts be not available, the respondents will take immediate steps for obtaining sanction/transfer of the post of A/C and Refrigeration Serviceman sanctioned for Lucknow Division, for which the names of the applicants were approved, on the basis of the recommendation of the duly constituted Committee. The above direction may be complied with within a period of three months from receipt of the copy of this order. There shall be no order as to costs.



Member-A.



Member-J

(pandey)