

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 26th day of Feb. 1997

Coram

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member
O.A. No. 1134 of 1995

1. Vikram Singh S/o Sri Ulfat Singh, resident of village Emlia, Post Padaicha, Tehsil Sadar, District Shahjahanpur.
2. Sachchida Nand Singh, S/o Sri Rajendra Prasad Singh, R/o Railway Colony, Roza, Quarter No. 233-B, District Shahjahanpur.

APPLICANTS

By Advocate Sri

Vs.

1. Union of India through Secretary Ministry of Telecom, Deptt. Delhi.
2. Telegraph Divisional Engineer (T.D.E.) Shahjahanpur.
3. Sub Divisional Officer Telegraphs (S.D.O.I.) Shahjahanpur.
4. Junior Telecom Officer (J.T.O.) Shahjahanpur.
5. Incharge Telecom Centre Powayan, Shahjahanpur
6. Incharge Telecom Centre Roza, Shahjahanpur.

RESPONDENTS

connected with

O.A. No. 1133 of 1995

1. Shyam Mohan S/o Sri Ram Bharosey resident of Village and Post Lakhanpur, District Hardoi.
2. Ram Kishor S/o Sri Parsadi Lal resident of House No. 300, Mohalla Khalil Garvi, Opposite to Jali Kothi, Shahjahanpur.

APPLICANTS

Vs.

1. Union of India through Secretary Ministry of Telecom, Department Delhi.
2. Telegraphs Divisional Engineer (T.D.E.) Shahjahanpur.
3. Sub Divisional Officer Telegraphs (S.D.O.T.), Shahjahanpur.

4. Junior Telecom Officer (J.T.O) Shahjahanpur.
5. Incharge Telecom. Centre, Roza, Shahjahanpur.
6. Sahayak Adhikshak Prabhari, Targhar, Shahjahanpur.

RESPONDENTS.

connected with

O.A. No. 1135 of 1995

1. Mohd. Wasi Khan S/o Mohd Safi Khan resident of Village and Post Kiryara, Tehsil Mohammdi, District Kheri - Lakhimpur (U.P.)
2. Devendrapal Singh S/o Sri Ruttu Singh, resident of Village Nagaria Buzurg, District Shahjahanpur U.P.

APPLICANTS

By Advocate vs

Vs.

1. Union of India through Secretary Ministry of Telecom, Department, Delhi.
2. Telegraphs Divisional Engineer (T.D.E.), Shahjahanpur.
3. Sub Divisional Officer Telegraphs (S.D.O.T.), Shahjahanpur.
4. Junior Telecom Officer (JTO) Shahjahanpur.
5. Incharge Telecom. Centre, Jalalabad, Shahjahanpur
6. Incharge Telecom. Centre, Tilhar, Shahjahanpur.

RESPONDENTS

Appearances

1. Sri S.K. Mehrotra Advocate - For Applicants
2. Sri N.B. Singh Advocate - For respondents.

Judgment

By Hon'ble Dr. R.K. Saxena, Judicial Member

All the applicants in these O.A.s were engaged as part time workers and worked for some time. On adoption of policy of discontinuance of part-time workers, they were disengaged. Hence the applicants have come with the reliefs that they should be directed to be re-engaged as casual labourers, be treated...pg3/-

as full time employees with all benefits of regular employees. Since common questions of facts and law were involved, they were heard together and are being disposed of by common judgment.

2. The facts of the cases are given separately so that the factual position may be clear.

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The case of the applicants is that they were engaged as part-time casual labourers on 1.4.1993 and 2.4.1993 respectively by the respondents 5 and 6. The applicant no.1 worked continuously and without any artificial break till 21.8.1995. Nothing specific has been averred about the applicant no.2 but it appears that similar position was obtainable in his case also. Both the applicants claim to have rendered more than 240 days service. Therefore, they became entitled for the status of temporary employee.

3. The respondent no.4 issued a circular dated 18.8.95 that no work should be taken from part-time casual labourers. Accordingly, the respondents 5 & 6 intimated the applicants on 21.8.95 and 22.8.95 respectively that no further work shall be taken from them. The applicants made representation that juniors were retained whereas they were disengaged without any notice but with no result. Hence this O.A.

4. The respondents have come with the case that the applicants were engaged as part-time workers to work for two or three hours daily at the rate of Rs.5-00 to Rs-7-00 per hour. The duration of daily

was subsequently reduced from 2 or 3 hours to one hour only. It is also pleaded that the applicants have not worked for 240 days even in two consecutive years. The termination of the services of the applicants have been justified.

5.5. The applicants restated the facts in R.A. which were mentioned in the O.A. Through supplementary affidavit, the copy of the scheme known as 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme' has been brought on record. The respondents, however, contended that the scheme was not applicable in the case of the applicants because they were part time workers and not casual labourers.

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6. The averment in this case is that the applicant no.1 was appointed as casual labour on 5.5.85 and worked till 3.8.87 with respondent no.6. It is again stated that the respondent no. 6 transferred the applicant no.1 to tele communication centre, Jala-labad on 23.12.93. He, therefore, worked as part-time daily wager from 7.4.95 to 21.8.95. There is no mention as to what had happened during 4.8.87 and 6.4.95. The silence indicates his disengagement during that period.

7. As regards the applicant no.2, it is stated that he was engaged by respondent no.6 on 1.11.90 and appears to have worked till his disengagement. The date of disengagement or the copy of order of disengagement has not been given or brought on record. This O.A. is filed to get them re-engaged, to treat them regular employees, and to be given all the benefits of a regular employee.

8. The O.A. of these applicants too has been opposed on those very grounds which were taken in the counter-affidavit of O.A. No. 1134 of 1995.

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9. The applicants plead that they were engaged by respondents 5 and 6 on 4.4.94 as casual labourers. They worked continuously till 21.8.95 without any break. It is claimed that their dis-engagement on completion of 240 days and without any notice was illegal. Hence the reliefs as mentioned herein-before, have been sought through this O.A.

10. The respondents have disputed the claim of the applicants on similar grounds which were taken in two other cases.

11. We have heard the learned counsel for the parties and have gone through the record.

12. The applicants in the three cases are not clear about their status. At some place they call themselves as casual workers and at some different place as part-time workers. The certificates which have been brought on record go to shew that they were part-time workers. The hours of work as are mentioned in annexure-3 of R.A. in O.A. no. 1134 of 95 is clear proof of the fact that they were engaged as part-time workers. It is true that the applicants of O.A. no. 1133 of 95 claim that they were appointed as casual daily wage earners but in para 4 (c) of the O.A., it

is averred that the applicant no.1 worked as part time daily wager from 7.4.95 to 21.8.95. Thus the stand taken in one para is denied in another. The applicant no.1 of O.A.1133/95 does not disclose anything about his engagement or disengagement during 4.8.87 and 6.4.95. This gap suggests discontinuity and ultimately leads to the conclusion of part-time engagement.

13. The learned counsel for the respondents, however, maintains the stand that the applicants were engaged for some time as part time workers, and their services discontinued when the policy decision for not having part time workers, was taken. There appears distinction between casual worker and part-time worker. A casual worker is supposed to work for eight hours. He can hardly get time to work at any other place on the same working days. The position, in the case of part-time worker, is different. On one working day, he can work at several places. The learned counsel for the respondents contends that the applicants previously worked for two or three hours which time was reduced to one hour only. The applicants on the other hand plead that they worked four to six hours a day. What work they used to perform was, in their own words, can guess how much time will be consumed in distribution of telegrams.

14. The learned counsel for the applicants relied on the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department

of Telecommunication, 1989" for regularisation of the applicants. It postulates certain conditions to be fulfilled before temporary status can be granted. The first condition is that one must be casual labourer, and second is that he should have rendered a continuous service of at least one year, out of which, he must have been engaged on work for a period of 240 days. In our opinion, the applicants who were part-time workers, cannot be included in the category of casual labour as discussed hereinbefore. Thus there is force in the contention of the learned counsel for the respondents.

15. The applicants placed reliance on the decision of Allahabad High Court in Chandra Prakash Trivedi & Others Vs. State of U.P. & Others 1995(2) LBESR 74 in which it was held that a daily wager, if served continuously for long, should be regularised. It does not speak of regularisation of part-time worker. It is not possible as well. If a part-time worker who is working at more than one places, is given the right to seek regularisation, he may have the right for regularisation for more than one places. Thus the law laid down in the case of Chandra Prakash Trivedi (supra) is not applicable. Their Lordships of Supreme Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma A.I.R. 1996 S.C. 1565, ruled that appointment on daily wages was not an appointment to a post, and thus the directions of re-employment could not be given. In view of this case-law also, the plea of the learned counsel for the applicants does not remain tenable.

16. For an appointment whether fresh or by promotion or by regularisation, there must be vacant posts. Then the process of selection in accordance with rules should start. The claimant should come out successful and within the number of posts. It is only then that valid appointment can be made. The Tribunal or the court cannot be made an instrumentality for back-door entry. Here we find such an attempt by the applicants.

17. In the result, we find no merit in the cases of the applicants. They are, therefore, dismissed. No order as to cost.

(S. Dayal)
Administrative
Member

(Dr. R.K. Saxena)
Judicial Member

*M.M./

Typed and ~~corrected~~.
Compared.