CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. No. 751, 752, 754, 755, 756 and 757 of 1988

DATE OF DECISION 1-2-1990

Baburana Baria & 5 others Petitioner

Mr CT Maniar Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mr JD Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi, Vice Chairman

&

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND—12 CAT/86—3-12-86—15,000

O.A.751, 752, 754, 755, 756 and 757 of 1988

1. (OA-751/88)
Baburana Baria,
Navi Bajar, Behind Railway Stn.,
Shantinagar, Okha,
Dist. Jamnagar.

2. (OA-752/88)
Deepak Dahyalal Rawal,
Rajda Road, Opp: Rahik Pan Depo,
Post: Jamkhanbhalia,
District. Jamnagar.

3. (OA 754/88)
Kapdi Ramdas Premdas,
Post Nandana, Via Bhatia,
Tal. Jamkhalyanpur,
Dist. Jamnagar.

4. (OA-755/88)
Ravidas Madhavdas Sarapdadia,
C/o Narandas Hariram,
Near Post Office,
Post Jamkhabhalia,
Dist. Jamnagar.

5. (OA-756/88)
Atul Babulal Pandya,
Mirabai Road, Bet,
Via Okha, Dist. Jamnagar.

6. (OA-757/88)
Modh-Vadia Meraman Arasi,
C/o Savji Puja Jagatia,
Near Microwave Station,
Dwarka, Dist. Jamnagar. - Applicants

Versus

1. The Union of India,
through: Department of
Telecommunication.

2. Divisional Engineer
Telecommunication,
Microwave Maintenance,
Rajkot.

3. Assistant Engineer Microwave,
(Maintenance), Khambhalia.

4. Divisional Engineer,
Telecommunication,
(Microwave Maintenance),
Ahmedabad.

5. Telecom District Engineer,
Jamnagar. - Respondents in all the cases

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M/s C.T.Maniar and K.G.Karia - Counsel for all the applicants

Mr J.D.Ajmera - Counsel for all the respondents

JUDGEMENT

(Hon'ble Shri A.V.Haridasan, Judicial Member)

As the facts and question of law involved in all these cases are similar, these applications were heard jointly and they are being disposed of by a common order. The facts necessary for the disposal of these applications are shortly stated as follows.

2. The applicants in all these applications were appointed as Casual Labourers at Microwave Station, Okha under the Assistant Engineer, Microwave, Khambhalia. All of them were appointed on different dates in and after April 1987. The applicants in each of the applications have respectively worked 455 days, 381 days, 492 days, 503 days, 471 days and 483 days and thereafter for two months namely November and December 1988. On 1.12.1988, they were served with the impugned order informing them that their services would stand terminated with effect from the afternoon of 31.12.1988 on the ground that regular Mazdoor were likely to be posted. Aggrieved by the above order of termination, the applicants have filed these applications. It has been alleged in the applications

that though the General Manager, Western Telecom Region had issued a circular order dated 25.10.1988 to all the Divisional Engineers to give instructions to all the Assistant Engineers to keep proper laison with concerned TDEs to ensure that Casual Mazdoors to be retrenched or absorbed in the TDE in the place vacated by the Senior Casual Mazdoors who are to be regularised, in order to avoid retrenchment in the local units and further complications and though by a circular letter dated 17.10.1988, the Government of India through the Department of Telecommunication, New Delhi had directed maintenance of combined senifity list of all Casual Labourers in respect of recruitment units, so as to facilitate absorption of Casual Labourers against Group'D' post and retrenchment due to non-availability of work to be done strictly in accordance with the combined seniority list, the respondents have without complying with these instructions, proposed to terminate the services of the applicants by the impugned order of termination. The case of the applicants is that they are not the junior most Casual Mazdoors and that termination of their services abruptly giving just one month's notice, violates not only the provisions of the CCS(Temporary Service) Rules, but also the provisions of Industrial Disputes Act. Therefore the applicants pray that the impugned order of termination may be quashed and

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that the respondents be directed to regularise the applicants in permanent employment.

3. In each of these applications, the respondents have filed written statement. It has been contended that the applicants who were employed only on a casual basis have no right to permanent absorption, that in order to implement the scheme for regularisation of Casual Mazdoors who had put in 7 years of service and fulfilled other conditions in implementation of the judgement of the Supreme Court, it has become necessary to retrench the Casual Mazdoors who were engaged after 30.3.1985, that on 22.4.1987 the Department of Telecommunication, New Delhi has issued a D.O.letter to General Manager Telephones, Ahmedabad directing that action may be taken to dispense with the services of Daily Rated Mazdoors taken on rolls after 30.3.1985 after observing all the necessary formalities, such as notice period, compensation etc., that the applicants who are junior most Casual Labourers have therefore to be retrenched, that though the provisions of I.D.Act would not be applicable to the case as the respondents cannot be stated to be an industry as defined in the I.D.Act, in order to avoid future complications, one month's notice has been given to all the applicants and compensation as per the provisions of Section 25-F of would be paid to them before the date of termination and

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that therefore there is absolutely no merit in the claim of the applicants, that the impugned orders are / violative of any of the provisions of the I.D.Act or that any of their rights have been infringed. The respondents therefore pray that the application may be dismissed.

4. We have betowed our keen attention to the arguments advanced bn either side and we have also scrutinised with great care the documents produced. The learned counsel for the applicants vehemently argued that having engaged the applicants for more than 240 days in a year and having utilised them as Casual Mazdoors, it is unjust for the respondents to terminate their services without taking steps to absorb them in the regular vacancies. The learned counsel invited our attention to the decision of the Hon'ble Supreme Court in Daily Rated Casual Labour employed under P&T Department V. Union of India and others reported in AIR 1987 SC 2342 wherein their Lordships have directed the P&T Department to prepare a scheme on a rational basis for absorbing as far as possible the Casual Labourers who have been continuously working for more than one year in the P&T Department. Seeking support from this judgement, the learned counsel argued that the proposed termination of the services of the applicants without taking steps to absorb them in regular cadre is against the direction contained in the judgement of the Supreme Court. But the

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learned counsel for the respondents on the other hand argued that the Department has made a scheme for absorption of Casual Mazdoors who are put in long years of service as far as practicable in the light of the directions contained in the judgement of the Supreme Court cited above and that in implementation of the same Casual Labourers who has put in 7 years of service and have fulfilled other conditions are being absorbed and it is to facilitate such absorption that Casual Mazdoors who have been engaged after 30.3.1985 like the applicants are discharged. He further submitted that on giving regular employment to the aforesaid Casual Labourers, there would not be vacancies to accommodate the applicants and therefore the Department has no other alternative, but to terminate their services. In support of the action taken, the learned counsel for the respondents invited our attention to the decision of the Madras Bench of the Central Administrative Tribunal in N Ravichandran and others V. General Manager, Telecommunications, Madras and others reported in 1989(11) ATC 812. That was a case in which the services of a Casual Mazdoor, who had worked from 16.10.1986 to 1.8.1988 were terminated without any notice. The Telecommunication Department resisted the above application filed by the Casual Labourer on the grount that as per instructions contained in the letter No.RET/84-1/83/PT, dated 22.12.1987, the Casual Labourers recruited after

31.3.1985 were to be dispensed with.and since the applicants in that case were recruited only in 1986 on a no work no pay basis, the termination was valid. But since it was conceded that 30 days notice or one months wages was not given to them, the Tribunal while dismissing the application, directed the respondents to pay the applicants therein 30 days wages in lieu of the notice. The prayer of the applicant therein to quash the termination was not granted and the action of termination was justified. The circumstances of the case under citation and the case on hand are almost similar. The applicant in this case are only casual labourers who had no right to continuity of service unless and until they are absorbed in regular vacancies. Their services have been terminated only after giving a months notice. In the reply statement it has been averred that in addition to a months notice compensation as provided for in Section-25-F of the I.D.Act also would be paid to them. In fact it has been averred that the compensation was already offered and that some of the applicants refused to accept the same. Therefore we do not find any irregularity or violation of law in the impugned order of termination. But however, it appears that the respondents have not prepared a combined seniority list in terms of the circular of the Government of India dated 17.10.1988 and have not complied with the instructions contained in the circular of the General Manager dated 25.10.1988.

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The circular dated 17.10.1988 requires the Department to prepare a combined seniority list so that retrenchment or absorption could be made in accordance with the seniority of the the Casual Labourer. So we are of the view that while upholding the termination of the services of the applicants, we have to direct the respondents to prepare a combined seniority list of all the Casual Mazdoors so that they could be reengaged or absorbed as the case may be as an when vacancies arise.

5. In the result in view of what is stated above, we hold that the orders of termination is legal and that they are not liable to be quashed. But anyway, as the respondents have offered to pay compensation to the applicants in addition to a months notice, we direct that such compensation should be paid within a period of one month from today, if the same is not already paid. We further direct the respondents to prepare a combined seniority list of all the Casual Mazdoors including the applicants and to consider them for reengagement and also for absorption as an when vacancies arise, in accordance with Rules and their seniority. There will be no order as to costs.

(P.H. TRIVEDI)
VICE CHAIRMAN

(A.V. HARIDASAN)
JUDICIAL MEMBER

1-2-1990

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