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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.904 of 2011
Cuttack, this the 24th day of July, 2015

A.K. Pal & Others Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No

2. Whether it be referred to PB for circulation? No


(R.C. MISRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 904 OF 2011
Cuttack the 24th day of July, 2015

CORAM
HON'BLE MR. R.C. MISRA, MEMBER (A)

1. Sri Amar Kumar Pal,
aged about 38 years,
S/o. Bhagaban Pal,
At-Qr. No. PTN-34,
New Colony, Sector-6,
P.O. Rourkela-2,
District-Sundargarh.
2. Sri Pranab Kumar Routray,
aged about 40 years,
S/o. Chandramani Routray,
At-Qr. No. D/196, Sector-8,
P.O. Rourkela,
District-Sundargarh.
3. Krupasindhu Sethy,
aged about 42 years,
S/o. Dola Sethy,
Telephone Barack,
Plant Site Road,
Rourkela-2, District-Sundargarh.
4. Karna Kumar,
aged about 47 years,
S/o. Van Singh
At-Qr. No.B/163, Sector-6,
P.O. Rourkela,District-Sundargarh.

...Applicants

(Advocate: Mr. N.K. Mohanty)

VERSUS

Union of India Represented through

1. The General Manager,
Rourkela Telecom District,
Bharat Sanchar Nigam Limited,
Door Sanchar Bhawan,
Rourkela, District-Sundargarh.
2. The Chief General Manager,
Bharat Sanchar Nigam Limited (Orissa),
Bhubaneswar, District-Khurda.
3. The Assistant Director General (Pers.IV),
Corporate Office,
Bharat Sanchar Nigam Limited,
102-B, Statesman House,
New Delhi-11001.

R.C.M.

4. The Deputy General Manager (Administration),
O/o. The Chief General Manager,
Telecom, Bharat Sanchar Nigam Limited, Orissa Circle,
Bhubaneswar, District-Khurda.
5. The Assistant Director, R & E,
O/o. The Chief General Manager,
Orissa Circle, Bharat Sanchar Nigam Limited,
Bhubaneswar, District-Khurda.
6. The Assistant General Manager (S& A),
O/o. The Chief General Manager,
Telecom, Orissa Circle,
Bharat Sanchar Nigam Limited,
Bhubaneswar, District-Khurda.
7. The General Manager (HR /Adm.-cum-CPIO),
O/o. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Orissa Telecom Circle,
Bhubaneswar, District-Khurda.
8. Secretary,
Ministry of Telecommunication,
New Delhi.

... Respondents

(Advocate: Mr. K.C. Kanungo)

ORDER

R.C. MISRA, MEMBER (A)

The applicants in this O.A. have approached this Tribunal making a prayer that the Respondents i.e., the authorities of BSNL may be directed to reinstate them and also regularize their services and to confer on them permanent status.

2. The facts briefly stated are that, the applicants had worked as casual labourer during the period 1994-1997 under the Ministry of Telecom when the BSNL was yet to be constituted. The applicants' services were terminated with effect from 31.10.1997 without any reason or notice. Prior to this, a Scheme known as "Casual Labour (grant of temporary status and regularization) Scheme 1989" had been introduced in order to provide temporary status to the casual labourers under the Department of Telecom. However, since the case of the applicants was not considered under the scheme, they had brought forth their



grievances by filing O.A. No.276/98 before this Tribunal. This O.A. was disposed of by an order dated 08.03.2002 with the following order:-

“In the aforesaid premises, in order to remove the discrimination, respondents are directed to examine the case of each of the applicants and extend them the benefits those were made available to the casual labours engaged prior to 30.03.1985 and suitably confer on them temporary status, where after they may be considered to come over to regular establishment of the Department. While giving these directions, anxious considerations are being given, because, it is not known as to whether while disengaging the applicants for good, provisions of protection under Industrial Disputes Act were adhered to or not has not been clearly spelt out in this case”.

3. Respondent No.2 filed a Writ Petition before the Hon’ble High Court of Orissa in W.P.(C) No.2740/02 challenging the aforesaid order dated 08.03.2002 passed by the Tribunal. However, at a later point of time the said Writ Petition was dismissed as withdrawn. Even thereafter the case of the applicants was not consider by the BSNL authorities and therefore, the applicants filed C.P. No.45/02 and M.A. No.887/03 praying for implementation of the orders of this Tribunal. This Tribunal disposed of the C.P. No.45/02 by an order dated 11.11.03 which is quoted below:-

“ It appears that the applicants have already offered themselves for being engaged casually (under the department/even through contractors) by last 05.09.2003 and it is alleged that even though work is available the applicants have not been given casual employment as yet. It also appears from the list appended to the letter dated 15.10.2003. (Annexure-1, to the M.A.) That even persons engaged during 1986, 1992, 1993, 1995, 1996 and 1998 (at Rourkela) have now been enlisted to be regularized. Therefore, a prima facie case has now been made out requiring intervention in the matter. Originally, this Tribunal has directed to examine the case of the applicants for their regularization and then to do needful. It appears without doing that, they are now on their toes to regularize some others.

In the above premises we direct the respondent to examine the case of the applicant and if needed by giving personal hearing to them and without looking to the case of the applicants and intimating the results thereof to them (by a



reasoned and speaking order) the respondents should not regularize left out 455 casual labourers as R.M. The applicants may represent their cases immediately to the respondents."

4. Subsequently the Respondent No.1 vide a letter dated 30.12.2006 intimated Respondent No.4 that out of 50 cases of casual labourers who were engaged in their unit, the cases of 49 casual labourers have already been reviewed and included in the list of 110 cases of casual labourers forwarded to the Circle Office on the recommendations of the High Level Committee. Even thereafter no effective steps have been taken by the Respondents to consider the cases of the applicants. Thereafter, the applicants sought for an information under the RTI Act from the concerned authorities. As per the information provided by the BSNL, letter dated 03.05.2010 was issued by the Office of CGM, Orissa Circle to the General Manager (HR/Adm-cum-CPIO) and it was indicated therein that the regularization of 455 ex-casual labourers had been kept in abeyance by BSNL Corporate Office vide letter dated 04.03.2004 and no decision has been taken as there is no provision of regularization for casual labourers in BSNL. The applicants thereafter filed a Writ Petition bearing W.P. (C) No.14425/10 before the Hon'ble High Court challenging the impugned action of the respondents in the matter of regularization. However, since in the meantime BSNL has been brought under the jurisdiction of the Central Administrative Tribunal, by an order dated 05.10.2010 of the Hon'ble High Court the Writ Petition has been allowed to be withdrawn with a liberty given to the applicants to file application before the Tribunal. The facts as stated above have led to filing of this O.A. by the applicants with the aforesaid prayers.

5. A perusal of the counter affidavit filed by the Respondents reveals the following facts.



6. Out of 1437 cases of left out casual labourers which was sent to the Corporate Office of BSNL, only 455 numbers were approved and rest 982 cases were not found to be eligible for regularization. The applicants belong to the unapproved category of casual labourers. But later on the Corporate Office of BSNL has kept the approved list of 455 casual workers in abeyance in view of the ratio decided by the Hon'ble Apex Court in case of State of Karnataka Vrs. Uma Devi and Others, AIR 2006 SC 1806. In a recent decision by the Hon'ble High Court dated 27.12.2009 in W.P. (C) No.17474/2009, it was observed and directed that it is left to the Management of BSNL, Orissa Circle, Bhubaneswar to consider the case of the Petitioners for regularization. It was further observed by the Hon'ble High Court that no positive direction can be issued to the Management to regularize the workmen in view of the ratio of the decision of the Hon'ble Apex Court in Uma Devi case. In view of such directions of the Hon'ble Courts, the decision for regularizing the approved list of 455 casual workers has been kept in abeyance. There are no provisions or Rules in the BSNL to regularize the casual workers engaged under the Ministry of Telecommunications prior to formation of BSNL in the year 2000. The claim of the present applicants is weaker since their names were not in the approved list. The cases of the applicants were not found fit for regularization as no documentary evidence in support of their engagement as casual labourers was available. Even the process of regularization of 455 approved casual labourers has already been kept abeyance.

6. In the counter affidavit the point of limitation has been raised by the Respondents by mentioning that the Original Application is hit by delay and laches inasmuch as the impugned orders at Annexure-A/10 dated 11.05.2010 and the enclosure dated 03.05.2010 are under challenge. It is further mentioned in



the counter affidavit that in the absence of documentary evidence that they were engaged as casual labourers in the BSNL the case of the applicants does not deserve any consideration. As regards the prayer of the applicants for direction to be issued to Respondents to engage them through the contractors if not possible directly, the Respondents have submitted that they can not advise any approved labour contractor to engage any particular labourer.

7. No rejoinder has been filed by the applicants.

8. Having heard Ld. Counsels for both sides, I have perused the records and also gone through written note of submissions filed by the Ld. Counsels for both sides.

9. The applicants though have attempted to challenge the letter dated 11.05.2010 at Annexure-A/10 , yet Annexure-A/10 along with its enclosure dated 03.05.2010 is an information procured through Right To Information Act, and cannot be construed as an impugned order in this case. However, the applicants who were retrenched as casual labourers have put forth their grievances concerning the inaction on the part of the Respondents i.e., BSNL authorities to consider their case of regularization. Although the Ld. Counsel for BSNL has raised the issue of limitation mentioning that the communication dated 11.05.2010 is under challenge, but, I do not consider this to be a valid objection in view of the fact communication dated 11.05.2010 is an information through RTI Act, which cannot be called in question and therefore the plea of limitation is out of place. I therefore, hold that the point of limitation will not stand as a bar for the Tribunal to examine the merits of this case. It is to be noted that the applicants had first approached this Tribunal by filing O.A. No.276/98 which was disposed of on 08.03.2002. The direction of the Tribunal to the Respondents was to



examine the case of each of the applicants and extend them the benefits those were made available to the casual labours engaged prior to 30.03.1985 and suitably confer on them temporary status. The Respondents filed an appeal before the Hon'ble High Court of Orissa and subsequently withdrew the same. Thereafter, the Respondents have not taken any effective steps to consider the case of the applicants. In C.P. No. 45/02 the Tribunal has also passed a detailed order in which a direction was issued to examine the case of the applicants and if needed by giving personal hearing and intimate the results thereof to them by a reasoned and speaking order. The Tribunal in this order has also made an observation that even persons engaged during 1986, 1992, 1993, 1995, 1996 and 1998 at Rourkela have now been enlisted to be regularized. Thereafter, since no further action was taken by the authorities information was sought for under Right To Information Act by the applicants. The information that was provided was that the regularization of 455 ex-casual labourers have been kept in abeyance by the BSNL Corporate Office vide letter dated 04.03.2004 and no decision has been taken as there is no provision of regularization of casual labourers in BSNL. From the above narration it is quite evident that the matter has been under consideration for a very long time and no formal decision has so far been taken. When it has been intimated that the regularization of ex-casual labourers had been kept in abeyance and no decision has been taken as there is no provision of regularization for casual labourers in BSNL, it is evident that the matter has not been finally settled by the BSNL. Viewed in the light of the order of the Tribunal that the case of each of the applicants is to be considered by giving an opportunity of being heard the information as supplied by the BSNL authorities does not indicate a compliance of the orders of the Tribunal in letter and spirit. Ld.



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Counsel for the Respondents has pointed out in his written notes of submission that the cases of regularization have been kept in beyance in view of the law laid down by the Hon'ble Apex Court in the case of State of Karnataka Vrs. Uma Devi and Others, AIR 2006 SC 1806. It is further strenuously argued that from its inception from 01.10.2000, it has been the policy decision of BSNL not to engage any casual labourers. Even while taking into account the submissions made by the Ld. Counsel for the Respondents, the facts as borne out from this O.A. are that the grievance of the applicants was never finally disposed of in spite of the directions issued by this Tribunal from time to time. It is seen from the record in the Annexure-A/9 of the O.A. that the applicants have filed representations dated 18.03.2010 before the General Manager, BSNL, Rourkela Telecom District praying for regularization of their service and apparently these representations were not specifically disposed of. Only a general reply was given under the RTI Act. When the direction was issued to examine the case of each of the applicant by giving a personal hearing if required, non consideration and non disposal of each of these cases does not comply with the orders of this Tribunal either in letter or spirit. The Ld. Counsel for the Respondents specifically submitted that as per the policy decision since inception, BSNL authorities are not employing casual labourers. I do not find any specific administrative order in respect of this submission. However, the applicants have not challenged any policy decision of BSNL authorities on this subject. Therefore, I do not think it appropriate to consider this aspect of the matter.

9. However, the fact remains that the representations made by the applicants have still not been looked into and disposed of in the light of the orders of this Tribunal and therefore, the O.A. is disposed of with a direction to the



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BSNL authorities to consider the case of each of the applicants in the light of the earlier orders of this Tribunal and the facts stated as above. It is also seen that there has been protracted litigation about this subject and therefore the Respondents are directed to consider the specific issue of the applicants within a maximum period of six months from the date of this order and intimate the result of their consideration with regard to the prayer made by them in the representation with a reasoned and speaking order to each of the applicants.

10. The Original Application is disposed of with above observations and directions with no order as to costs.


(R.C. MISRA)
MEMBER(A)

K.B.