

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 422/2000

FRIDAY, THIS THE 9th DAY OF MARACH, 2001.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

I.U. Unnikrishnan S/o Unnichekkan
Casual Labourer (Pump Operator)
Office of the Assistant Engineer (Electrical)
Electrical Division,
Trichur Division
residing at Inchodi House,
Nenmenikkara P.O.
Puthukad, Trichur district.

Applicant

By Advocate Mr. Shafik M.A.

Vs

1. Union of India represented by
the Secretary
Ministry of Communications
Sanchar Bhavan,
Ashoka road,
New Delhi-110 001
2. The Chief General Manager,
Telecom, Kerala Circle
Trivandrum
3. The General Manager
Telecom, Trichur SSA
Trichur.
4. Chairman-cum- Managing Director
Bharat Sanchar Nigam Ltd.
Sanchar Bhavan,
New Delhi.

Respondents

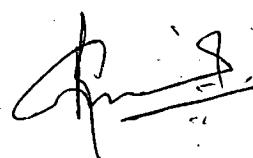
By Advocate Mr. P. Vijayakumar, ACGSC

The application having been heard on 23.2.2001, the Tribunal delivered the following on 9.3.2001:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant seeks to declare that he is entitled to be engaged as a casual labourer on the basis of his seniority and eligibility without any condition as to the days of engagement and to confer all benefits to the applicant consequent to such engagement including temporary status and to direct the respondents to grant consequential



regularisation to him, as has been given to those who had continued in service in the light of judgment of this Tribunal in O.A. 1027/91 and connected cases.

2. Applicant is aggrieved by the refusal of the respondents to engage him for work for more than 100 days in a year - a condition according to him that is to be implemented for fresh casual labourer recruits. The applicant is a casual labourer Pump Operator working under the 3rd respondent from 1988 onwards. He claimed that he had worked continuously for the last 18 odd years. In accordance with the direction of this Tribunal respondents had issued a notification through leading Malayalam dailies inviting applications from casual mazdoors who had worked earlier for empaneling them in the list of mazdoors. The applicant who had worked for more than two decades had responded to be included in the approved mazdoor list. Respondents refused to accept his claim. Thereafter, Assistant Engineer (E), Telecom Electrical Sub division had issued A-1 letter dated 12.3.99 to the third respondent showing the service particulars of the applicant and had recommended for empanneling. On further query from the third respondent Assistant Engineer (E) issued A-2 letter dated 6.9.99. Thereafter A-3 order dated 3.8.99 was issued to the applicant informing him of the decision to empanel him as a casual labourer. However, it was stated in A-3 that the said engagement would not entitle him for regularisation and was without any right for even being conferred with temporary status. According to the applicant this condition was not applicable in the case of empanelled mazdoors like the applicant since they were included in the approved mazdoor list only to be engaged when work was available in the department. According to him as per the judgment of this



Tribunal, the empanelled mazdoors were to be issued with mazdoor cards and the benefit of the scheme of temporary status and regularisation should be extended to those who were included in the list in the order of their seniority. The applicant claimed that respondents had implemented part of the judgments of this Tribunal in O.A. No. 1027/91 and 1402/93 and knew this fact. Second respondent had explained this matter to the first respondent and asked for clearance for the engagement of the empanelled mazdoors beyond the prescribed days for fresh recruits by A-4 letter dated 21.10.99. If the applicant was engaged only for 100 days the same would deny his chance of conferment of temporary status and eventual regularisation. Similarly empanelled person of Palakkad SSA one Sri P. Dinaprakash S/o Krishnan who was working in Cherpulassery Exchange was working continuously without any condition. The action of the respondents in fixing the limit for days of engagement which was intended for the fresh casual labourers, in his case was absolutely illegal, arbitrary and violative of all canons of law. Hence, he prayed for the above reliefs.

3. Respondents filed reply statement resisting the claim of the applicant. According to them the applicant as per A-1 had worked only for 32 days prior to 22.6.88. He was not in casual service under the department prior to 31.3.85-the date after which casual labour engagement was banned in the department. But upon the directions in O.A. 1402/93 the applicant was provisionally included in the panel of casual mazdoors after scrutinizing his application for empanelment. But on the instruction from the circle Office his case was put to a further scrutiny with reference to the stipulations contained in R-3(a) letter dated 24.11.98 of the CGMT/Trivandrum. Upon such scrutiny in the light of the



information given in his R-3(b) application by the applicant, his case had to be rejected as there was a break of more than 3 years in his service. Applicant represented again by R-3(c) dated 1.4.99 before the department stating that he had been working as casual mazdoor till August, 1995, which information was not originally made available at the time of his earlier R-3(b) application for empanelment. Upon verification of Annexure R-3(c) applicant was empanelled as casual mazdoor and was being engaged as casual mazdoor at the office of Assistant Engineer (Electrical) Trichur. In the meanwhile further to the ban against engaging casual mazdoors, para 193 of P & T Manual which permitted engaging casual mazdoors was deleted by R-3(d) OM dated 12.2.99 issued by the DOT. The said OM further permitted hiring of workers for works of contingent or emergency nature for a period of 15 days at a stretch 60 days in a year. The above said period for which hiring of casual mazdoors was permitted was enhanced to 30 days at a stretch and 100 days in a year as per R-3(e) OM dated 15.6.99. Under these circumstances, Telecom Officers were not empowered to engage casual mazdoors beyond a period of 31 days at a stretch and 100 days in a year and engagement and payments of casual mazdoors were authorised to be made only subject to the above stipulations.

4. Heard learned counsel for the parties. Learned counsel for the applicant submitted that O.A.No.66/2000 filed by another employee on a similar matter had been allowed by this Tribunal. Further, the OM dated 15.6.99 R-3(e) had already been quashed by a Division Bench of this Tribunal in O.A. No. 199/2000. A copy of the order of this Tribunal in O.A. No. 66/2000 was made available. The learned counsel



for the respondents submitted that the judgment of this Tribunal in O.A. 199/2000 had been stayed by the Hon'ble High Court of Kerala.

5. I have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings and also perused the documents brought on record.

6. The applicant is basically claiming enforcement of the principles laid down by the order of this Tribunal in O.A. 1027/91 and 1402/93. On going through the orders of this Tribunal in O.A. No. 1027/91 A. Mohanan and Others Vs. SDOT, Palghat and Others (1993) 25 ATC 421. I find that this Tribunal had laid down the principles that should be followed in the adjudication of the cases of casual mazdoors who had worked earlier and approached this Tribunal claiming re-engagement etc. Respondents' main plea is that even though the applicant had been empanelled, because of existence of R-3(d) and R-3(e) OM dated 12.2.99 and 15.6.99 respectively, the number of days of engagement of the applicant could not be extended beyond the limit laid down in R-3(d) and R-3(c). During hearing there was no dispute amongst the learned counsel that R-3(e) had been quashed by the Tribunal in O.A. No. 199/2000 and on that basis O.A. 66/2000 was disposed of by this Tribunal. Learned counsel for the applicant seeks a declaration as given by this Tribunal in O.A. No. 66/2000.

7. In O.A. 66/2000 it had been declared that the applicant is entitled to be engaged as a casual labourer on the basis of his seniority and eligibility without any

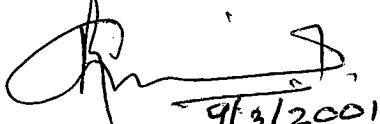
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conditions as to the days of engagement and for consequential benefits such as conferment of temporary status and regularisation in accordance with the rules in force.

8. On examination of the details of the applicant in O.A. No. 66/2000 as contained in the order dated 1.11.2000 of this Bench of the Tribunal and details of the applicant in this O.A., I find that both of them are empaneled casual labourers who approached this Tribunal aggrieved by the respondents' action in imposing restrictions in their number of days of engagement. Pleas of the respondents opposing the claims are found to be similar. Rights of empaneled casual labourers had crystallised by the order of this Tribunal in O.A. No. 1027/91 and the empanelment had been as a result of the order of this Tribunal in O.A. No. 1402/93. Following the principles laid down by this Tribunal in O.A. No. 1027/91 and the orders of this Tribunal in O.A. No. 199/2000 and O.A. No. 66/2000, the applicant is also entitled to a similar order as in O.A. No. 66/2000. Accordingly, it is declared that the applicant is entitled to be engaged as a casual labourer on the basis of his seniority and eligibility without any condition as to the days of engagement whenever casual labourers under the third respondent are engaged and for consequential benefits such as conferment of temporary status and regularisation in accordance with the rules in force.

9. The Original Application is disposed of as above without any order as to costs.

Dated the 9th March, 2001.


9/3/2001
G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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List of Annexures referred in this Order

A1 True copy of the letter No. G-28/TESD-I/TCR/99/160 dated 12.3.99 issued by Asst. Engineer, Electrical Sub Division, Trichur.

A2 True copy of the letter No. G-28/TESD-I/TSR/99/625 dated 6.9.99 issued by the Asst. Engineer (Electrical) Sub division to the Asst. General Manager (Administration)

A3 True copy of order No. E5/MAZ/XIV/21 dated 3.8.99 issued by the 3rd respondent.

R-3(a) True copy of the circular No. TFC/ST-II/28-2/95 (KW) dated 24.11.98 issued from the office of the 2nd respondent.

R-3(b) True copy of the application submitted by the applicant dated 17.4.95

R-3(c) True copy of the representation submitted by the applicant dated 1.4.99.

R-3(d) True copy of the OM DOT no/ 269-4/93 STN-II (PT) dated 12.2.99.

R-3(e) True copy of the OM No. 269-4/93-STN-II(PT) dated 15.6.99.