

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 482/96

Tuesday the 14th day of July 1998.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.S.Koyasan
S/o Sulaiman
Temporary Status Mazdoor
Trunk Exchange Power Plant
Telephone Exchange, Trichur
R/o Panikkaveettil, Kanjirakkode P.O.
(Via) Vadakancherry. ...Applicant.
(By advocate Mr MRR Nair)

Versus

1. The Sub Divisional Engineer
Power Plant Unit, Telephone Exchange
Trichur.
2. The Deputy General Manager
Telecom District, Trichur.
3. The Chief General Manager
Telecom, Kerala Circle
Trivandrum. ...Respondents.

(By advocate Mr MHJ David J)

Application having been heard on 14th July
1998, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced his career as a casual labour under the Secondary Switching Area, Trichur w.e.f.6.2.83 and was granted temporary status w.e.f. 1.10.89 in accordance with the Scheme for grant of temporary status and regularisation of Casual Labourers did not report for work from July 1993 to February 1996. According to the applicant, he could not report for duty during this period as he was suffering from epilepsy. Alongwith a medical certificate (Annexure A-3) and a fitness certificate (Annexure A-4), the applicant made a representation claiming re-engagement to the first

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respondent (Annexure A-5) on 27.2.96. In reply to that, the applicant received the impugned order Annexure A-1 informing him that as he was absent for more than 2½ years, there was no provision for condoning the break and that, therefore, his case for re-engagement cannot be considered. The applicant has, therefore, filed this application praying that the impugned order may be set aside and the respondents be directed to re-engage him.

2. The respondents in their reply statement have stated that as the applicant's break in service is more than a year, according to the instructions on the subject, there is no provision for condonation of the break. However, they have stated in para 2 of the reply statement that the applicant was selected for appointment as Group D regular mazdoor by the DPC which met on 3.8.93, and ^{that} as he remained absent, the order could not be communicated to him as letters sent to him were returned unserved. The respondents, therefore, pray that the OA may be dismissed.

3. By order dated 7.5.96, the respondents were directed to re-engage the applicant subject to availability of work till final order in this application is passed. Pursuant to the above orders, the applicant has since been re-engaged and is continuing in service. The questions that arises for consideration are whether the respondents can deny re-engagement to the applicant on the ground that he did not report for duty and what relief the applicant is entitled to in the facts and circumstances of the case.

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4. The facts that are not in dispute are that the applicant is a casual mazdoor who has been granted temporary status w.e.f. 1.10.89 by order dated 19.2.90, that he did not report for duty from July 1993 to February 1996 and that prior to July 1993, the applicant had already completed casual service for 10 years. The applicant states that his absence from duty was on account of illness which physically prevented him from reporting for duty. The respondents refused to engage him when he made a representation to re-engage him, enclosing medical certificate as also fitness certificate (A-5) stating that there was no provision for condonation of break in service. The action on the part of respondents not to take him back to duty when he reported is illegal and unsustainable because as a casual labourer with temporary status in accordance with clause 9 of the Scheme, his services can be dispensed with only after holding an enquiry if he had committed a misconduct of unauthorised absence. If the applicant had absented from duty without justifiable cause, the respondents were free to take action against him for the misconduct of unauthorised absence. As that has not been done, the respondents were bound to take him back. Be that as it may in the case of the applicant, the question of condonation of break really does not assume much importance as even according to the respondents he had sufficient length of service to be entitled for absorption on a Group-D post. As he had been selected by a DPC held in August 1993 for appointment, the respondents should have offered him an appointment. It is not seen that the respondents have made any



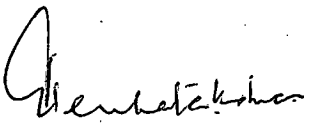
proper efforts to send the offer of appointment to the applicant. The fact that some communications sent earlier were returned unserved does not absolve the respondents from making an earnest attempt to have the offer of appointment served on him by sending it by registered post. However, now that the applicant has been re-engaged and is available, the respondents have to offer him the appointment on a Group-D post.


5. In the result, in the light of what is stated above, we dispose of the application with the following directions:

- (a) The applicant having been re-engaged shall be continued in service as casual labour till he is absorbed on the post of regular mazdoor on the basis of the recommendations of the DPC which met on 3.8.93.
- (b) Respondents shall now give effect to the recommendations of the DPC to absorb the applicant on regular group-D post of mazdoor.
- (c) The above exercise shall be completed and necessary orders issued within two months from the date of receipt of a copy of this order.

No order as to costs.

Dated 14th July 1998.


(P.V. VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER


(A.V. HARIDASAN)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: Order No.E.8/108 dated 25.2.1996 issued by the first respondent to the applicant.
2. Annexure A3: Medical certificate dated 15.2.1996 issued by Dr.S.Balasubramaniam, Venkateshwara Clinic, Coimbatore to the applicant.
3. Annexure A4: Fitness certificate dated 16.2.1996 issued by Dr.Jose Kuriyan Katt-ukaran Civil Surgeon, Taluk Hospital, Wadakancherry to the applicant.
4. Annexure A5: Representation dated 27.2.1996 submitted by the applicant to the second respondent.

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