

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 493/89
~~XXXXXX~~

X199

DATE OF DECISION 31-8-1990

PP Joseph Applicant (s)

Mr KV Raju Advocate for the Applicant (s)

Versus

General Manager, Telecommu- Respondent (s)
nications, Ernakulam and 2 others

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act the applicant has prayed that the order dated 21.12.1988 of the Telecom District Manager, Ernakulam directing the applicant to produce experience certificate proving that he was employed as Casual Mazdoor between 30.6.1984 to 31.3.1987 within 7 days and stating that if he did not do so, he would not be eligible for regularisation in service should be quashed and that the respondents may be directed to regularise the applicant as Mazdoor ^{in the} Telecommunication Department from the date on which persons similarly situated like him were regularised. A short resume of the facts is as follows.

2. The applicant was a daily rated Mazdoor in the Tele-communication Sub Division, Muvattupuzha commencing his service in the year 1978-79. But during the period from 30.6.1984 to 31.3.1987, the ~~second~~ ^{on} respondent did not allot any work to him for the reason that he happened to be an accused in a criminal case before the Court of the 1st Class Magistrate, Mutattupuzha as calendar case No.202/84. Though the applicant was acquitted by the judgement of the Magistrate dated 19th September, 1985 and though the applicant submitted an application before the second respondent for allotment of work in January 1986 he was allotted work only from June 1987. Pursuant to the direction of the Supreme Court in the decision reported in AIR 1987 SC, 2342, the respondent No.3 had entered into an agreement with the ~~XXXX~~ Unions in the year 1987, that all daily rated workmen had ^{on} who/commenced ~~his~~ service before 1980 would be regularised within a period of 2 years of the agreement. The applicant who had been continuously working till 30.6.1984 when the respondents ceased to allot ~~the~~ work to him ~~and~~ ^{on} had completed 240 days in each year. He also submitted his bio-data to the second respondent in 1988 for the purpose of getting himself regularised in the service. But ^{his} candidature was rejected for the reason that there was a break in his service from 31.6.1984 to 31.3.1987 as he failed to produce experience certificate for this period. As the applicant was not allotted work during this period for the reasons that he was ^{an} accused in a criminal case, he submitted a representation to the first respondent on 29.12.1988 requesting him to condone the break in service,

if any, and to consider his name for regularisation. As he did not get any favourable reply, the applicant has filed this application praying that the Annexure-A letter directing him to produce experience certificate for the period between 30.6.1984 to 31.3.1987 and informing that if he did not produce the same, he would not be considered for regularisation may be quashed and that the respondents ~~may~~ be directed to regularise him in service from the date on which ~~xxx~~ persons similarly situated like him were regularised.

3. In the reply statement on behalf of the respondents it has been admitted that the applicant had worked for 1034 days between 8.2.1979 to 2.4.1983 and 35 days from 5.6.1984 to 9.7.1984. It has been contended that as there was a break in service from 3.4.1983 to 4.6.1984 and 10.7.1984 to 31.3.1987 as no work had been allotted to him during this period on account of his involvement in a criminal case, the break cannot be condoned and that therefore he is not entitled to be regularised in service. It has also been contended that ^{for} the mere fact that he was acquitted by the criminal court, he cannot be allowed to claim the lost opportunity. It has also been stated that consequent on his acquittal, the applicant was given work from 1987 onwards.

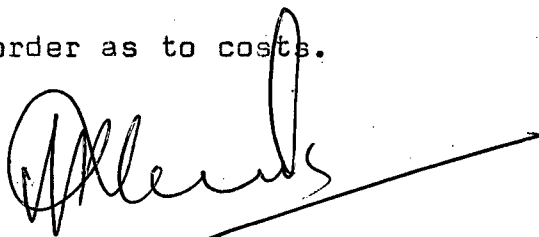
4. We have heard the arguments of the learned counsel on either side and have also perused the documents. Having commenced casual employment in 1978 and having worked for more than two years with 240 days service in each year prior

to 1987, the applicant would have been eligible for consideration for absorption if there was no break in his service. Apparently, there is a gap in his service for the period between 1983 to 1987. The applicant could not produce the experience certificate for the period between 30.6.1984 to 31.3.1987 as directed in Annexure-A letter. But it is an undisputed fact that during this period, the applicant was not given work on account of his involvement in a criminal case. It is further admitted that the applicant was acquitted in the criminal case and that after the acquittal from 1987 onwards he is being given work. The criminal court has acquitted the applicant, finding him not guilty. The respondents also did not consider it just and necessary to remove the applicant from the roll of casual mazdoors for any conduct unbecoming of a casual mazdoor for his alleged misconduct or involvement in the criminal case. So the non-engagement of the applicant as casual mazdoor from 30.6.1984 to 31.3.1987 was for reasons for which he was not responsible. The respondents should have engaged the applicant at least from January 1986 onwards when the applicant requested for re-engagement producing a copy of the judgement of the criminal court. But the respondents decided to employ him only from the year 1987 onwards. There is no justifiable reason for denying the applicant casual employment during the period from January 1986 to the year 1987. Since the only reason for not engaging the applicant from 30.6.1984 was the

pendency of the criminal case against him, by reason of his acquittal and by reason of the respondents not taking any action to remove him from the roll of approved mazdoor, it has to be deemed that the applicant continued to be on the roll without any break in service. Therefore, the demand made in Annexure-A letter requiring the applicant to produce a certificate to the effect that he rendered service as casual mazdoor for the period from 30.6.1984 to 31.3.1987 is unjustifiable and meaningless because the respondents who had denied casual employment to him during this period cannot reasonably direct the applicant to produce a certificate showing rendering of service which would be an impossibility. Therefore, the Annexure-A letter has to be set aside. The respondents have to be directed to consider the case of the applicant for absorption in regular service along with those who had been in casual employment like him considering that he continued in employment though no work was allotted to him by the respondents between 30.6.1984 to 31.3.1987.

5. In the result, for the reasons mentioned in the foregoing paragraph, we allow the application. The Annexure-A letter dated 21.12.1988 of the Telecom District Manager, Ernakulam is quashed. The respondents are directed to consider the case of the applicant for regularisation as Mazdoor in Telecom Department treating that there has been no break in his service and giving credit to him the same number of working days as immediately the person/junior to him in the service as Casual Mazdoor had

worked during the period from 30.6.1984 to 31.3.1987 also and
to regularise him ^{in service} in accordance with his seniority, if he is
found otherwise eligible for regularisation. The action in
the above line should be completed within a period of three
months from the date of communication of this order. There is
no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


31.8.90
(SP MUKERJI)
VICE CHAIRMAN

31-8-1990

trs