

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.52/97

Tuesday, this the 15th day of April, 1997.

C O R A M

HON'BLE SHRI AV HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

PC Mohanan, Regular Mazdoor,
Telephone Exchange,
Elanthoor.

....Applicant

By Advocate Shri AM Thomas.

vs

1. Union of India represented by
the Secretary to Ministry of
Communication.
2. The Chief General Manager,
Telecommunications,
Thiruvananthapuram.
3. Telecom District Manager,
Thiruvalla.
4. Sub Divisional Officer,
Telegraphs, Pathanamthitta.

....Respondents

By Shri James Kurian, Addl Central Govt Standing Counsel.

The application having been heard on 9th April, 1997,
the Tribunal delivered the following on 15th April, 97:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, while working as a Casual Mazdoor in the Telecommunication Department, was granted temporary status with effect from 31.12.91. According to A.1 seniority list of Casual Mazdoor, it is seen that the break in service was condoned in March, 1988. Thereafter, applicant was appointed as a regular mazdoor by order A.2 dated 14.5.93. While he was working as a regular mazdoor, a show cause notice A.3 dated 14.8.96 was issued stating that the proceedings of the Departmental Promotion

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Committee (DPC) was investigated by a Committee appointed by the Chief General Manager, Telecom, Thiruvananthapuram, and the service details of the applicant were verified. The investigating Committee stated:

"Out of 29 cases, 18 cases were selected. The remaining 11 cases are kept pending for want of (in)eligibility and sufficient records. Appointment order for 19 cases were found to be issued vide E-206/TDA/15 dated 26.4.93... TDE issued an order stating that "having cleared the points raised by the DPC met on 6.4.93 Shri PC Mohanan, temporary status Casual Mazdoor is hereby allotted to Pathanamthitta Division for posting as regular Mazdoor. Whereas the case of Shri PC Mohanan was rejected by the DPC for want of sufficient records". It seems that he was regularised without review DPC, whereas the case of Shri PC Mohanan was rejected by the DPC for want of sufficient records... The Committee has given the following conclusion:

"Not eligible to be regularised as on 31.3.93 since not having the requisite 10 years service.""

It was, therefore, proposed to terminate the services of applicant. Applicant gave a reply to the show cause notice by A.4 dated 12.9.96. He stated that he was not in a position to produce the records again as they were produced before the TDE, Thiruvalla and were not returned to him. Applicant submitted that regularisation had been ordered only after proper verification of all records by the TDE. Thereafter, by A.5 dated 23.9.96, further documents were called for asking for a certificate condoning the break in service from 1980 to 1981 and 1982 to 1987 and details of service put in during 1979-80. Applicant

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did not respond to this notice and thereafter, by the impugned order A.6, the appointment of applicant as regular mazdoor ordered on 14.5.93 was cancelled. Applicant challenges this order and prays that A.6 be quashed and that he be declared entitled to work as regular mazdoor as ordered by A.2.

2. Respondents submit in their reply that the approval card R.1 produced by the applicant shows that he was only sixteen years old when he commenced work on 1.11.78 and since approval cards are issued only to those who had completed eighteen years of age, the claim of the applicant that he was working as a casual mazdoor from 1.11.78 was not correct and applicant could have worked as casual mazdoor only from 14.12.81 which is the date of issue of the approval card. Applicant also could not produce any details of attendance put in during 1978, 1979 and 1980. Applicant had not worked at all in 1981 and so an approval card should not have been issued to him in 1981. R.1 shows that the number of the approval card 13/81 has been changed to PTA/30. The entry of 329 days from 1.11.78 to 20.3.80 had been attested, but respondents contend that no such attestation should have been there. Respondents also state that there is a marked change in style of making the entry and also there is wide variation in the signature of the Sub Divisional Officer, Telegraph. Therefore, the respondents have not accepted the claim of the applicant and state that award of temporary status with effect from 30.12.91 on the strength of 329 days work claimed by the applicant from 1.11.78 to 20.3.80 was a mistake. Respondents state that Shri Gopalakrishna Pillai, who was Sub Divisional Officer, Telegraphs, Punalur, who issued the approval card to the applicant, was not a Sub Divisional Officer in 1980. It was, therefore, suspected that the applicant had forged the

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entry of attendance on the approval card to claim the benefit of temporary status. Respondents also state that the A.1 order produced by the applicant to show that the break in service of applicant had been condoned, had never been issued from that office. The Telecom District Engineers do not also have the power to condone break of more than six months. The case of applicant for being appointed as regular mazdoor was considered by the Departmental Promotion Committee on 8.3.93 and 6.4.93 and according to the proceedings of the Departmental Promotion Committee produced at R.3, the DPC has recorded 'the break up details required from SDOT, Pathanamthitta' against the name of the applicant. Since no other DPC has been convened thereafter, the applicant had not been approved for regularisation and the TDE did not have any power to approve the regularisation without placing the matter before the DPC and getting the approval. Respondents, therefore, state that the order dated 14.5.93 issued by the TDE was without authority and 'is the net result of various suspicious circumstances and illegal actions without observing the rules and procedures. Thus, the appointment secured by the applicant as regular mazdoor through dubious methods is not maintainable and thus need to be corrected... Thus in respect of the applicant the service claimed to have put in by him from 1.11.1978 to 30.3.1980 is construed as interpolated to claim temporary status with effect from 30.12.1991 and thereafter regularisation by claiming 10 years of service.' Respondents also submit that applicant had obeyed the impugned order and started work as mazdoor on the muster rolls from 7.11.96.

3. In his rejoinder, applicant has produced A.7, which is a letter dated 18.7.89 issued by the Sub Divisional Officer,

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Telegraphs, Punalur, stating that the case had been verified with relevant records available in his office and it was found that applicant had worked for 344 days in total with effect from 1.11.78 to 23.3.82 and there is no evidence that he worked prior to 1.11.78. The year-wise break up of service rendered by applicant as casual mazdoor was also indicated as follows:-

1978-79	: 142 days
1979-80	: 187 days
1981-82	: 15 days
Total	: 344 days

Applicant has also produced A.8 which is a seniority list of casual mazdoors signed by the TDE, Thiruvalla, which clearly indicates, against serial number 126, that the break had been condoned in March, 1988. It is, therefore, clear that the contention of the respondents that the service of the applicant from 1.11.78 to 30.3.80 is interpolated in order to claim temporary status and the contention that no such order as A.1 was issued are incorrect statements.

4. During the hearing, learned counsel for respondents submitted that of the three grounds shown in support of the cancellation of the regular mazdoor status of the applicant in the impugned order, he was not pressing the first two as correct. That is to say, the ground that break in service was not condoned by any competent authority was not pressed as also the statement that the service put in by the applicant prior to 14.12.81, the date of issue of approval card, cannot be counted for selection as regular mazdoor, was not pressed. All that survives for consideration in the impugned order is the ground that the

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consolidated figure of 329 days attendance from 1978 to 1980 is not supported by original records. From Annexure A.7 produced by applicant in his rejoinder, it is clear that this ground cannot be accepted as correct. A.7 is a letter issued by the Sub Divisional Officer, Telegraphs, Punalur, dated 18.7.89 in his file No.E.46/II/89-90/55 and the facts referred to therein cannot be brushed aside lightly. It is also not discernible that during this period the applicant did not work continuously for 240 days in a year. That being so, even the third and last ground on which the impugned order has been based is also to be rejected. In the circumstances, the impugned order has no factual basis. That apart, the minutes of the Departmental Promotion Committee R.2 do not indicate that the case of applicant had been rejected. The minutes clearly state that the remaining eleven cases are kept pending due to reasons mentioned against each and against applicant what is mentioned is that break up details are required from the SDOT, Pathanamthitta. That is very different from saying that the applicant was not eligible for regularisation. Applicant could not be blamed if the respondents did not follow up the meeting of the Departmental Promotion Committee on 6.4.93 with a further meeting to consider the pending cases such as that of the applicant. The appointment order A.2 has been issued by an authority who is competent to do so and if he had acted without getting the approval of the DPC, the consequence cannot be the termination of the services of the applicant. Nothing prevented the respondents from holding a DPC meeting to consider the pending cases and pass appropriate orders.

5. The further point for consideration is that the reply statement of the respondents appears to indicate that the services of the applicant have been terminated since he had secured his appointment through dubious methods and there were various

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suspicious circumstances and illegal actions and non-observance of the rules and procedures. This seems to indicate more a lapse on the part of respondents than on the part of the applicant. In any case, if that was the ground for the termination, respondents should have followed the due procedure for terminating the services of the applicant after holding a proper inquiry as is necessary while taking punitive action. Termination on punitive grounds cannot be taken under the shelter of a clause in the appointment order stating that the appointment may be terminated by the appointing authority at any time with one month's notice without assigning any reasons.

6. In the result, the impugned order A.6 cannot be sustained. Accordingly, we quash A.6 and direct that the status of applicant be restored to that of a regular mazdoor without any break that might have been caused by the implementation of A.6.

7. The application is allowed. No costs.

Dated the 15th April, 1997.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



AV HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: A true copy of the relevant portion of the seniority list published by the T.D.E. (Telecom District Engineer)
2. Annexure A2: True copy of the Memo No.E-13/PTA/93-94/120/
Sub. : Divisional Officer, Telegraphs, Pathanamthitta. Dated 14.5.93 issued by the
3. Annexure A3: True copy of the show cause No.Q.624/8
Notice/issued by the Sub Divisional Officer, Telegraphs, Pathanamthitta dated 14.8.1996.
4. Annexure A4: True copy of the explanation submitted by the applicant dated 12.9.1996 before the 4th respondent.
5. Annexure A5: True copy of the Memo No.Q-624/11 dated 23.9.1996 asking the applicant to produce the Certificate issued by the competent Authority condoning the break-in service and details of service put in during 1979-80.
6. Annexure A6: True copy of the order No.Q-624/13 dated 4.11.1996 issued by the Sub Divisional Officer, Telegraph, Pathanamthitta.
7. Annexure A7: True copy of the letter E 46/II/89-90/55 of the Sub Divisional Officer, Telegraphs, Punalur to Sub Divisional Officer, Telegraphs, Pathanamthitta dated 18.7.1989.
8. Annexure A8: True copy of the seniority list, published by the Telecom District Engineer, Tiruvalla as on 31.3.1989.
9. Annexure R1: True copy of the approval card to work as a casual mazdoor dtd.14.12.81 by the Sub Divisional Officer, Telegraphs, Punalur.
10. Annexure R2: True copy of the minutes of the DPC.
11. Annexure R3: Copy of the work order issued to K. Krishnan, Sub Inspector, Phones, Elanthoor since 7.11.1996.

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