

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 30.3.1990

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 521/89

1. Sashi Kartha
2. Ratheeshan K.
3. Kunhikannan.V
4. Vinod.G
5. Raveendran.M
6. Unnikrishnan.C
7. Ramadasan.P.V.
8. Pavithran.M - Applicants

Versus

1. Union of India rep.
by Secretary to Govt.,
Ministry of Communication,
New Delhi.
2. The Sub Divisional Officer,
Telegraphs, Kasargode,
3. The Telecom District Manager,
Bannanore-1. - Respondents.

Mr.M.R.Rajendran Nair - Counsel for applicants

Mr.K.Prabhakaran,ACGSC - Counsel for respondents

O R D E R

(Mr.A.V.Haridasan, Judicial Member)

The applicants eight in number who were Casual
Mazdoors under the second respondent, the Sub Divisional
Officer, Telegraphs, Kasargode have in this application
filed under Section 19 of the Administrative Tribunals Act

...2/-

prayed that the Annexure-II order dated 22.8.1989 of the
second respondent, ^{to the effect} ~~that~~ the engagement of the applicants
were casually engaged in 1986 only as Casual Mazdoors
would be stopped with immediate effect should be quashed,
and that it may be declared that the applicants are entitled
to continue in service as Casual Mazdoors and to get
work and wages in accordance with law and that they are
entitled to get regularised in service in preference to
those who were subsequently employed. Shorn of details
the facts in the application are briefly as follows.

2. The applicants were initially employed by the
Assistant Engineer, Telegraphs Co-axial Cable Project,
Cannanore/Bangalore on different dates in the year 1986.
Ever since their engagement, they have been continuously
employed and they have completed three years of continuous
service. While they were working under the Sub Divisional
Officer, Telegraphs, Kasargode from March 1988 onwards as
directed by the third respondent, the second respondent
has issued the impugned order No.E 63/VI/166 dated 22.8.89
to the effect that the applicants who were initially engaged
only in 1986 would not be engaged on muster roll for any work
w.e.f. 1.9.1989. The applicants having worked continuously
for three years in the Telegraphs department which is an
industry, the decision to deny employment to them abrupt-
edly w.e.f. 1.9.1989 without observing the requirements of

Section 25^F of the Industrial Disputes Act would amount to illegal retrenchment. The fact that the applicants were engaged in 1986 without being sponsored by the Employment Exchange or against the departmental instructions would in any way affect not ~~their~~ ^{to be} rights under the Industrial Disputes Act.

Hence, the applicants pray that the impugned order may be quashed and that it may be declared that the applicants are entitled ^{to be} regularised in service in preference to those who were subsequently engaged..

3. The application is resisted by the respondents.

In the reply statement it has been contended that the decision to terminate the engagement of the applicants w.e.f. 1.9.1989 was taken in accordance with the Government instructions contained in DOT New Delhi No.270-6 /84-STN dated 30.3.1986 that no fresh Mazdoors were to be engaged as Casual Mazdoors from 30.3.1985. It has been further contended that the recruitment and employment of Casual Mazdoors in the department are governed by the instructions of the Government of India and as the provisions of the Industrial Disputes Act were extended to Casual Mazdoors in the department of Telecommunications only from 22.9.1989 vide DOT New Delhi No.269-53/87-STN dated 22.9.1989, applicants are not entitled to claim continuous in employment. The applicants have prayed for an interim relief that,

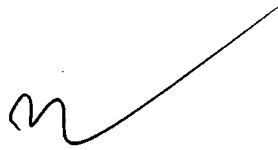
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pending final decision of this application, Annexure-II order may be stayed and that the respondents may be directed to engage the applicants for work on muster-roll on the basis of the interim order issued on 1.9.1989 which was extended from time to time, the applicants are being engaged as Casual Mazdoors. On 1.3.1990, we directed the ~~xxxxxxxxxxxxxxxxxxxx~~ the respondents to file an affidavit clarifying whether the disengagement of casual workers vide Annexure-II was confined only to 1986 entrance or all casual workers who have been engaged during 1986 and later. ~~xxxxxx~~ An affidavit was filed on behalf of the respondents in which it was stated that the Telecom. District Cannanore has not engaged any fresh casual mazdoors after 30.3.1985 and no casual mazdoor engaged subsequent to the engagement of the applicants is retained in the Telecom. District Cannanore.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced.

✓ 5. From the pleadings and also from Annexure-A-1A to A1-G, it is evident that the applicants have been working under the respondents as casual mazdoors from 1986 onwards and that each of them had put in more than 240 days of casual work in each year preceding the date of Annexure-II order. It is by now settled that the department of P&T

...5/-



is an industry. It has been so held ~~in 1982 KLT 613~~ ^{in 1982 KLT 613} by the Kerala High Court, in 1982 KLT 613 and in 1984 KLT 161. Similar view has been taken by this Tribunal in M.A.Bhkhari Vs. Union of India, ATR 1989(1) CAT 162. Since the applicants had been working for about three years continuously with more than 240 days in each year in terms of Section 25 F of the Industrial Disputes Act, they cannot be retrenched until they have been given one month notice in writing and has been paid retrenchment compensation. In this case, since the applicants ~~come~~ within the definition of workmen, who has been in the service of the respondents for about three years, the termination of their service without ^{the requirements of} observing Section 25 F of the Industrial Disputes Act would be unsustainable in law. Therefore, the respondents are not entitled to deny employment to the applicants w.e.f. 1.9.1989 without complying with the legal requirements of Section 25 F of Industrial Disputes Act. The fact that the applicants were engaged against the Government's instructions contained in Annexure-R1 would not take away the rights of the applicants who had been in continuous employment for more than three years. In Panama Tanti and others Vs. Union of India and others, ATR 1987(1) CAT 466, the Calcutta Bench of this Tribunal has held that, even if there was some mistake or irregularity in the recruitment of Casual Labour, ~~xxxxxxx~~ ^{they} they would attain temporary status on completion of more than 120 days of work.

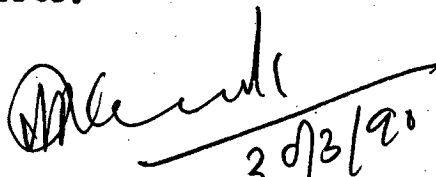
Therefore, the fact that the applicants were engaged against the Government instructions cannot be held out as a reason to deny them the benefits available to them under the provisions of the Industrial Disputes Act.

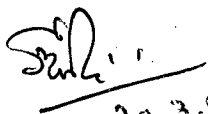
Therefore, we find that the impugned order at Annexure-II dated 22.8.1989, ^{to the effect} ~~that~~ the applicants need not be engaged on muster-roll for any work w.e.f. 1.9.1989 without complying with mandatory requirements of the provisions of Industrial Disputes Act cannot be sustained.

6. The Hon'ble Supreme Court has directed the Central Government in many of its rulings, for example AIR 1986 SC 584 ^{SC} AIR 1987 SC 2342 ⁱⁿ ~~directed the Central Government~~ to evolve a scheme on rational basis for absorbing the Casual Labourers who have been ⁱⁿ continuous employment for more than one year in P&T Department as far as possible. Casual Labourers being among the weakest section in the society deserve sympathetic approach at the hands of the Government, as has been observed by the Hon'ble Supreme Court in a catena of decisions.]

7. In view of the facts, law and circumstances discussed above, we allow the application, quash the Annexure-II order dated 22.8.1989 of the respondents declare that the applicants are entitled to continue as Casual Mazdoors and to get work and wages as available

with the respondents, and we ~~also~~ direct the respondents to consider their case for regularisation, if there is a scheme for regularising casual employees in accordance with their seniority and eligibility. We however make it clear that in case the respondents have to terminate the employment of the applicants, they can do so only in strict compliance with the provisions of the Section 25 F of the Industrial Disputes Act. There is no order as to costs.


30/3/90
(A.V. HARIDASAN)
JUDICIAL MEMBER


30.3.90
(S.P. MUKERJI)
VICE CHAIRMAN

30.3.1990