

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 540/99

Friday, this the 17th day of December, 1999.

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HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

1. C. Shaji,
Alkkathara Veedu,
Kalady, Karamana.
2. G. Madhusoodhanan Nair,
Adhikari Vilakathu Veedu,
Kalady, Karamana.

... Applicants

By Advocate Mr Sasidharan Chempazhanthiyil.

Vs.

1. Sub Divisional Engineer (External), Telecom,
Chalai, Trivandrum.
2. General Manager Telecom,
Trivandrum.
3. Director General,
Telecom Department,
New Delhi.
4. Union of India represented by
its Secretary,
Ministry of Communications,
New Delhi.

... Respondents

Ms. P. Vani, Addl.CGSC.

The application having been heard on 17.12.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicants seek to quash A14, A15 and A17, to declare that they are entitled to be regularised in Group D posts under the respondents and also to be conferred with temporary status and to direct the 2nd respondent to take action accordingly.

2. The applicants say that they were working as Casual Mazdoors under the 2nd respondent prior to 1985. They had registered in the Employment Exchange. The Telecom District Manager, Trivandrum, invited applications from casual mazdoors for reengagement of those who have been engaged prior to 1985. Applicants submitted applications in

pursuance of the notification. The Telecom District Manager did not finalise the list of casual mazdoors. To a notice sent on behalf of the casual mazdoors it was replied by the District Manager saying that a committee was constituted for scrutinising the large number of applications received. Subsequently, the applicants worked continuously from March 92 to October, 97. They were engaged from 1992 on casual basis. Respondent-2 again invited applications by notification from casual mazdoors to be received by him on or before 30.4.95. The applicants applied in pursuance of the same also. Engagement of the applicants was terminated from August, 1998. Applicants submitted representations to the 2nd respondent as per the directions of this Tribunal in O.A. 1636/98. Those representations were disposed of as per A14, A15 rejecting their claim.

3. Respondents resist the O.A. contending that the applicants do not have any ground to challenge, since they have failed to fulfil the conditions stipulated in the notification. No application was received from the applicants in response to A5. Reference to A8 is made only to get over limitation. A16 is nothing, but ratification of the ban order issued as early as in the year 1985 for deployment of men on daily rates. Applicants were engaged in the capacity of Piece Work Holders on quotation basis. The department is free to adopt this work.

4. Though the applicants say that they were working as casual mazdoors under the 2nd respondent prior to 1985, from their pleadings it is very evident that the 1st applicant has got no document to show that he was engaged at any time prior to 1985. A1 is the earliest document that the 1st applicant relies in support of the case for engagement under the respondents. That relates only from April, 85. It is quite strange that the 1st applicant is simultaneously saying that he was engaged prior to 1985 and the earliest document he relies on A1 is only from April, 85. Such an

attitude is only to be deplored.

5. Respondents say that A1, A1(a) to A1(c) and A2 documents are not issued by the competent authorities. There is nothing to show that A1 and A2 series are issued by the competent authorities.

6. A1 is a certificate issued by the Sub Divisional Officer, Telegraphs. If it is issued in his official capacity, it should contain the office seal. There is no office seal in A1. A1(a) is issued by the Junior Telecom Officer. On what date it was issued is not discernible. A1(a) shows the name of C. Shaji. It further shows '3.5.88 to 5.5.88 3 days Vizhinjam, 6.5.88 to 8.5.88 3 days Nedumangad, and 9.5.88 to 10.5.88 2 days Valiyamala'. What it proves is not known. A1(b) also does not contain any date. So also the official seal. It also does not help to know in what way it helps the applicants. A1(c) is issued by the Junior Telecom Officer. It does not contain any date or office seal. It says 'Another work at Vizhinjam' and 'Employment under JTOT, TV from 5.3.88 to 4.4.88 and 17.4.88 to 22.4.88'. What was the nature of the engagement is not known. Engagement as casual mazdoors or for doing piece work on contract basis is not known from A1(c). A2(a) to A2(c) relating to the second applicant clearly show that he was doing piece work on quotation basis.

7. There is no case for the applicant that A1, A1(a) to A1(c) and A2 are issued by Gazetted Officers. One of the reasons stated in the impugned orders A14 and A15 is that the essential requirement of production of certificate of experience from a gazetted officer has not been met by the applicants. That ground is seen to be true.

8. One other ground stated in A14 and A15 impugned orders is that the last date of engagement as per A1(b) in O.A. 1636/98 fell on 2.5.88 and there was no correspondence

from the applicants with the department for the claim of engagement as casual mazdoor within a period of 3 years from the date of last engagement and thereby the claim raised is hit by limitation. In this context it is relevant to see what is stated in para 9 of the O.A. In para 9 it is stated thus:

"It is submitted that the contention in para 3 that the applicants were not heard for more than 3 years is relevant, in view of the fact that they were interviewed in 1998 and also on 7.3.92".

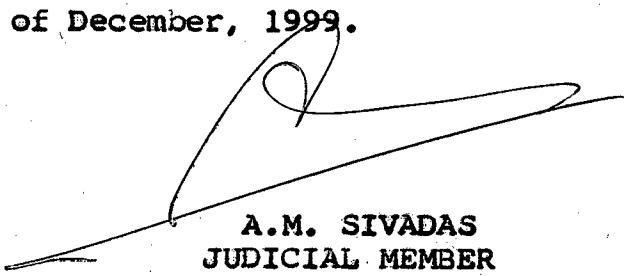
Para 3 referred to in para 9 of the O.A. refers to para 3 of A14 and A15. The applicants as per para 9 of the O.A. thus admit the stand of the respondents on limitation.

9. According to applicants, the Telecom District Manager did not finalise the list of casual mazdoors and hence a notice was sent on behalf of the casual mazdoors by and it was replied/saying that a committee was constituted for scrutinising the large number of applications received. The said reply is produced as A8. A8 dated 18.7.89 is issued from the office of the District Manager, Telecommunications, Trivandrum to Mrs Santhamma Issack, Advocate, Kochi. From the same it cannot be seen that the said Advocate has sent any notice for and on behalf of the applicants. Applicants also do not say that the said Lawyer issued a notice to the Telecom District Manager, Trivandrum on their behalf. Applicants very vaguely say that to a notice sent on behalf of the casual mazdoors, A8 reply was sent by the District Manager, Telecom, Trivandrum. It is pertinent to note that the applicants do not have a case that notice was issued by the lawyer on behalf of all the casual mazdoors. 'The casual mazdoors' mentioned in para-3 of the O.A. can only mean the casual mazdoors on behalf of whom notice was sent by the Advocate. So, the applicants cannot seek shelter under A8 to wriggle out of limitation.

10. The applicants have sought to quash A16 and A17. Since A14 and A15 are not liable to be quashed, no purpose will be served even if A16 and A17 are quashed. That being the position, I am not going into the question whether A16 and A17 are liable to be quashed.

12. Accordingly, the Original Application is dismissed. No costs.

Dated the 17th of December, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDER.

A1, Copy of Experience Certificate from 4/85 to 11/85.

A1(a) Copy of the experience certificate of May, 1988.

A1(b) Copy of the certificate from 11/86 to 1/87.

A1(c) Copy of the Experience Certificate from 3/88 to 5/88.

A2, Copy of the Experience Certificate for February, 1984

A2(a), Copy of the paid voucher of July, 1992.

A2(a)(a), English translation of Annexure A2(a).

A2(b), Copy of the paid voucher for August, 92.

A2(b)(a), English translation of A2(b).

A2(c), copy of the paid voucher for Sept. 92.

A5, copy of the Notice ST-227/A dt.26.9.88 issued by the Telecom Distt. Manager, Trivandrum.

A6, Copy of the OM NO.49014/4/90-Estt(C) dated 8.4.91 of the GIO Deptt. of Personnel & Training.

A8, Copy of letter No.VIII/Genl(C)/89-90/46 dt.18.7.89.

A14, Copy of order No.1636/98/6 dt.31.3.99 issued by 2nd Respt.

A15, Copy of the order No.1636/98/7 dt.31.3.99 issued by 2nd respondent.

A16, Copy of letter No.269-4/93-STN II dt.12.2.99 issued by the Asstt. Director General (STN).

A17, Copy of the notice No.G.25/98-99/5 dated 12.1.99 issued by the respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.540/99
and
OA No.951/99

Dated Tuesday this the 3rd day of February, 2004.

C O R A M

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

OA 540/99

1. C.Shaji
Alkkathara Veedu
Kalady, Karamana.
2. G.Madhusoodhanan Nair
Adhikari Vilakathu Veedu
Kalady, Karamana.

Applicants.

(By advocate Mr.Sasidharan Chempazhanthiyil)

Versus

1. Sub Divisional Engineer (External)
Telecom Chalai, Trivandrum.
2. General Manager Telecom
Trivandrum.
3. Director General
Telecom Department
New Delhi.
4. Union of India rep. by its
Secretary
Ministry of Communications
New Delhi.

Respondents.

(By advocate Mr.N.Nagaresh)

OA No.951/99

1. J.Suresh
S/o C.Janardhanan Pillai
C.J.Sadanam
Parippally P.O.
2. V.Krishnakumar
S/o V.Vasudevan Pillai
Kallaraveedu
Parippally.
3. S.Sobhanam
S/o Sivanandan, Kochuvila Veedu
Anathalvattam
Kadakkavoor.

Applicants.

(By advocate Mr.Sasidharan chempazhanthiyil)

Versus

1. General Manager
Telecom District
Trivandrum.
2. Director General
Telecom Department
New Delhi.
3. Union of India rep. by its Secretary
Ministry of Communication
New Delhi.

Respondents
(By adv. Mr. N. Nagaresh)

The two applications having been heard on 3rd February, 2004, the Tribunal on the same day delivered the following:

O R D E R

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

Both these cases which relate to re-engagement, grant of temporary status, regularization etc. to the alleged casual labourers were dismissed vide two separate orders of this Tribunal. However, the applicants in both these cases carried the matter before the Hon'ble High Court of Kerala in O.P. No. 17683 & 18003 of 2000. The Hon'ble High Court of Kerala vide a common order dated 8th October, 2003 remanded these two applications back to the Tribunal, setting aside the order of dismissal of the applications and directing the Tribunal to consider the matter on merit after allowing the contesting parties to adduce evidence in support of their respective contentions. After remand, in OA 951/99 the applicants produced Annexure A-13 series and the respondents in both cases filed additional reply statements.

2. We have heard the learned counsel on either side.

3. Although the cases relate to the claim of the applicants for grant of temporary status and regularization, in view of the difference in the facts, it is profitable to state in nutshell the facts in individual cases.

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OA 540/99

4. Applicants, two in number, who were initially engaged as casual labour from April 1985 and February 1984 respectively were not engaged from May 1988 onwards. They were re-engaged thereafter on their responding to call letter dated 27.2.92 (A9 & 10). The applicants claim to have been re-engaged as casual labours from July 1992. Their grievance is that they are not being continuously engaged and given the benefit of temporary status and regularization in accordance with the Casual Labour (Grant of Temporary Status & Regularization) Scheme. They are also aggrieved by the rejection of their claim for empanelment made pursuant to A-11 notification vide orders dated 31.3.99 (Annexure A14 & 15 respectively). The applicants are also aggrieved by the instructions issued by the Director General of Telecom, taking away the powers of the subordinate authority for engagement of fresh casual labours and making payment. The applicants claim that they have been continuously in engagement as casual labours, that even after their re-engagement in 1992, they have become eligible for grant of temporary status and regularization in Group-D posts and that, therefore, all the grounds stated for rejection of their claim for empanelment are unsustainable. With these averments, the applicants seek the following reliefs:

- (i) Call for the records and quash Annexure A14,A15,A16 and A17.
- (ii) Declare that the applicants are entitled to be regularized in Group D posts under the respondents and direct the 2nd respondent to take action accordingly.
- (iii) Declare that the applicants are entitled to be conferred with temporary status under Annexure A18 and direct the 2nd respondent to pass appropriate orders accordingly.

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(iv) Direct the respondents to provide the applicants with continued engagements till they are regularized as prayed in relief item 2 above.

5. The respondents contend that the applicants were engaged as casual labours only intermittently till 1988 and thereafter their whereabouts were not known and their re-engagement from 1992 onwards being only on piece rate basis, they are not casual labours entitled either for empanelment or for grant of temporary status and regularization.

6. We have heard the learned counsel for the parties and carefully gone through the pleadings and the material on record. The Hon'ble High Court of Kerala has found that the certificates produced by the applicants in these cases should not have been rejected on the ground that they were not issued by the competent authority especially when the certificates were issued by Sub Divisional Engineer, a gazetted officer. This aspect had not been considered by the Bench of the Tribunal earlier.

7. We have examined the claim of the applicants in the light of the certificates produced by them. The certificates produced by the applicants A-1 & A-2 show that the applicants had been engaged as casual labours for a few days in 1985 and 1984 respectively. The other documents A-1 (d) series and A-2 (a to d) series etc. relate to the payments for working on quotation basis from 1992 onwards. After the last engagement in 1985 in the case of the first applicant and 1984 in the case of the second applicant, the first time the applicants were engaged was only in the year 1992, that too on quotation basis. This Bench of the Tribunal had in its order in OA 1027/91 and connected formulated certain principles as to how casual labours who were disengaged could be considered for reengagement etc. It was held

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in those cases that unapproved casual labours who have not been heard of for 3 years and approved casual labourers who have not been heard of for 7 years do not have any claim for re-engagement. In this case, the last engagement in the case of the first applicant was in 1985 and the last engagement in the case of the second applicant was in 1984. There is nothing on record to show that the applicants who were unapproved casual mazdoors had put in any claim for re-engagement for three years after the last engagement in 1982 and 1985. It is true that this Bench of the Tribunal in OA 1402/93 directed the Department to prepare a panel of casual labours who had been engaged in the post for the purpose of re-engagement and a notification A11 was issued. Although the applicants put forward their claim, they were not included in the list of casual labours eligible for empanelment for the reason, inter alia, that they did not make their claim within a period of 3 years from the date of last engagement. Factually, the applicant have not been able to make out that after 30.11.85 in the case of the first applicant or after 7.5.84 in the case of the second applicant, within 3 years they had made any claim for re-engagement. The reason for rejection of the applicants' claim for placement in the panel contained in A14 & A15 orders, therefore, cannot be faulted because the orders are strictly in accordance with the formula contained in the orders of the Tribunal in OA 1027/91 and connected cases. The engagement of the applicants from 1992 onwards is only on quotation for piece rate work which cannot be treated as casual labour service qualifying for empanelment or grant of temporary status. //8] We are of the considered view that the impugned orders A-14 and A-15 therefore cannot be faulted.

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9. The direction issued from the office of the Director General of Telecom taking away the power of the subordinate authority to engage casual labour and the Accounts Officer to make payment is perfectly in order and in consonance with the general policy of doing away with the practice of engagement of casual labour taken as early as in 1985 as the Department wanted to end such practice in public interest and therefore cannot be faulted.

10. In the light of what is stated above, this application is dismissed.

OA 951/99

11. Applicants, 3 in number in this case, claim that they commenced service as casual mazdoors prior to 1985. Their grievance is that from 1995 onwards, they are being paid as contract labourers and are not being granted the benefit of temporary status and regularization. Their claim for engagement as casual labours and consequential benefit of grant of temporary status was rejected vide A-11 orders dated 29.7.99. Therefore, the applicants have filed this application jointly seeking to quash A-10 & A11, declaring that they are entitled to be conferred with temporary status with effect from 17.12.93 and for consequential benefits.

12. The respondents resist the claim of the applicants contending that the applicant had not completed 240 days of service as casual labours and they are now being engaged only as contract workers on piece rate basis. However, we find that the



Sub Divisional Engineer (Phones), Varkala had issued A-1 and A-1 (a) certificates in favour of the first and second applicants in which it is stated that the first and second applicants had worked as casual mazdoors from 1987 to 1995 continuously. We also find that the third applicant had produced A1(b) & (c) from Junior Engineer (Phones) which would prima facie show that the 3rd applicant had worked as casual mazdoor for some time and A-(d) which would show that the 3rd applicant had worked for 153 days from 3.2.92 to 31.7.92 as also other documents which would show that the 3rd applicant had worked on the basis of bills. Whether the bills are on daily rated basis or not is not discernible from the pleadings or from other materials. Therefore, we are of the considered view that the General Manager, Telecom Trivandrum will have to be directed to have another look into the claim of the applicants. Since the applicants are casual labours, their capability to obtain and produce evidence will be comparatively feeble. The department must definitely have in its possession all the material regarding the nature of engagement of the applicants because for spending public funds as wages or remuneration, there should be records which would definitely show the method of payment whether or muster roll, bills or ACG 17 or on hourly or piece rate basis. If the applicants had been working and getting payment as daily wages then their engagement can be treated only as casual labourers even if they were paid under ACG 17 or on bills. Since the respondents have no case that the certificates produced are forged ones, we find that in the interests of justice, the respondents have to be directed to scrutinise all the documents in their possession regarding the engagement of the applicants with reference to the documents produced by the applicants also in taking a decision on their claims.

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13. In the light of the above discussion, this application is disposed of directing the first respondent to consider the claim of the applicants for the benefit of empanelment and grant of temporary status and regularization in accordance with the provisions of the Scheme in that regard after verifying the certificates produced by the applicants and their claim made in the application and with reference to the documents in the possession of the department.

14. A speaking reply on the claim of the applicants shall be given to each of these applicants within 3 months from the date receipt of the copy of this order.

15. Both these applications are disposed of accordingly.

Dated 3rd February, 2004.

H.P.DAS

ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN

