

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 574 of 2013

Thursday, this the 24th day of March, 2016

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

P.K. Pocker, aged 50 years, S/o. Kunjumohammed,
 Temporary Status Mazdoor, OCB South, Office of SDE
 BSNL, Trichur South, Near Municipal Stand, Trichur,
 residing at Pottayil House, Vettikattiri, Vallathol Nagar,
 Trichur – 679 531.

..... **Applicant**

(By Advocate : **Mr. M.R. Hariraj**)

V e r s u s

1. Bharath Sanchar Nigam Ltd., represented by its Chairman and Managing Director, Sanchar Bhavan, New Delhi – 110 001.
2. Chief General Manager, Telecommunications, BSNL, Thiruvananthapuram – 691 001.
3. General Manager, Telecommunications, BSNL, Trichur – 680 026. **Respondents**

(By Advocate : **Mr. T.C. Krishna**)

This application having been heard on 4.3.2016, the Tribunal on 24.03.2016 delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

This application has been filed for regularization of the service of the applicant. Here is the gist of the applicant's case:

The applicant was appointed as Casual Labourer under the respondent Department on 19.3.1983 vide Annexure A1. On 1.10.1989 he was granted

temporary status. It is stated that in 1992 he could not report for work for sometime as a result of which the applicant was disengaged. Though he made representation his case for re-engagement was not considered. Annexure A2 order was issued on 30.9.1994 re-engaging the applicant. But Annexure A2 was not communicated to the applicant. He again continued to make representations seeking re-engagement. Finally he approached this Tribunal filing OA No. 1076 of 1999. But in fact his name was considered for regularization vide Annexure A3. But Annexure A3 was also not communicated to the applicant. His case for regularization was not considered as the applicant had been disengaged. Though it was contended by the respondents in OA No. 1076 of 1999 that the applicant was not included in the list of temporary status mazdoors that contention was rejected by this Tribunal. The respondents were directed to consider the representation of the applicant. Though the representation of the applicant was considered it was rejected. Again challenging the same the applicant filed OA No. 1059 of 2000. This Tribunal set aside the order and directed the respondents to re-engage the applicant subject to availability of work vide Annexure A5. Accordingly, the applicant was re-engaged on 14.2.2002. Since then he has been working as a temporary status mazdoor. The applicant had applied for condonation of the break in service from 16.3.1993 to 14.2.2002. That representation was rejected. The Original Application filed challenging the same was also rejected by this Tribunal. Though Writ Petition was filed that was also dismissed vide Annexure A6. Ever since his re-engagement pursuant to Annexure A5 the applicant has been continuously engaged as temporary status mazdoor. Though he made

request for regularisation his case was not considered for grant of regular appointment. Juniors to the applicant had got the benefit of regularisation. Vide Annexure A7, the applicant's request for regularisation was rejected. The applicant ought to have been treated as the person on the rolls of temporary status mazdoor on 1.10.2000 and hence he should be considered for absorption. The applicant should be regularized as Group-D (MTS).

2. This application has been strongly resisted by the respondents contending as follows:

The applicant commenced work as casual mazdoor on departmental rolls with effect from 19.3.1983. In 1989 the scheme for conferment of temporary status on 'currently engaged casual mazdoors' who were initially engaged prior to 31.3.1985 and who completed 240 days of work in any preceding year was introduced by the Department of Telecommunication effective from 1.10.1989. Having fulfilled the said condition the applicant was conferred with temporary status as per Annexure A1. The applicant had applied for regularization during 1993. It was rejected since he was not continuously working under the rolls of the Department from July, 1992 onwards. The applicant was absent from duty from 1.7.1992 to 5.6.1993. A medical certificate dated 6.6.1993 was produced and he claimed that his absence from duty from 1.7.1992 to 5.6.1993 was due to health reasons. As the break of service was for more than six months the case of the applicant was taken up with the circle office and period of break in service was condoned by the competent authority. The approval of condonation of break in service with instruction to report for duty was sent by registered post to

the applicant in his last known address. However, the same was returned with postal endorsement "unclaimed". In OA No. 1076 of 1999 the applicant himself has stated that he was outside the State. It is also evident from one of his representations dated 30.7.2000 that he had left in search of better opportunities elsewhere including gulf countries. Only those persons who satisfied the departmental rules/conditions were regularized or re-engaged. The applicant stands on a different footing. A review DPC was held to consider regularization of casual mazdoor with temporary status who had completed 10 years or more of service as on 31.3.1993. The applicant was not selected as he was not working during the relevant time. He was not in employment during the period from 1.7.1992 to 7.6.1993. He also did not have ten years continuous service as on 31.3.1993. The representation which was directed to be disposed of by this Tribunal was considered and orders were passed. OP No. 523 of 2003 filed by the applicant was dismissed by the Hon'ble High Court of Kerala vide Annexure A6 judgment. There is no legally enforceable right to the applicant and hence he is not entitled to any of the reliefs claimed in this Original Application.

3. A rejoinder was filed by the applicant disputing the averments raised by the respondents in the reply statement. Further an additional reply statement was also filed by the respondents disputing the averments raised by the applicant in the rejoinder.

4. The short question that arises for consideration is whether the applicant is entitled to get an order of regularization as sought for ?

5. We have heard the learned counsel appearing for the parties and have also gone through the pleadings and documents on record.

6. It is not disputed that the applicant commenced his service in the then Telecom Department as a casual mazdoor on 19.3.1983 and he was granted temporary status with effect from 10.8.1989. It was stated that in 1992-1993 he was able to work only for 122 days. He was absent from duty from 1.7.1992 to 5.6.1993. It is admitted that subsequently that break was condoned by the competent authority and he was instructed to report for duty as per the letter sent by registered post. But it was returned unclaimed. The respondents would contend that as has been admitted by applicant in the previous case, (OA 1076/1999) he had left the State and was abroad (in gulf countries) seeking better job opportunities. Therefore, the contention that he was not aware of the communication having been sent to him cannot come to his rescue since he was away from the State. The reason stated for leaving the Country, according to him, was that there was laxity on the part of the Department. That is only a reason now invented by the applicant. Since the applicant was admittedly away from this country for quite long time he cannot blame the respondents and contend that he should have been re-engaged without taking note of his absence. However, in OA No. 1076/1999 this Tribunal passed an order permitting the applicant to submit representation within two weeks from that date. The 3rd respondent was

directed to consider and pass appropriate orders on that representation. Since the representation was not considered in favour of the applicant he again filed OA 1059/2000. Annexure A1 order therein which was impugned by the applicant was quashed and the respondents were directed to re-engage the applicant subject availability of work and in preference to freshers and outsiders. This has been projected by the learned counsel for the applicant to contend that the respondents were bound to order regularization as well since it was stated that it should be in preference to freshers and outsiders. That has been taken exception to by the respondents.

7. Challenging Annexure A5 order in OA No. 1076/1999, a Writ Petition was filed by him before the Hon'ble High Court as OP 523/2003. It was disposed of by the Division Bench on 10.1.2003. It was observed by the Division Bench in Annexure A6 that the applicant claimed to have worked till June, 1992 and thereafter he did not report for work till the year 2000. It is only in the year 2000 he approached the authority. After two rounds of litigation he approached the Tribunal. The Tribunal directed the respondents to reengage the applicant subject to the availability of work and in preference to freshers and outsiders. Pursuant thereto the applicant was reengaged. It was clearly observed by the Division Bench as:

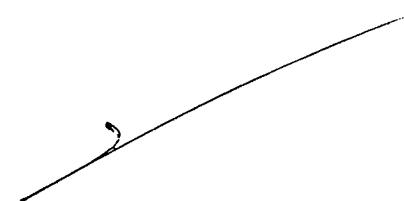
“3.The Tribunal had never directed that the break in service from June 6, 1993 onwards shall be condoned. There was, thus, no obligation on the part of the respondents to condone that break. If it was the petitioner's case that he was entitled to claim condonation of the break, he could have made a prayer before the Tribunal and got a direction. Having failed, there was no occasion for him to claim for that relief before the Departmental authorities. In any case, nothing has been pointed out from the records to show that there was a

good reason for the petitioner's absence from duty for a long period of about eight years. In this situation, the action of the authority in refusing to condone the break cannot be said to be arbitrary or unfair."

It was also observed by the Division Bench as:

"4.The authority was not acting in a judicial or quasi-judicial capacity. It was only examining the prayer for condonation of the break made in the representation. No rule had been invoked to show that the petitioner was entitled to the claim made by him. In fact, the matter had already been adjudicated by the Tribunal and under the order, the authority was not bound to grant any relief for condonation of any break. Even otherwise, we are satisfied that the petitioner has already got more than his due. Jobs under the Government are meant for persons who are serious about their work. The petitioner was totally casual about the service. Thus, he deserves nothing beyond being re-engaged as a casual labourer. The authority was not bound to record a judgment by assigning reasons. In the circumstances, we find no infirmity in the view taken by the authority."

8. In the light of the categoric finding entered by the Division Bench it is beyond any pale of doubt that the applicant has absolutely no right to claim regularisation contending that his break in service should not be reckoned at all. In other words, the contention that the break in service should be condoned and he should be treated as an employee working under the Department and having temporary status, having ten years of service as on 10.3.2012 is absolutely denuded of any merit. Ever so many aspects have been stated in this Original Application which are not at all germane for consideration in the light of the specific concluded finding entered by the Division Bench of the High Court in Annexure A6.



9. The finding entered by the Division Bench as has been quoted earlier would spurn down the plea belatedly advanced by the applicant. The contention that he came to know of Annexure A7 only recently is also seen to be undigestible. Learned counsel for the respondents would contend that the plea for regularization is unsustainable in the light of the dictum laid down by the Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors. - AIR 2006 SC 1806*, wherein it was held:

“Therefore, consistent with Scheme for public employment, this court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified person, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, temporary employee could not claim to be made permanent on the expiry of his term of appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance.”

10. It was also held by the Hon'ble Supreme Court that regularization of casual labourers, *dehors* the provision of the Recruitment Rules, is unconstitutional and illegal. It is also submitted by the learned counsel for the respondents that the judgment in *Umadevi* was followed by the Hon'ble Supreme Court in judgment dated 16.1.2009 in *SLP(C) 7803/2006* in the case of *BSNL v. Teja Singh*.

11. The learned counsel for the applicant would further submit that *Umadevi*'s case is not the be all and end all. No doubt, there may be cases which can be clearly distinguished on facts but at the same time when the

law has been laid down by the Constitution Bench decision cannot be bypassed by pointing out some slight difference on facts. The ratio laid down therein is clear on the point that regularization of casual labourers *dehors* the provisions of the Recruitment Rules is unconstitutional and illegal. The applicant was not appointed against any regular vacancy nor was the appointment made under any Recruitment Rules. The request for regularization is clearly unsustainable in the light of the judgment rendered in *Umadevi* as well. Even otherwise, the applicant's case is totally bereft of any merit as has been already held by the Division Bench in Annexure A6.

12. The decision of the Supreme Court in *Bharat Sanchar Nigam Limited v. Bhurumal – (2014) 7 SCC 177* cited by the learned counsel for the applicant has no relevance to the facts of this case since in that case the employee therein was challenging illegal termination and so what was considered was reinstatement with back-wages. Since there was procedural defect the employee was granted monetary compensation and not reinstatement with back-wages.

13. The decision of the Hon'ble Supreme Court in *Amarkant Rai v. State of Bihar & Ors. v. (2015) 8 SCC 265*, cited by the learned counsel for the applicant is also inapplicable to the facts of this case. Considering the facts of that case it was held by the Hon'ble Supreme Court that the petitioner therein was entitled to regularization since it would fall in the exception carved out in *Umadevi (3) – 2006 (4) SCC 1*. The position in this case is totally different from the facts dealt with in *Amarkant Rai's* case cited

supra.

14. In the light of what have been delineated earlier, we have no hesitation to hold that the applicant is not entitled to get any relief in this OA.

15. Hence, this Original Application is dismissed. No order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”