

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 586/2009

Dated this the 20th day of October, 2010

C O R A M

HON'BLE MR JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1 P.M.Haneefa
Temporary Status Mazdoor
Central Telegraph Office
Kochi-682 016

2 P.K. Yesudas
Temporary Status Mazdoor
Telegraph Office, Palarivattom
Kochi-682 025

Applicants

By Advocate Mr. M.V. Somarajan

Vs

1 The Chairman and Managing Director
Bharat Sanchar Nigam Ltd., Sanchar Bhavan
New Delhi.

2 The Principal General Manager
Telecom District, BSNL, Ernakulam

3 The Divisional Engineer (SFMSS)
Telecom BSNL, Central Telegraph Office
Ernakulam, Cochin-682 016

4 The Sub Divisional Engineer (Admn)
Office of the Principal General Manager
Telecom BSNL, Ernakulam

5 The Chief General Manager Telecom
BSNL, Kerala Circle, Trivandrum-695 033

By Advocate Mr. N. Nagaresh

The Application having been heard on 8.10.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants are presently working as Temporary Status Mazdoors under the 2nd respondent. According to them, they were originally engaged as part time Casual Mazdoors in the year 1983 and 1985 respectively (A-1). They were appointed as Full Time Casual Mazdoors on 21.2.2000 (A2) and were subsequently appointed as temporary status Mazdoor as per the Scheme. On the eve of creation of BSNL on 1.10.2000, the Department issued orders to regularise all Casual Mazdoors on 29.9.2003 (A-3). But it was not acted upon by the 2nd respondent. Instead of regularising their service, they were appointed as Full time temporary Status Casual Mazdoors w.e.f. 21.2.2001 (A-6). The respondents regularised all others as per A-3, A-4 and A-8 ignoring the applicants. Later when their full time appointments were cancelled, they challenged the action of the respondents through O.A. Nos. 913/2001 and 914/2001. The Tribunal allowed the OAs which was upheld by the High Court vide judgment in OP No. 26750 and 26814 of 2002. When those orders were not implemented, they again approached the High Court through WP NO. 18913/05 which was allowed. A series of Writ Petitions were filed. Ultimately WP(C) 2621/08 was disposed of directing the applicants to represent to the 5th respondent (A-17). Accordingly, they submitted A-18 and A-19

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representations which were rejected by A-20 and A-21 which are under challenge in this O.A. They are seeking for a declaration that they are entitled to be regularised as Group-D employees w.e.f. the date of conferment of temporary status. They raised the main grounds that their claims were not considered on par with casual mazdoors who were appointed against Group-D vacancies for the last 25 years, they are the only one left out being regularised in the whole BSNL in India, many part-time mazdoors who were juniors and not even attained the status of full time and temporary status were regularised as early as in 2001, the denial of regularisation adversely affects their service prospects and it is violative of Article 14 and 16 of the Constitution of India.

2 The respondents filed reply statement. The contention of the respondents is that the applicants were not approved casual labourers, that they were made full time w.e.f. 21.2.2001 by mistake because they were neither recruited by any departmental authority nor appointed as casual mazdoors after observing the recruitment procedure. The Department had banned recruitment of casual mazdoors w.e.f. 14.8.1984 and full time casual labourers w.e.f. 30.3.1985. They have submitted that the applicants were engaged occasionally as casual mazdoors. Temporary Status Regularisation Scheme was originally applicable to those full time casual labourers employed by the Department prior to 31.3.85. The conferment of temporary status to the applicants itself was in contravention of the rules on the subject. Therefore, they are not eligible for regularisation.

3 The applicants filed rejoinder. They submitted that the contention of the respondents was adjudicated by the High Court of

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Kerala in OP NOs. 26750/02 and 2681/02 respectively and the Hon'ble High Court had set aside and quashed the same and that the judgments of the High Court have become final.

4 We have heard learned counsel for the parties and perused the records produced before us.

5 The main contentions of the applicants are that their claim for regularisation was not considered on par with other casual mazdoors who were appointed as Group-D as per A-8 order and that they were alone left out being regularised in the cadre and that many part-time mazdoors who were juniors and not even attained the status of full time and temporary status later than the applicants, were regularised. They have also relied on the judgments of the Apex Court in State of Karnataka Vs. Umadevi and others (2006 4 SCC 1) and U.P. Electricity Board Vs. Pooran Chandra Pandey (23007 (4) KLT 513(SC)) in support of their case.

6 The contention of the respondents on the other hand was that the applicants were not approved casual mazdoors and that due to an inadvertent mistake they were converted into full time casual mazdoors and they supported their action in regularisation of certain casual mazdoors by A-8 as they were empanelled casual mazdoors. The respondents have distinguished the decisions of the Supreme Court in State of Karnataka Vs. Umadevi and others (2006 4 SCC 1) and U.P. Electricity Board Vs. Pooran Chandra Pandey (23007 (4) KLT 513(SC)) which were relied on by the applicants in support of their contention.

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7 There is no dispute that the applicants were working as part time Casulal Mazdoors occasionally with effect from 1983 and 1985 respectively. From the service particulars submitted by the respondents in the reply statement, it is seen that though the 1st applicant was initially engaged for 10 days in 1983 and 107 days in 1984, he was not engaged in 1986, 1989, 1990 and in 1991 he was engaged for 61 days. He was not engaged thereafter. As regards the 2nd applicant though he was engaged in 1985 for 5 days only, he had worked for 365 days in 1991, 1992, 1993 and from 14.12.94 onwards for 7 hrs. However, they were ordered to be engaged as full time casual mazdoors with the approval of the Deputy General Manager (Administration) after review of the cases and in pursuance of the orders of the Tribunal, vide Annexure A-1 dated 2.3.2000. When the respondents cancelled their appointment as full time mazdoor the applicants represented to the authorities for restoration of the same and for earlier regularisation as Group-D. When their request was turned down by the Department, they moved the High Court challenging the rejection of their representations. The High Court directed the respondent to consider the representations if any submitted by the applicants in accordance with law within two months. The representations submitted by them were rejected. They are now challenging the rejection orders.

8 We notice that the BSNL and the three Employees Federations on 2.1.2001 had discussed the issue of absorption of Group-C and D staff working in BSNL and approved the following:

3 Absorption of Casual Labours



Order have been issued by DOT for regularising Ayahs/all casual labourers including part time casual labours. Left out case if any will be settled by BSNL in accordance with order NO. 269/94/98STN-II dated 29.9.2000

9 Pursuant to the above, the Department has taken steps for regularisation of casual mazdoors. The order dated 29.9.2000 issued by the Department of Telecom Services to all CGM, Telecom Circles / Districts etc. states as follows:

"The employees unions are demanding regularisation of all the casual labourers. This issue was under consideration for quite some time. It has been decided to regularise all the casual labourers working in the Department including those who have been granted temporary status with effect from 1.10.2000 in the following order:

- (1) All casual labourers who have been granted temporary status upto the issuance of order No. 269-4/93-STN II dated 12.2.99 circulated vide letter No.269-13/99-STN II dated 12.2.99 and further vide letter No. 269-13/99-STN II dated 9.6.2000
- (2) All full time casual labourers as indicated in the Annexure
- (3) All part time casual labourers who were working for four or more hours per day and converted into full time casual labourers vide letter No.269-13/99/STN II dated 16.9.99
- (4) All part time casual labourers who were working for less than four hours per day and were converted with full time casual labourers vide letter No. 269-13/99/STN II dated 25.8.2000

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(5) All Ayas and supervisors converted into full time casual laboures as per ordeer NO.269-13/99/STN II dated 29.9.2000

The number of casual labourers to be regularised in categories (2) to (5) above is given in the Annexure enclosed. The figures given in the Annexure are based on information received from circles.

The casual lablourers indicated from (1) to (5) above are to be adjusted against available vacancies of regular mazdoor. However, Chief General Managers are also authorised to create posts of Regular Mazdoors as per the prescribed norms, and to that extent, the prescribed ceiling for the circle will stand enhanced.

As per the office letter No. 269-4/93-STN II dated 12.2.99, vide which temporary status was granted to casual labourers eligible on 1.8.98, no casual labourers were to be engaged after this date and all casual labourers not eligible for temporary status on 1.8.98 were to be disengaged forthwith. Therefore, there should be no casual labourers left without temporary status after 1.8.98, other than those indicated in serial Nos(2) to (5) above. However, if there is still any case of casual labourers left out due to any reasons that may be referred to the Head Quarters separately..."

10 The applicants have neither produced any material showing their engagement as Part time Mazdoors w.e.f. 1983 and 1985 respectively nor have they produced any seniority list of Full Time Mazdoors in support of their contention that their juniors were appointed as Group-D.

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11 There is no dispute now that the applicants stand appointed as Full Time Mazdoors by order dated 2.3.2000 and attained temporary status w.e.f. 21.2.2001. This is settled by the orders of the Tribunal affirmed by the High Court. The High Court in WP(C) NO. 18913/2005, filed by the applicants against denial of benefits granted by the Tribunal in O.A Nos.913/2001 & 914/2001 upheld by the DB of the High Court, held as follows:

2 Standing Counsel for the BSNL has handed over for my perusal a copy of letter issued by Assistant Manager, BSNL, Kochi-16 to the Sub Divisional Engineer (Admn), Central Telegraph Office, Ernakulam stating that the petitioners were conferred temporary status with effect from 28.2.2001 and it was also decided that they are eligible for all benefits as Temporary Status Mazdoor as per clause(3) order No.1 cited above. Learned counsel for the petitioners submit that revised salary has been paid to the petitioners based on the above communication and arrears bill also has been prepared and therefore petitioners have no further grievance in the matter.

3 Learned counsel points out that one more relief prayed for in this Writ Petition remains namely for an order regularising their services. It is seen from Exts. P4 and P5 that a claim for regularisation was not an issue before the Central Administrative Tribunal and therefore that claim of the petitioners as such was not considered by the Tribunal. Standing Counsel for BSNL points out that if claim is appropriately made before the competent authority, the same will be considered according to law. Recording the above submission and reserving the right of the petitioners to file appropriate representation before the BSNL claiming regularisation of service in Group-D Writ Petition is disposed.

Therefore, the cancellation of appointment as Full Time Mazdoors and conferment of temporary status was set aside by the High Court and the issue of their regularisation in Group-D alone was

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directed to be considered by the respondents.

12 The issue that comes up for consideration in this O.A. is regarding regularisation of the applicants as Group-D employees. The contention of the respondents that the appointment of applicants as Full Time Mazdoors and subsequent grant of temporary status was a mistake, would no more be valid in view of the order of the Tribunal in O.A.Nos.913/2001 & 914/2001, affirmed by the High Court. The applicants having been appointed as Full Time Mazdoors and granted temporary status after completion of 240 days of work on 21.2.2001, and the cancellation of the same was set aside by the Tribunal affirmed by the High Court, they are entitled to be appointed in Gr.D cadre, in their turn along with other temporary status attained Mazdoors as and when vacancies arise.

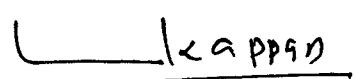
13 In this view of the matter, we allow the O.A, quash Annexures A-20 and A-21 with the declaration that the applicants are entitled to be considered for appointment in Group D cadre posts in their turn, in accordance with the rules on the subject.

14 The OA is disposed of with the above declaration..

Dated 20th October, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER