

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No. 84/93

Wednesday, this the 19th day of January, 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)

1. Bharathiya Telephone Employees Union,
Line Staff and Group D, Secretary,
Switching Area, Ernakulam represented
by Dist. Secretary, C.Unnikrishnan
Unnithan, Wireman, O/o Cross Bar
Installation, PKVS, Kochi-11.
2. G.Padmakumar, Casual Mazdoor,
O/o. Store Depo, Gandhi Nagar,
Telecom, Kadavanthara PO,
Kochi.

.. Applicants

By Advocate Shri K.K.Balakrishnan

V/s

1. Union of India rep. by
Secretary, Min. of Telecoms,
Sanchar Bhavan, New Delhi.
2. Director General,
Telecom, Sanchar Bhavan,
New Delhi-1.
3. Chief General Manager,
Telecom Kerala Circle,
Trivandrum.
4. General Manager,
Telecom District,
Ernakulam, Kochi-31.

.. Respondents

By Advocate Shri K.Karthikeya Panicker, ACGSC.

ORDER

N.DHARMADAN

The first applicant is the Union of the Line Staff and Group-D employees working in the Telecom Department and the second applicant is a Casual Mazdoor having temporary status now working under the fourth respondent. He is also

a member of the first applicant. In this application, we are considering the grievances of the second applicant alone.

2. According to the second applicant, the service conditions of a temporary status casual mazdoor are to be regulated in accordance with Annexure-A1 scheme prepared by the Department. The said scheme, "Casual Mazdoor (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunication", came into fore w.e.f. 1.10.89. The relevant conditions for the disposal of this case are extracted below:-

"6. Trmporary status would entitle the casual labourers to the following benefits:-

- i) Wage at daily rates with reference to the minimum of the pay scale for a regular Gr.D official including DA, HRA and CCA.
- ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year.
- iii) Leave entitlement will be on a pro-rata basis, one day for every 10 days of work. Casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of services for any reason or their quitting service.

XXXXXXXXXX

XXXXXXX

XXXXXXXXXX

10. The D.O.T. will have the power to make amendments in the scheme and or to issue instructions in detail within the frame work of the scheme. "

3. According to the second applicant, a clarification dated 8th June 1990 was issued, which is produced as Annexure-A4. The relevant clauses in the clarification letter are also extracted below:-

- | | |
|--|--|
| "f) Whether weekly off will qualify for leave | f) Yes |
| g) Whether the days of leave availed will qualify for weekly off and leave | g) <u>Days of leave availed will qualify only for weekly off that, too if one works for a minimum of 3 days in that week</u> |
| h) Is there any maximum limit for accumulating leave | h) No limit |
| i) Authority for granting leave/increment | i) <u>Respective unit officer</u> " |

4. Admittedly, the second applicant is a casual mazdoor who attained temporary status and is working under the 4th respondent. According to him he is eligible for annual increment of pay for every one year if he works continuously. The leave entitlement would be pro-rata basis i.e. one day for every 10 days of work, but casual leave or other kind of leave will not be admissible to him. Annexure-A1 is a scheme framed by the Department pursuant to the directions of the Supreme Court in Writ Petition 373/86. The Supreme Court issued the following directions:-

"The principal complaint of the petitioners is that even though many of them have been working for the last ten years as casual labours, the wages paid to them are very low and far less than the salary and allowances paid to the regular employees of the Posts and Telegraphs Department belonging to each of the categories referred to above and secondly no scheme has been prepared by the Union of India to absorb them regularly in its service and consequently they have been denied the benefits, such as increments, pension, leave facilities, etc. etc. which are enjoyed by those who have been recruited regularly. They allege that they are being employed by the Union of India."

5. Relying on the clauses in Annexure-A1 scheme as clarified by Annexure-A4, the learned counsel for applicant submitted that a casual employee, who works for a period of three days in a week and there is continuity in service. he is entitled to get one day's paid weekly off in a week. According to him, this procedure in the matter of grant of weekly off was followed. But the D.T.O. by letter, Annexure-A2, regulated the leave facility and weekly off already granted as per Annexure-A1 scheme. According to this order, paid weekly off would be allowed only after six days of continuous work. A consequential order, Annexure-A3 was also issued on 18.8.92. These orders are challenged in this application filed under section 19 of the Administrative Tribunals Act.

6. The only contention raised by the learned counsel for applicant is that the impugned orders are contrary to the provisions dealing with grant of leave to casual employees having temporary status. They were not^{issued} under

Annexure-A1 scheme, Clause 10. If respondents 1 & 2 want to modify Annexure-A1 scheme, of course they can do it by making suitable amendments to the scheme in the suitable manner as provided therein. No such amendment was issued by the competent authority. Hence, the orders are unsustainable.

7. The learned counsel for the respondents was not able to sustain the impugned orders answering the above contention. In the reply the respondents have relied on Annexure-R1 communication issued by the Director to the CGM taking the view that neither the mazdoors nor the temporary status casual mazdoors are regular Government servants and thereby they are not eligible for any reliefs and the original application is to be dismissed according to the respondents.

8. On a reading of Annexure-R1 we are satisfied that it is not relevant for answering the main contention urged by the applicant. We are also not dealing with the rights and contention of the first applicant in this case. We are only dealing with the rights of the 2nd applicant.

9. In para 4 of the reply the respondents have also stated that Annexure-A2 specifically "points out that paid weekly off is allowed only after six days of continuous work as per Minimum Wages Act and any continuous work for less than six days does not merit a paid weekly off. Hence the clarification at A4 is superseded by the Department of Telecommunications letter dated 25.11.91 (Shown at Annexure A2".

10. No provisions of the Minimum Wages Act was brought to our notice by the learned counsel for the respondents to support this statement in the reply. Annexure-A2 does not indicate that the same was issued in supersession of the clarification Annexure-A4 which provides that casual employees are entitled to weekly off if they work for a minimum three days in that week and Annexure-A1 scheme

states that on pro-rata basis i.e. one day for every ten days can be availed of by the employees. If the D.T.O. wants to make amendments to the scheme he can do so "within the frame work of the scheme". As indicated above, Annexure-A2 has not superseded the clarification in Annexure-A4 and it cannot be treated as one issued "within the frame work of the scheme" if we strictly examine the contentions advanced by the learned counsel for the applicant.

11. If paid weekly off is allowed to employees only after working for six days in a week as indicated in Annexure-A2, an employee who works continuously, but less than six days, would not become eligible for a paid weekly off. This stand is not consistent with the scheme, Annexure-A1, as clarified in Annexure-A4. It cannot be treated as an instruction or amendment issued "within the framework of the scheme" Annexure-A1 which as clarified in Annexure-A4 provides that any employee who worked for a minimum period of three days in a week is entitled to get the benefit of a weekly off with pay.


12. As indicated above, we are satisfied that the impugned orders had not been issued in consonance with the scheme or "within its frame work" even though the object of the said orders was that the employees in an institution where there are six days of work in a week, they are bound to work the full period of six days. Considering these aspect the authorities can issue appropriate orders "within the frame work of the scheme" Annexure-A1.

13. A careful reading of Annexures-A1 and A4 persuades us to take a view that the impugned orders cannot be sustained in the manner^y in which they had been issued by the authorities. Accordingly, we are of the view that these

orders cannot be sustained. We quash the same and allow the original application. However, we make it clear that this judgment will not stand in the way of the respondents in passing appropriate orders "within the frame work of the scheme" as provided in Annexure-A1 and clarified by Annexure-A4.

9. The application is allowed as indicated above.
There will be no order as to costs.


(S.KASIPANDIAN)
MEMBER (A)

 19.1.24
(N.DHARMADAN)
MEMBER (J)

v/-