

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 99/98

Wednesday, this the 17th day of March, 1999.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

T.G. Davis,
S/o. George,
Thattil Mondy,
Cherppa P.O., Trichur District,
Temporary Status Mazdoor,
Office of the Sub Divisional
Engineer Phones(External North),
Trichur - 11.

...Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The General Manager,
Telecom,
Trichur.
2. The Sub Divisional Engineer
Phones (External North),
Trichur - 11.
3. Union of India, represented by
Secretary to Government of India,
Ministry of Communications,
New Delhi.

...Respondents

By Advocate Mr. M.H.J. David J, ACGSC

The application having been heard on 17.3.99, the
Tribunal on the same day delivered the following:

ORDER

The applicant seeks to quash A-1 and to declare that he
continues in service as temporary status casual mazdoor and
to direct the respondents to engage him for work on Muster
Roll and to pay him wages as per Rules.

2. The applicant was working as a casual labourer under
the respondents from 1.2.85. He was granted temporary status

..2/-

with effect from 1.10.89 as per A-2. Due to personal reasons, the applicant had to remain away from work from 1995 to 10.1.98. As per A-1, the impugned order dated 30.12.1997, his service is terminated due to long absence from duty.

3. Respondents contend that as per R-1, the applicant was informed that his name would be removed from the list of approved mazdoors to which the applicant has not responded. Since the absence of the applicant is beyond a period of one year, there is no provision to condone the same.

4. The applicant in the O.A. has specifically stated that A-1 order is arbitrary and illegal and A-1 is issued without following any procedure in accordance with law. It is also stated in the O.A. that the applicant has passed the test for absorption as Phone Mechanic and if he is not re-engaged, he will be losing the post of Phone Mechanic.

5. Respondents in the reply statement have not denied the averment in the O.A. that A-1 termination order is issued without following the procedure laid down by law so also the averment that the applicant has passed the test for absorption as Phone Mechanic.

6. This Bench of the Tribunal in an almost identical case has held that:

'The action on the part of the respondents not to take him back to duty when he reported is illegal and unsustainable because as a casual labourer with temporary status in accordance with Clause 9 of the Scheme, the service can be dispensed with only after holding an enquiry if he had committed a misconduct of

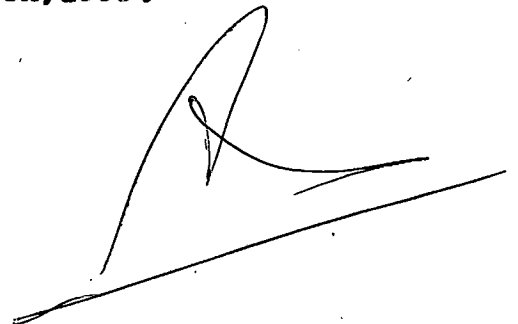
unauthorised absence. If the applicant had absented from duty without justifiable cause, the respondents were free to take action against him for the misconduct of unauthorised absence. As that has not been done, the respondents were bound to take him back.'

7. There is absolutely no case for the respondents that an enquiry has been held against the applicant in accordance with Clause 9 of the Scheme. The learned counsel appearing for the applicant submitted that there was no enquiry in accordance with Clause 9 of the Scheme and there is no finding to the effect that the applicant has committed a misconduct. In the circumstances, the principle laid down in the above cited ruling is applicable to the facts of the case and A-1 is liable to be quashed.

8. Accordingly, A-1 is quashed. It is declared that the applicant continues in service as temporary status casual mazdoor. In pursuance of the interim order, respondents have re-engaged the applicant. He shall be paid wages according to the Rules in force.

9. O.A. is disposed of as above. No costs.

Dated the 17th day of March, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A1: True copy of the letter No.E-IV/Mazdoor/35 dated 30.12.97 issued by the 2nd respondent to the applicant.
2. Annexure A2: True copy of the letter dated 23.9.90 issued by (No.E-5/Maz/TS/30) Divisional Engineer(ADM) along with the relevant portion of the list of mazdoors.
3. Annexure R1: True copy of letter No.E.IV/Mazdoor/27 dated 17.6.97 issued by the 2nd respondent to the applicant.

.....