

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 107/92 429x.

DATE OF DECISION 30.3.1993.

Shri KJ Shajan _____ Applicant (s)

Shri MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus
The Sub Divisional Officer, Telecom, Aluva and 3 others _____ Respondent (s)

Shri VV Sidharthan, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member

&

The Hon'ble Mr. R Rangarajan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant who had rendered service as an unapproved casual labourer for 247 days between 22.7.87 and 15.5.88 is aggrieved by the rejection of his request for re-engagement and has filed this application under Section 19 of the Administrative Tribunals Act praying that the Annexure I memo dated 12th August, 1991 rejecting his request for engagement may be quashed, that it may be declared that he continues to be a casual mazdoor under the respondents and that the respondents may be directed to give him approval card including him in the list of casual mazdoors and to consider him for re-engagement and regularisation. The

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applicant has alleged in the application that he commenced casual work under the 1st respondent on 24.11.1986, that his engagement was stopped and he was denied employment from 15.5.1988, that when he made a representation on 16.7.1991 claiming re-engagement finding that his juniors are re-engaged, the Assistant Engineer in the office of the 3rd respondent has issued the impugned memo unreasonably rejecting his legitimate request. The applicant has further alleged that as the Government had in OM dated 8.5.91 as a one time measure relaxed the requirement of being sponsored by Employment Exchange in the case of casual mazdoors engaged upto 7.6.1988 the refusal on the part of the respondents to re-engage the applicant amounts to violation of the applicant's fundamental rights guaranteed under Articles 14 and 16 of the Constitution. He has also alleged that the termination of his services was in violation of the provisions contained in Chapter V-A of the Industrial Disputes Act.

2. The respondents admit that the applicant was engaged as a casual labourer for 247 days between 22.7.87 and 15.5.1988. But they contend that as the Department of Telecommunication has ~~banned~~ employment of casual mazdoors after 30.3.85 by memo No.270/6/84-SIN dated 20.8.1985 (Annexure R1) the applicant who is not an approved mazdoor could not be further engaged and is not entitled to claim engagement or regularisation. The OM dated 8.4.91 according to the respondents is applicable only to casual mazdoors who were recruited prior to 30.3.85. Thus, the respondents contend that the applicant is not entitled to any relief.

3. We have heard the arguments of the learned counsel for the parties and have also given our anxious consideration to the facts and circumstances of the case brought out in the pleadings and documents on record. The fact that the applicant had rendered casual service for 247 days between

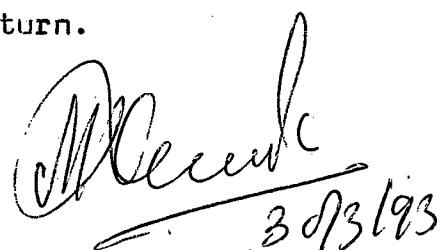
22.7.1987 and 15.5.1988 and that he was denied employment thereafter are facts beyond dispute. Since even in his representation for which he was given Annexure I Memo in reply the applicant had claimed only re-engagement and had not complained against violation of provisions of Chapter V-A of the ID Act, he cannot challenge the termination of his service in this application filed after 3 years. However, as a retrenched workman he can seek re-engagement subject to availability of work if there is no other legal impediment for such re-engagement. The learned counsel for the respondents brought to our notice the memo dated 30.3.85 issued by the DG, P&T banning forthwith recruitment of casual labourers. But it was while this ban was in force that the respondents engaged the applicant as a casual mazdoor for 247 days between 22.7.87 and 15.5.88. Therefore, if work is available and if persons with less length of casual service than him are engaged, the applicant has a preferential claim for engagement as a retrenched casual labour. Further, in the OM dated 8.4.91 (Annexure R2) the Government as a one time measure had ordered that casual labourers recruited prior to 7.6.88 and in service on the date of issue of the OM recruited otherwise than through the employment exchange should be considered for regularisation in group D posts. The contention of the respondents that the Annexure R2 OM applies only to those recruited prior to 30.3.1985 is absolutely untenable. Had the respondents continued to engage the applicant even after 15.5.88, he would have been eligible to be considered for regularisation under the Government order at Annexure R2. His non-engagement from 15.5.88 is inconsequential because even by its very nature casual engagement is not a permanent or continuous affair.

4. In the result, the application is disposed of directing the respondents to enlist the applicant in the list of

unapproved casual labourers giving him credit for 247 days of casual service rendered by him between 22.7.1987 and 15.5.1988, to issue him a casual mazdoor card and to engage him in casual work, if work is available in preference to fresh hands and unapproved casual labourers who have less length of casual service than him. The question of granting him temporary status and regularisation should also be taken up at the appropriate time in his turn.

5. There is no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(AV HARIDASAN)
JUDICIAL MEMBER
30/3/93

30.3.1993

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