

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.117/2003

Friday this the 26th September 2003

C O R A M:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

G.Rajan, S/o Govinda Panicker
Casual Labourer.
O/o the Sub Divisional Engineer
(External) Phones, Thirumal
Trivandrum - 12.

Applicant

By Advocate Mr.Thomas Mathew)

Vs.

1. Union of India represented by its Secretary, Ministry of Communications New Delhi.
2. Chairman cum Managing Director Bharat Sanchar Nigam Ltd, Sanchar Bhawan, New Delhi
3. Chief General Manager, Telecom Kerala Circle, Trivandrum - 33.
4. Asstt.General Manager (Administration) Telecom District Trivandrum-23.

Respondents.

(By Advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 26.9.2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN.

This application is the 5th round of litigation between the applicant who is a Casual Labourer and the respondents regarding re-engagement and grant of temporary status as also absorption in a Group D post. The applicant who commenced his service as Casual Labourer in November 1981 and had rendered 310 days of service under the respondents between November 1981 and December 1982. While continuing in casual service, he approached this Bench of the Tribunal filing O.A No.270/91 alongwith 10 others praying for a direction to the respondents therein to issue Casual Labourer Card to the applicants who have worked at Trivandrum Telephone District prior to 7.5.1985 in the

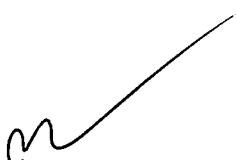
light of the letter issued by the Department of Personnel dated 7.5.1985. The O.A was disposed of advising the applicants to make a representation to the 1st respondent in that case and directing the 1st respondent therein to dispose of the representation and grant necessary relief in accordance with law taking into account the documentary evidence produced by the applicants and also what was in the possession of the respondents within a period of three months. However, the representation submitted by the applicant and others were rejected by an order dated 18.6.91. Aggrieved, the applicant approached this Tribunal again by filing O.A No.1108/91. This Tribunal vide order dated 29.6.92 set aside Anxx.A1 order dated 18.6.91, rejected all the contentions raised by the respondents and directed the 1st respondent to consider the applicant for casual employment on the basis of his previous service of 310 days. In obedience to the above direction, the 4th respondent in this case, Assistant General Manager (Administration) Telecom District, Trivandrum issued letter dated 22.2.1993, calling upon the applicant to report before him on 26th Feb.1993 with all relevant records in original to prove age, date of birth, educational qualifications, previous experience, etc. The applicant having complied with such directions and after verification of the records, the 2nd respondent issued Anxx.A2, Casual Labourer Card to the applicant. Accordingly, the applicant was re-engaged vide Anxx.A3. He was given work under M.R. The applicant continued as casual labourer on M.R from 2.3.1993 to 30.4.1993 and thereafter he was not given regular work w.e.f. 1.5.1993. Therefore, the applicant filed O.A No.1212/93 for a direction to respondents No.1 & 2, to make suitable entry in the register of casual labourers and also to issue Casual Labour Card. The O.A was disposed of with a direction to the respondents to include the name of the applicant in the register of casual labourers and issue casual

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labour card, if he is eligible for the same in accordance with law based on the declaration of his service in the earlier judgment and also taking into account the period of work of the applicant under the second respondent after re-engagement for issuing casual labour card in addition to 310 days worked during the year 1981-82. However, the 4th respondent expressed his inability to engage the applicant in view of the ban on engagement of casual labourers as stated in Anxx.A5. The applicant was told that the order of the Tribunal in identical case was stayed by the Hon'ble Supreme Court and the case of the applicant for re-engagement would be considered after a decision by the Apex Court. During the period, the applicant was engaged to work and wages were paid to him on the basis of quotations for work. Subsequently, the applicant came to know that Hon'ble Supreme Court by order dated 28.7.98 has disposed of the Civil Appeal No.7033-54 of 1993 filed by the respondents. The applicant submitted his representation dated 24.5.1999 to the 3rd respondent, the Chief General Manager, Telecom, Trivandrum and the General Manager, Telecom District, Trivandrum, for considering his case. Thereafter, the applicant's name was included in the list of unapproved casual mazdoors in the order of priority in Trivandrum SSA issued by the 4th respondent and the name of the applicant find place at serial No.2 in Anxx.A9. The Telecom Department thereafter in its decision on 29.9.2000, decided to regularise all casual Labourers working in the department including those who have been granted temporary status w.e.f. 1.10.2000. It was also communicated that as per letter dated 12.2.1999, temporary status was granted to casual labourers eligible as on 1.8.1998 and in the case of left out casual labourers, their cases were to be reported to the Head Quarters (Anxx.A10). Pursuant thereto, Anxx.A11 was issued indicating name of the casual labourers whose cases have been left out and the applicant figured at Sl.No.4. The applicant

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came to know that Smt.D.Indira Devi and A.Ambujakshy who were regularised as per letter dated 10.4.2001 were junior to the applicant. According to the applicant in not regularising the services of the applicant on a Group-D post although he had completed 310 days in the year 1981-82 was unjustified. One Shri S.Babu who was at Sl.No.7 at Anxx.A9, approached this Tribunal by filing O.A No.1723/98 claiming grant of temporary status w.e.f. 1.4.1994 and the Tribunal allowed the application declaring his rights for grant of temporary status w.e.f. 1.4.94 holding that the engagement of the applicant on quotation basis was without any legal basis and directing the respondents to consider the applicant therein as casual labourer and to grant temporary status w.e.f. 1.4.94 with all consequential benefits. Understanding that Sh.S.Babu who is junior to the applicant has been given temporary status, the applicant submitted Anxx.A15, representation for granting such benefits to him. Finding no response to the representation, the applicant filed O.A 506/02 for a declaration that the applicant is entitled to temporary status w.e.f. 1.4.1994, the date on which he completed 240 days casual service, to direct the respondents to grant temporary status w.e.f. 1.4.94 and he deemed to have continued as casual labourer. The said application was disposed of by Anxx.A16 order dated 19.7.2002 directing the Chief General Manager, respondent No.3 therein, to consider the applicant's representation and give him an appropriate reply. In obedience to the above directions, the impugned order Anxx.A17 has been issued turning down the claim of the applicant on the ground that the applicant was not a casual labourer but a person engaged on contract basis and that there was a ban on recruitment of casual labourers and the applicant is not entitled to the benefits. Aggrieved that the applicant has filed this application for the following reliefs:



"i) to call for the records leading to Annexure A17 and quash the same.

ii) declare that the engagement of the applicant on piece rate quotation basis with effect from 1.5.1993 is arbitrary and illegal and that the applicant deemed to have continued as casual labourer from 1.5.93 onwards and direct the respondent to treat the service put in by the applicant from 1.5.93 onwards as casual labour service for all purposes;

iii) declare that the applicant is entitled to temporary status with effect from 1.4.94 as per the scheme casual labourers temporary status and regularisation and direct the respondents to grant temporary status to the applicant with effect from 1.4.94 the date on which subsequently he completed 240 days in terms of Annx.A13 apart from the service rendered for 310 days prior to 1985.

iv) declare that the applicant is similarly situated to applicant in O.A No.1723/98 and is senior to him as per Annx.A9 panel and is entitled to similar treatment for grant of temporary status and consequential benefits as per decision in Annx.A14 order and direct the respondents accordingly;

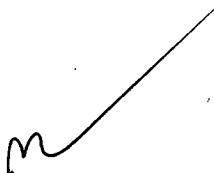
v) declare that the applicant in panel at Annx.A9 has crystallised a right for employment as casual labourer and is entitled to all benefits in accordance with the scheme; and direct the respondents accordingly."

2. The respondents in the reply statement contended that the application is not maintainable before this Tribunal because BSNL is a Corporation w.e.f. 19.9.2000 as seen from Annx.R1 and Annx.R2 and the said Corporation having not been notified under Sec. 14(2) of the Administrative Tribunals Act, 1985, the applicant a casual labourer in Group-D cadre being absorbed in the BSNL, this Tribunal has no jurisdiction to entertain his grievances. It has also been stated that the Calcutta Bench of the Tribunal has dismissed O.A declaring that incase no notification under Sec.14(2) of the Administrative Tribunals Act, 1985, the application of employees of Public Sector Undertaking is not maintainable. No contentions regarding merits of the case refuting the averments in the O.A has been raised in the reply statement although the application was admitted by order dated 19.2.2003 and the question of jurisdiction had not raised at the time of admission.

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33. I have carefully gone through the application and all the connected material placed on record as also the reply statement filed on behalf of the respondents. I have heard the arguments of Mr.Thomas Mathew, the learned counsel for the applicant and of Ms Zerine appeared on behalf of Mr.C.Rajendran, SCGSC.

4. Since the only question raised by the respondents in the reply statement is regarding want of jurisdiction, I shall deal with at that issue first. The applicant is a Casual Labourer seeking the benefit of grant of temporary status and regularisation. The learned counsel of the respondents argued that the applicant being a casual labourer in Group-D cadre and as all in the Group-C and Group-D cadre have been absorbed into BSNL which is a Corporation not notified under the provisions of Sec.14(2) of the Administrative Tribunals Act, 1985, this Tribunal has no jurisdiction to entertain this application. I find this contention is untenable and actually against fact. I presume that the contention in the reply statement that the applicant, a Casual Labourer, belongs to Group-D cadre has been raised without understanding the meaning of cadre, and Group-D as also 'Casual Labourer' 'Casual Labourer' does not hold any post in any cadre. A casual labourer is granted temporary status in accordance with the scheme and becomes eligible for certain benefits due to temporary employees after 3 years of service in temporary status, and thereafter would be eligible for absorption on a Group-D post in terms of the provisions of the scheme. The contention that the applicant being a casual labourer in Group-D cadre was absorbed into BSNL and therefore the Tribunal has no jurisdiction is probably a product of an improper understanding of the whole issue. The applicant not being an absorbed employee in the BSNL but a casual labourer of



the erstwhile Telecom Department of the Union of India right from 1981 as is established from all the documents including Annx.A1. I reject the contention of the respondents that the Tribunal has no jurisdiction.

5. The next question ^{is} as to whether the applicant is entitled for temporary status. That the applicant was engaged from November 1981 to December 1982, continuously, that during that period the applicant had put in 310 days of casual service is conceded in para 2 of the impugned order Annx.A17, that the applicant was given casual labour card in the year 1993 is evident from Annx.A3 and that he was re-engaged as casual labourer is also evident from Annx.A3. That the applicant given work only piece rate basis is not disputed by the respondents. It is evident from Annx.A9, the list of unapproved casual labourer, that the applicant was placed at Sl.No.2 whereas Shri S.Babu was at Sl.No.7. It is also evident as per order of the Tribunal in O.A No.1723 of 1998, Annx.A14, that the application filed by Shri S.Babu whose name figures at Sl. No.7 at Annx.A9 was allowed with the following declaration and direction:

i) We quash and set aside Annx.A6.

ii) We declare that the applicant is entitled to temporary status as per Casual Labourer (Grant of Temporary Status and Regularisation) Scheme with effect from 1.4.94 the date on which he had completed one year of casual service.

iii) We direct the respondents to grant temporary status to him with effect from that date with all consequential benefits.

iv) We declare that the engagement of the applicant on quotation basis w.e.f. 1.8.96 is without any legal basis.

v) We direct the respondents to treat the applicant as deemed to have continued as casual labour from 1.8.96 onwards and

vi) We direct the respondents to treat the service put in by the applicant from 1.8.96 onwards as casual labour service for all purposes.

6. It cannot be disputed that the applicant who is on par in all respect with Sh.S.Babu in O.A No.1723/98 and even better placed as the applicant as at Sl.No.2 while Sh.Babu at Sl.No.7 (Annx.A9) is entitled to similar benefit as per declaration as was given to the applicant in O.A No.1723/98. The respondents themselves have included name of the applicant in the list of left out casual labourers pursuant to Annx.A10 order. Under these circumstances, the contention of the respondents that the applicant is not a casual labourer and he is not entitled the benefit of temporary status is totally unsustainable. The applicant who had completed 240 days of service in the year 1982 itself would have been entitled to the benefit of temporary status long prior to the date Sh.S.Babu was granted temporary status. He is also entitled to continue as a casual labourer despite the fact that the applicant was made to M.R receipt s and tender quotation for giving him work.

7. In the light of the foregoing discussions, the application is allowed. The impugned order Annx.A17 is set aside declaring that the engagement on piece rate w.e.f. 1.5.1993 is illegal. The respondents are directed to treat the applicant to have continued as Casual Labourer from 1.5.1993 onwards and that the applicant is entitled to temporary status w.e.f. 1.4.1994, as claimed by the applicant, if not earlier. I, therefore, dispose of this application and direct the respondents to grant the applicant temporary status from 1.4.1994, as he has completed 240 days service in the year 1982 itself and to consider him for further benefits under the scheme. The order granting temporary status shall be issued to the applicant within a period of two months from the date of receipt of a copy of this order. No order as to costs.


(A.V.Haridasan)
Vice Chairman.