

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 16/99

Tuesday this the 3rd day of October, 2000.

CORAM

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

K.K.Abdul Basheer
S/o K.V.Kassim
Kakkottupeedikal
Kamba, Kinevellloor P.O.
Palghat.

Applicant

By advocate Mr. M.R.Rajendran Nair

Versus

1. Sub Divisional Officer
Telephones, Palghat.
2. Telecom District Manager
Palghat.
3. Chief General Manager
Telecom, Kerala Circle
Trivandrum.
4. Union of India represented by
Secretary to Govt. of India
Department of Telecommunications
New Delhi.

Respondents

By advocate Mr. T.C.Krishna, ACGSC

Application having been heard on 3rd October, 2000,
the Tribunal on the same day delivered the following:

O R D E R

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

This is the fourth round of litigation in regard to re-engagement of the applicant as a casual mazdoor. Applicant has prayed in this original application for quashing A-12 and for some other reliefs. When the application came up for hearing today, learned counsel of the applicant stated that at the moment the applicant restricts his claim to setting aside impugned order A-12 and to a direction for engagement of the applicant on the basis of his entitlement for empanelment. Hence the consideration is restricted to the prayer contained in sub para 1 (a) of para 8 of the original application. Rest

of the prayers are not considered for the time being and it is for the applicant to agitate those issues separately in appropriate proceedings.


2. The facts of the case in a nutshell can be stated as follows.

Applicant was engaged for the first time as a casual labourer in the year 1985. His name was included in the list of approved mazdoors (Annexure A-1). However, by an order dated 14.1.87 (Annexure A-2), applicant's name was removed from the list of approved mazdoors. Applicant was, however, continued to be engaged. When the applicant and 4 others were not engaged after 1990, they jointly filed OA 1517/92 claiming re-engagement/regularisation etc.. Applicant was the 5th applicant in that OA. As the applicant in that case had approached the Tribunal even before making any representation before the concerned authority, that application was rejected as premature. Applicant and others thereafter made representations and finding no response, sent reminders on 6.10.93. Finding no response, the five applicants in OA 1517/92 approached the Tribunal in OA 2234/93. Respondents in that case filed reply statement wherein it was admitted that they were engaged by the department and were paid wages and their receipt taken in form ACG-17, but their claim for continuous engagement was denied. That OA was disposed of by order dated 19.12.94, directing the respondents to give the applicants a reply to their representations. Pursuant to the above direction, respondents gave the applicants therein a reply dated 18.1.95 (Annexure A-7), stating that no records showing their engagement were available. The said order A-7 was again challenged by the applicant and 4 others in OA 216/95. The said application was disposed of directing the

respondents to consider the claim of the applicants in the light of the statements contained in the additional reply statement in OA 2223/93. In obedience to the above direction, applicant made A-10 representation. Considering the A-10 representation, applicant and others were given a reply dated 28.11.95 (Annexure A-11) informing that their request for enlistment as approved mazdoor could not be agreed to and they would be considered for empanelment as in the case of applicants in OA 2223/93 subject to the result of the SLP filed before the Apex Court in OA 1402/93. After dismissal of the SLP by the Apex Court, impugned order in this case A-12 has been issued in which applicant's name is shown as in the list of persons who are not eligible for empanelment and the reason stated is "Not approached for re-engagement within 3 years". The challenge in this application is against non-inclusion of applicant's name in the panel. It is alleged in the application that even going by the averments made by the respondents in the reply statement in OA 2234/93, the applicant was engaged upto November 1990 as casual mazdoor though not in the approved list and the applicant having approached the Tribunal by filing OA 1517/92 within a period of 2 years from the date of last engagement as casual mazdoor, the ground stated in the impugned order is unsustainable. It is with the above allegations that the applicant has filed this application.

3. Respondents contest the claim of the applicant. The short question that arises for consideration is whether the applicant has sought re-engagement as an unapproved casual mazdoor within a period 3 years from the date of his last engagement.

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4. That the the applicant along with 4 others had filed OA 1517/92, 2234/93 and 216/95 are not in dispute. In the reply statement filed in OA 2234/93 in which the applicant was 5th applicant , respondents in para 5 had stated as follows:

"In the present case, the applicants were mainly engaged as per procedure explained in (a) above (emphasis supplied), i.e. for urgent works of a purely casual nature of short duration. Owing to an oversight their names were included in the list of approved mazdoors. The mistake was found out on further verification of the records that the applicants had not worked on muster rolls and therefore their names were deleted from the said list. However, despite deletion of their names from the approved list, the applicants were continued to be engaged as per procedure (a) above. From November 1990 onwards they were engaged by the contracts."

5. To understand what is meant by (a) above, it is necessary to quote what is stated in para 4 of the reply statement in OA 2234/93.

"There are two types of engagements of manual labour in the department, viz (a) for urgent works of a purely casual nature of short duration authorized departmental official engages manual labour and that immediately on completion of work, they are paid wages and their receipt taken in form ACG-17. No other record of the person concerned or such engagements are maintained in the Department."

6. It is evident from the reply statement filed by the respondents in OA 2234/93 in which the applicant herein was the 5th applicant that upto November, 1990 though his name was deleted from the list of approved mazdoors he was continued to be engaged for urgent work of purely casual nature for short duration under ACG-17. Engagement of casual work for short duration under ACG-17 is also casual engagement though the person so engaged cannot claim to be an approved mazdoor. From Annexure A-8, a letter written by the Assistant Engineer (Cables) to Telecom District Manager and the annexures thereto, it is evident that the applicant was so engaged during the years 1987, 88, 89 and 90 and that during 1988 to 90 the applicant was engaged for 260 days each year. Even

going by the contention of the respondents, as the applicant was engaged as casual mazdoor under ACG-17 and as an approved mazdoor till November 1990 and engaged thereafter only under contract, the ground taken in the impugned order that he was not entitled to be included in the panel for the reason that he did not put forth his claim within a period of 3 years is found to be unreasonable because it is a fact undisputed that the applicant filed OA 1517/92 along with 4 others, claiming re-engagement even before expiry of 2 years from November, 1990. Therefore, the respondents were bound to include his name in the panel for future engagement as an unapproved casual mazdoor.

7. In the light of what is stated above, the impugned order is set aside to the extent of showing the name of the applicant as a person ineligible for empanelment for future engagement. Respondents are directed to include the name of the applicant at appropriate place in the list of unapproved casual mazdoors for engagement in preference to persons with lesser length of such service than him. The above direction shall be complied with within 2 months from the date of receipt of the copy of this order.

8. Original application is disposed of as above.

Dated 3rd October, 2000.



A.V. HARIDASAN
VICE CHAIRMAN

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Annexures referred to in this order:

- A-12: True copy of letter No.E-35/Mazdoor/General/IX/54m dated 26.3.99 issued by 2nd respondent.
- A-1: True copy of the order dated 7.10.86 No.E-85/86-87/113 issued by the 1st respondent.
- A-2: True copy of the order dated 14.1.87 No.E-85/86-87/113 issued by the 1st respondent.
- A-7: -True copy of the order dated 18.1.95 No.OA 2234/93/18 issued by the Divisional Engineer (Planning and Administration) for the 2nd respondent.
- A-10: True copy of the representation dated nil submitted by the applicant to the 2nd respondent.
- A-11: True copy of the order dated 28.11.95 No.OA 216/95/28 issued by the Divisional Engineer(Administration) for 2nd respondent.
- A-8: True copy of the letter dated 16.2.91 No.E-11/90-91/6 along with the relevant portion of the list issued by the Assistant Engineer (Cables), Telephones, Palakkad.