

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 21/90 499
~~XXXXXX~~

DATE OF DECISION 27.11.1990

O.A. Viswambharan Applicant (s)

Mr. M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

UOI rep. by its Secretary, Respondent (s)
Ministry of Communications, New Delhi & 2 others

Mr. V. Krishna Kumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan - Administrative Member
and
The Hon'ble Mr. N. Dharmadan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Mr. N. Dharmadan, Judicial Member)

An approved casual mazdoor, who worked under Respondent-2 at Cochin, filed this application mainly for a direction to the respondents to engage him for work and regularise his service in accordance with law as per Annexure-VI scheme prepared and approved by the Department of Telecommunication pursuant to the decision of the Supreme Court.

2. The applicant has produced Annexure-IA series certificates issued by the 2nd respondent to support his case that he had worked from 1.1.1984 to 12.6.1984 as casual mazdoors under the 2nd respondent. He has given

...2/-

further details of his works in the application . The relevant portion is extracted below:

<u>"Period of employment</u>	<u>No. of days</u>	<u>Muster Roll No.</u>
01.10.83 to 18.10.83	16	IC. 13700/14, 15
19.10.83 to 31.10.83	13	T.C.13699/6, 7
07.11.83 to 16.11.83	10	T.C.13699/18, 19
17.11.83 to 30.11.83	14	T.C.13705/4, 5
01.12.83 to 16.12.83	16	T.C.12599/24, 25
17.12.83 to 31.12.83	15	T.C.13705/15, 16

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3. The applicant also produced before us for our perusal casual labour service card issued by the 2nd respondent in which there are entries to substantiate that he had worked from 1.10.83 to 31.12.83. The applicant submitted Annexure-II ~~xxxxxxx~~ dated 10.11.1985 and Annexure-II.A dated 30.12.1986 for getting continued employment under respondents. According to the applicant he was not given any work inspite of his request in the representations.

4. Later on 23.9.1988, the Deputy Telecom Distt. Manager, Ernakulam issued a notice inviting applications from persons for engaging casual mazdoors/who had worked before 1985 and thereafter abandoned the work. Pursuant to the notice, the applicant had filed Annexure-IV request dated 4.10.1988. He had also filed Annexure-V letter dated 31.1.1989 for considering his claim for engagement. They were not considered. Since the respondents did not consider the case of the applicant in the light of Annexure-III notice, he filed the present application under

Section 19 of the Administrative Tribunals Act, 1985.

5. The respondents have filed a counter affidavit traversing all the averments and allegations made in the application except some statements regarding the applicant's engagement in 1983 and 1984 and submission of representations for getting work pursuant to the notice, Annexure-III. They admitted the statements of the applicants regarding his engagement during the period from 1.10.1983 to 12.6.1984. They further stated that he has filed a belated application dated 20.5.1986 requesting for employment. This was not entertained since he remained absent for about 22 months. The respondents also admitted having issued Annexure-III notice and received Annexure-IV request from the applicant pursuant to the same, but according to the respondents, the applicant's case was considered by the Committee contemplated Annexure-III notice and they rejected the same since he had not put-in more than 400 days of work before 1985 for getting continued engagement.

6. The applicant filed a rejoinder in which he has stated that his representations were not considered and he was not selected for engagement of casual work pursuant to Annexure-III notice even though he worked under 2nd respondent for more than 240 days before, 1985.

7. The respondents' contention that the applicant's case was considered and rejected because he had not put-in

400 days of service before 1985 deserves to be rejected having regard to the facts and circumstances of this case. Annexure-III notice does not fix any such condition for consideration of the right of casual mazdoor for future engagement. There is no basis for fixation of 400 days of work as indicated in the reply statement. Even in the scheme prepared and approved by the Telecom Department as evidenced by Annexure-VI, the required number of days for getting temporary status is only 240 days. The statutory minimum days fixed under the Industrial Disputes Act, 1947 is 240 days for getting regularisation in service. The respondents' counsel was not able to give any satisfactory explanation or reason for the fixation of 400 days as the criterion for selecting candidates for appointment as casual mazdoors.

8. Under these circumstances, we are unable to appreciate the rationale behind the fixation of 400 days for getting re-engagement pursuant to Annexure-III notice. The applicant had put-in more than 240 days of service and he is fully eligible for granting temporary status and regularisation. The applicant was never told by issuing a communication after considering Annexure-IV representation that his request was rejected on account of the reason indicated in the counter affidavit. Considering these aspects, we are of the view that the claim put forwarded by the applicant pursuant to Annexure-III

notice had not been considered by the respondents and disposed of in accordance with law.


9. The learned counsel for the applicant limited the prayer at the time of hearing that his client is ^{satisfied if the respondents are} directed to ~~xx~~ engage ^{him} as Casual Mazdoor as the last person to be included in the list of Casual Mazdoor maintained by the 2nd respondent and he may be given work whenever work is available under the 2nd and 3rd respondents. He may also be regularised in service taking into account his seniority in accordance with law.

10. We are of the view that the request of the learned counsel is a legitimate one and it deserves to be granted. Accordingly, we allow this application to the extent of directing 3rd respondent to include the applicant's name as a Casual Mazdoor in the list of Casual Mazdoor maintained in the office as last man as on today and give him work whenever work is available according to his turn. The applicant shall also file an application furnishing all details of his earlier work for acquiring temporary status and regularisation in accordance with law. If such an application is filed by the applicant within two weeks from today, the 3rd respondent shall consider the same in the light of Annexure-VI and pass appropriate orders within six weeks from the date of the receipt of a copy of this judgement.

11. In the result, this application is disposed of with the above directions. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

27.11.90


(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

27.11.1990