

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 213 of 2000

Wednesday, this the 28th day of June, 2000.

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. V.P. Gangadharan,
S/o Kuniraman Nair,
Vadakkeparambil PO,
Unnikulam, Poonoor,
Kozhikode District. ...Applicant

By Advocate Mr. M.R. Rajendran Nair

Versus

1. The Divisional Engineer,
Microwave Maintenance, Kozhikode.
2. The Sub Divisional Officer,
Telecom, Calicut.
3. The General Manager,
Telecommunications, Calicut.
4. Union of India, represented by
the Secretary to Government of India,
Ministry of Communications, New Delhi. ...Respondents

By Advocate Mr. K. Kesavankutty, ACGSC

The application having been heard on 28th June, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1, to declare that he is entitled to be enlisted as approved casual Mazdoor and to direct the respondents to enlist him as approved casual Mazdoor in accordance with the directions of this Tribunal in OA 1402/93 and also to grant him work and wages in preference to freshers and juniors furnishing documentary evidence of his engagement for work under the department in future.

..2.

2. The applicant commenced working under the 2nd respondent as a casual Mazdoor from the year 1968. He worked for 107 days during the period 1968-69 under the 2nd respondent. Thereafter he was engaged for 1131 days on muster rolls under various officials in different stations. Thereafter he was engaged on bills from the year 1992 onwards. He was engaged till 2-2-1999 and thereafter he is denied engagement on the ground that he is not an approved Mazdoor. He submitted a representation to the 3rd respondent in pursuance of the advertisement in compliance with the directions in OA 1402/93 and connected cases. He apprehended that he will not be considered for enlistment as casual Mazdoor just because he did not obtain any direction from the Tribunal and hence, he approached this Bench of the Tribunal by filing OA 560/99. That OA was disposed of directing the 1st respondent to consider the representation dated 15-3-1999. Thereafter the impugned order, A1, was passed. It is understood that the respondents are engaging freshers as casual Mazdoors for work under the department.

3. Respondents resist the OA contending that the work on contractual basis was given by the Sub Divisional Engineers working under the 1st respondent after inviting quotations to undertake such works on contractual basis entrusted to them. The applicant and others submitted quotations to undertake such works. The applicant happened to be the lowest bidder and hence the work was given to him on contractual basis. The applicant was hired purely for doing such specific jobs on contract basis from January, 1992 till 2-2-1999. The request of the applicant for empanelment could not be considered since he had abandoned the work from 21-2-1974 onwards without any intimation or valid reason.

4. In the rejoinder, the applicant has stated that there exists master-servant relationship between the applicant and the respondents. The quotations produced along with the reply statement are obtained from the applicant by officers of the department making use of the fiduciary position in which they were. The procedure required for employment of contract labourers was not followed in the instant case. The quotations are not genuine.

5. In the additional reply statement filed by the respondents, it is stated that there is no master-servant relationship between the respondents and the applicant.

6. A1, the impugned order, says that there is a gap of 18 years from 1974 to 1992 and this long gap of 18 years could not be condoned as per rules/Court orders on the subject. On this ground, as per A1, the respondents have found that the applicant is not eligible for any benefit as requested by him and he cannot be re-engaged.

7. There is no case for the applicant that he was engaged during the period from 1974 to 1992, but he does not admit that during that period he had abandoned the work. According to the applicant, he was engaged again from the year 1992 onwards. Respondents also say that the applicant did work from the year 1992 onwards, but it was not on a casual basis, but on contractual basis. In the reply statement, in paragraph 4, it is stated that the work on contractual basis was given by the Sub Divisional Engineers working under the 1st respondent after

inviting quotations to undertake such works on contractual basis and the applicant and others submitted quotations to undertake such works.

8. The learned counsel appearing for the respondents argued that the applicant was doing only piece-work. There is no such plea in the reply statement that the applicant was doing piece-work. The specific case put forward in the reply statement is that the work on contractual basis was given after inviting quotations to undertake such works and the applicant was hired purely for doing such specific jobs on contract basis from January 1992 till 2-2-1999. A plea which is not raised cannot be entertained. The argument now put forward across the Bar by the learned counsel for respondents that the applicant was doing piece-work cannot be entertained for the simple reason that there is no plea raised in the reply statement.

9. A series of annexures are produced by the respondents to press into service that the applicant was working on contractual basis. None of these documents would go to show really that the applicant was doing contract work. The reason is very clear. Paragraph 419 of the P&T Manual Vol.II, Chapter IX, says that the terms of a contract must be precise and definite, and there must be no room for ambiguity or mis-construction therein. Apart from various other principles to be observed, it is also stated therein that provisions must be made in contracts for safeguarding Government property entrusted to a contractor. The annexures in general and specifically those relating to the applicant produced by the respondents in support of their case that the applicant was doing contract work, do not contain the terms of contract. When the terms of contract are not contained therein, it is

needless to say that it lacks preciseness and definiteness. There is also no provision made for safeguarding Government property. By no stretch of imagination the series of annexures produced by the respondents can be said to be helpful to the respondents to support their stand that the applicant was engaged on contract basis.

10. From the reply statement it is very clear that the respondents are very well aware of the provisions contained in paragraph 419 of the P&T Manual Vol.II for the reason that it is specifically stated therein that quotations were invited to undertake such works and the applicant was hired for doing such specific jobs on contract basis. When respondents say that the applicant was hired for doing such specific jobs on contract basis, it is not known why in these annexures the nature of the job is conspicuously absent. These annexures simply say that for doing work for certain days at Lakkidi Microwave Station the applicant is agreeable for the amount shown therein. This is as vague as possible. Terms of contract are not there. What is the nature of the work to be done is not there and none of the fundamental principles to be observed as per paragraph 419 of P&T Manual Vol.II is complied with. That being so, it cannot be accepted for a moment that the applicant was engaged on contract work. As it is the admitted case of the respondents that the applicant was engaged from 1992 to 2-2-1999 and the case of the respondents that it was on contract basis cannot be accepted, it could only be taken that the applicant was engaged as a casual labourer.

11. In the light of what is stated above, A1 the impugned order is liable to be quashed.

12. Accordingly, A1 is quashed. Respondents are directed to consider the case of the applicant for enlistment as approved casual Mazdoor in accordance with law and pass appropriate orders within three months from the date of receipt of a copy of this Order. It is submitted by the learned counsel for respondents that the respondents have no intention to engage any fresher as casual labourer as there is no work.

13. The Original Application is disposed of as above. No costs.

Wednesday, this the 28th day of June, 2000



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in this Order:

1. A1 True copy of the letter No. X-7/DE:MW:KE/99-2000/28 dated 3-8-1999 issued by the 1st respondent.