

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 217/2001.

Thursday this the 14th day of November 2002.

CORAM:

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

C.K.Joshy, Group 'D' Employee,
Office of the Sub Divisional Engineer,
Telecommunications, Vytila,
Ernakulam. Applicant

(By Advocate Shri K.R.B.Kaimal)

Vs.

1. Union of India represented by
the Secretary to Government,
Ministry of Communications,
New Delhi.
2. The General Manager,
Telecommunications, Office of the
Principal General Manager,
Telecom, Bharat Sanchar Nigam Ltd.
Kochi-31. Respondents

(By Advocate Shri A.Sathianathan, ACGSC)

The application having been heard on 14th November, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant has filed this O.A. aggrieved by A-8 order dated 26.7.2000 of the 2nd respondent rejecting his representation dated 8.2.99 by which he sought retrospective regularisation as group 'D' on completion of 10 years service and other service benefits. He sought the following reliefs through this O.A.

- i). an order quashing annexure A-8.
- ii). an order directing the 2nd respondent to review the regularisation of the applicant as Group D, and to assign him earlier date by reckoning his entire service as Casual Mazdoor with effect from 18.7.1982 and to grant him all consequential service benefits.



iii). such other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The applicant commenced his service as Casual Labourer in Ernakulam Telecommunications on 19.7.82. At that time he was below 18 years of age. His date of birth was 14.10.65. He claimed that there was not any objection from the authority against his engagement as Casual Mazdoor and his service was regularised in group 'D', and while he was continuing as Casual Mazdoor he was granted temporary status and was redesignated as temporary Mazdoor with effect from 1.10.89. Thereafter, the 2nd respondent issued A-1 order dated 8.7.94 regularising the service of the applicant and of many others in the cadre of Group D. According to the applicant the regularisation of Group 'D' was to be made on the basis of seniority as Casual Mazdoor. When he came to know that many persons who commenced service as Casual Mazdoors after the date of commencement of his service and rendered lesser service than him were regularised in Group 'D' earlier than him, he submitted that he enquired about the said discrepancy. On coming to know on the basis of the enquiry that, the service which the applicant had rendered before 18 years, could not be reckoned for regularization in terms of the relevant orders issued by the Director General of Telecommunications and on coming to know that this Tribunal had as per A-2 order dated 27.8.1993 in O.A.1098/92 held that the order directing exclusion of service rendered as Casual Mazdoors before 18 years, was illegal and unjust and finding that no review was done by the authorities, he submitted A-3 representation dated 8.2.99 to the 2nd respondent. He claimed that he had submitted a representation even prior to A-3. While so, the applicant was deputed as Phone Mechanic training w.e.f.1.5.1999 and he satisfactorily completed the training on 25.6.1999. Finding that



the respondents were making promotions on the basis of date of regularization as Group 'D' the applicant filed O.A. 837/99 before this Tribunal. But this Tribunal by A-4 order dated 2.8.99 dismissed the application at the admission stage. The applicant aggrieved by the order of dismissal of O.A.837/9 filed O.P.N.22295/99 before the Hon'ble High Court of Kerala. The Hon'ble High Court dismissed the O.P. by A-7 judgement dated 6.12.1999 declining to interfere with A-4 order of this Tribunal but with the observation that the judgement would not stand in the way of disposing of A-3 representation therein by the 2nd respondent. The 2nd respondent disposed of the representation by A-8 order dated 26.7.2000. Aggrieved by A-8 the applicant filed this O.A. seeking the above reliefs. According to the applicant A-8 order was illegal, discriminatory and violative of the fundamental rights under Articles 14, 16 and 21 of the Constitution.

3. The respondents filed reply statement resisting the claim of the applicant and the applicant filed a rejoinder.

4. Heard the learned counsel of the parties. Shri Sudheer, learned counsel appearing for the applicant took us through the factual aspects as contained in the O.A. He submitted that many others like the applicant had entered the service as casual Mazdoors before attaining the age of 18 years and their services were regularised and they were absorbed in Group 'D' after ten years service as Casual Mazdoors. Even though the applicant had completed 10 years service on 19.7.1992, he was regularised only with effect from 31.3.1994 and the services rendered by him prior



to attaining the age of 18 years were not considered. He referred us the A-2 order of this Tribunal dated 27.8.93 in O.A.1098/92 and submitted that this Tribunal had after considering the clarification dated 17.12.92 had in the said O.A. held that the service rendered by the applicants therein prior to attaining the majority was to be taken into account for regularization in group 'D' and directed the respondents to do so. He further submitted that pursuant to the order of this Tribunal in O.A.1155/98 dated 24.8.98, the respondents had granted the reliefs by A-6 order dated 14.7.99 advancing the dates of appointment of S/Shri K.N.Sunil and P.K.Sivaraman taking into account the service rendered by them as Casual Mazdoor before attaining the age of 18 years. He submitted that the applicant who was also similarly situated like these candidates, had not been given similar treatment and had been discriminated. In the case of the applicant, his representation seeking similar benefits had been rejected on the ground of delay as well as referring to the clarification dated 17.12.92. Since this Tribunal had considered the clarification dated 17.12.92, the respondents can no longer rely on the same, he submitted.

5. Learned counsel for the respondents took us through the reply statement and reiterated the points made therein.

6. On a careful consideration of the submissions made by the learned counsel for the parties and rival pleadings and after perusing the documents brought on record, we are of the considered view that the applicant is not entitled for the reliefs sought for .

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7. The applicant had approached this Tribunal earlier by filing O.A.837/99. In that O.A. he had prayed for assigning him earlier date by reckoning his entire service as casual Mazdoor with effect from 18.7.1982. This Tribunal in that O.A. held as follows:

"After a careful perusal of the application and materials placed on record and on hearing the learned counsel on either side, we are of the considered view that the applicant does not have a subsisting cause of action. If the applicant had a grievance regarding supersession in the matter of regularization and if his juniors had been regularised ahead of him, the applicant should have sought remedy at the appropriate time. It has also not been stated in the application who is the junior regularised earlier. Further, the applicant himself was regularised by an order dated 8.7.94 in a Group 'D' post prospectively. For about more than 4 1/2 years, the applicant did not raise any grievance regarding his date of regularization. It is seen that the first representation made by the applicant is the one dated 8.2.99. The applicant has stated that he had made several representations earlier but no copy of such representation has been produced. Further, even if the applicant had made representations earlier then if he did not get any reply within six months, he should have filed an application within a year thereafter. It has been held by the Apex Court that repeated unsuccessful representations will not revive a time barred cause of action. If any authority for the position is needed, it can be had in the ruling of the Apex court in S.S.Rathore Vs. State of M.P., AIR 1990 SC 10.

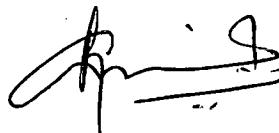
In the light of what is stated above, as the applicant does not have subsisting cause of action, the application is dismissed in limine. No costs."

8. The applicant filed O.P. No.22295/99 against the order of this Tribunal in O.A.837/99. The Hon'ble High Court of Kerala dismissed the O.P. as follows:

"Heard.

While declining to entertain this O.P., we make it clear that our non-interference shall not stand in the way of disposal of Ext.P3 representation stated to have been made by the petitioner and pending before the third respondent.

O.P. is accordingly dismissed."

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6.10.1999

Sd/-Arijit Pasayat, Chief Justice
Sd/-K.S.Radhakrishnan, Judge.

Order on CMP.No.36795 of 1999 in O.P.22595 of 1999-S

Dismissed

6.12.1999.

Sd/-Arijit Pasayat, Chief Justice
Sd/-K.S.Radhakrishnan, Judge.

9. Pursuant to A-7 order the respondents issued A-8 reply to the applicant after considering the representation dated 8.2.99 submitted by him. The said A-8 reply reads as under:

Government of India
Department of Telecom Service
Office of the Principal General Manager
Telecom District Ernakulam, Kochi-16

ADMINISTRATION WING

No. Admn-II/OA.837/99/6 dated at Kochi-16, the 26.7.2000.

The representation dated 8.2.99 submitted by Shri C.K.Joshy, Group'D' under sub Divisional Engineer Phones Vytila Kochi-19 regarding the retrospective regularisation as Group 'D' on completion of 10 years service and other service benefits has been examined in detail.

Shri Joshy was not selected through employment exchange. The casual Mazdoors were engaged by the field staff on the basis of their statement regarding age, qualification address etc. As the Casual Mazdoors were engaged for casual work for a short spell the date of birth etc. were not verified as the regularisation scheme was not introduced at that time. Shri Joshy could manage to get engaged as casual Mazdoor before he attained the age of 18.

The above representation of Shri Joshy is not granted for reasons cited below.

(a) as per the clarification issued by the DOT New Delhi vide No.209-10/89-STN dated 17.12.92 the period of service rendered before attaining the age of 18 will not be counted for any purpose and

(b) he was silent on the subject for the past five years.

The official may be informed accordingly."

Sd/-
General Manager Telecom
O/o PGMT Ernakulam

To

The SDET
Vytila.



10. We find from the above that, one of the reasons given by the respondents for rejecting his representation was that his silence on the subject for the period of five years. As we find that this Tribunal in O.A.837/99 had already held that the applicant has approached this Tribunal after considerable lapse of time and accordingly dismissed the said O.A. at the admission stage itself. We find that the respondents have also given one of the reasons for rejecting his representation is delay. Therefore we are of the view that, this reason given by the respondents in A-8 cannot be faulted and does not call for any interference by this Tribunal especially keeping in view that the O.P. filed against the order of this Tribunal was dismissed by the Hon'ble High Court of Kerala.

11. Coming to merits, the respondents had relied on the clarification issued by the DOT vide No.209-10/89-STN dated 17.12.92 that the period of service rendered before attaining the age of 18 years would not be counted for any purpose. According to the learned counsel of the applicant, this Tribunal had already considered this clarification in O.A.1098/92 and has held that the applicants therein were entitled for regularization in Group'D' taking into account the service rendered prior to attaining the age of 18 years as Casual Mazdoor. We have gone through A-2 order of this Tribunal. This Tribunal in A-2 order held as follows :

"The learned counsel for respondents also relied on the clarification Annexure R-2 issued by the Assistant Director General (STN). Clause 3 of the clarification containing the querry and the answer is extracted below:

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"3. Till minor casual labourers engaged prior to 30.3.85 who attained majority after 30.3.85 be eligible for temporary status? Yes. However, the period of service rendered before attaining the minimum age prescribed will not be counted for any purpose.

8. According to the learned counsel for applicant this clarification does not apply. We accept this submission. Learned counsel for respondents has no explanation or answer to the submission made by the learned counsel for applicant in the light of the clarification Annexure R-2.

12. On going through the above, we find that this Tribunal has accepted the submission made by the learned counsel for the applicant that the above clarification did not apply. What were the reasons were not explained therein. Hence, we are of the considered view that the above order has to be taken as an O.A. decided between the parties.

13. We asked the learned counsel for the applicant as to what is the legal basis for the claim of the applicant that he is entitled for regularisation taking into account the service rendered prior to the age of 18 years. He relied only on A-5 order of this Tribunal as well the action of the respondents in regularising the two employees S/Shri K.N.Sunil and Sivaraman as per A-6 order. We are of the considered view that as long as the clarification dated 17.12.92 has not been set aside by any known-process of law, the respondents are bound to follow the said order. The said clarification was not set aside in O.A.1098/92. The clarification dated 17.12.92 is not under challenge in this O.A. Hence, if the respondents had followed the said clarification dated 17.12.92 and had rejected the representation of the applicant by A-8 order, we hold the same cannot be faulted.

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14. As regards the plea of discrimination, we are of the view that, the same can be raised only if it can be established that the benefit claimed is as per rule/statute. The applicant has not produced any material to show that he is legally entitled to the benefit he is claiming and as long as he has not established his legal right for the benefit on a plea of discrimination he is not entitled for the same.

15. Apart from the above, we also find that, by claiming that he should be regularised from a date earlier than others who are listed in A-1 regularisation order he will be treading on the rights of others. None of these parties are before us in this O.A.

16. In view of all the foregoing, we hold that the applicant is not entitled for the reliefs sought for in this O.A. and accordingly we dismiss this O.A. with no order as to costs.

Dated the 14th November, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

rv

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Order No. Admn-7/Rectt/EK.221/TSM/IV/20 dated 8.7.1994 issued by the 2nd respondent.
2. A-1a: True copy of the relevant portion of the list of employees annexed to Annexure A-1 order.
3. A-2: True copy of the Judgement of the Hon'ble Central Administrative Tribunal in O.A.No.1098/92 dated 27.8.93.
4. A-3: True copy of the representation submitted by the applicant to the 2nd respondent dt.8.2.1999.
5. A-4: True copy of the order of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in O.A.No.837/99 dated 2.8.1999.
6. A-5: True copy of the order of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in O.A.1155/98 dated 24.8.1998.
7. A-6: True copy of the Order No.O.A.1155/98/16 dated 14.7.99 issued by the 2nd respondent.
8. A-7: True copy of the judgement of the Hon'ble High Court of Kerala in O.P.No.22295/99-S dated 6.12.1999.
9. A-8: True copy of the Order No. Admn-II/O.A.837/99/6 dated 26.7.2000 issued by the 2nd respondent.

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