

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 272/92

Monday, the sixth day of December, 1993

MR. N. DHARMADAN MEMBER (JUDICIAL)

MR. S. KASIPANDIAN MEMBER (ADMINISTRATIVE)

M.K. Sukumaran
S/o M.K. Kunjan
Madathiparampil House
Harijan Colony, Mulanthuruty

Applicant

By Advocate Mr. M.R. Rajendran Nair

vs.

1. The General Manager
Telecommunications, Ernakulam
2. The Sub Divisional Officer
Telegraphs, Aluva
3. Union of India represented by
Secretary to Government, Ministry of
Communications, New Delhi

Respondents

By Mr. T.P.M. Ibrahim Khan, ACGSC

ORDER

N. DHARMADAN

The applicant is a casual mazdoor having some prior service between 1.2.86 to 5.4.86 under the Jr. Engineer, Phones Group Exchange, Mulanthuruty. He submitted that some of the juniors of the applicant who have been engaged after the engagement of the applicant have been given work without following a uniform principle. Hence, he filed representation on 12.8.91 for considering re-engagement. That was disposed of Annexure-I order dated 27.8.91 which reads as follows:

"The representation of Sri Sukumaran M.K. has been carefully considered and it is to be intimated that there is no provision in the rules to re-employ any casual mazdoor whose absence is more than 6 months and rules do not permit any fresh intake of mazdoor after 31.3.85."

2. The learned counsel Shri M.R. Rajendran Nair appearing on behalf of the applicant submitted that the Department is not taking a uniform settled principle for re-engagement of casual mazdoors having prior service. The specific averments in para 4 of the original application

reads as follows:

"It is submitted that in various places in Kerala Circle including Ernakulam Secondary Switching area fresh casualmazdoors are engaged by the Telecom Department in 89, 90 and 91 etc. For eg. one Mr. T.K. Ramesan is engaged as casual mazdoor in July, 1991 in cables division and he is working under Sri M.D. Gopalan, Cable Splicer. In Palakkad, Alathur and Alappuzha there are many casual mazdoors who are engaged from 17.11.87, 4.9.87 and 28.5.88 are continuing in Palakkad."

3. According to the applicant, this is not answered by the respondents in the reply. The answer given by the respondents is extracted below:

"Regarding averments in 4(4) of the original application, it is submitted that ineligible fresh hands are not engaged in this SSA. Individual cases are not relevant in this case."

4. The learned counsel for applicant also brought to our notice the judgment of this Tribunal in O.A. 1027/91 and connected cases which was followed by this Tribunal in some cases. But the department has filed SLP against the same and hence they are not inclined to follow the principle followed in these cases and adopt a uniform formula or procedure in the matter.

5. Respondents relied on the judgment of this Tribunal in O.A. 1293/92 and contended that the original application is liable to be dismissed. Since the applicant was absented from work from 5.4.86, according to the respondents, the applicant has abandoned the work; hence, he is not eligible for re-engagement.

6. This Tribunal considered the claim of casual mazdoors having prior service in detail and after following the dictum laid down by the Supreme Court. After discussing the various departmental orders and instructions in the light of the law laid down by the Supreme Court, we have to be uniformly applied in all cases laid down the following principles/for absorption of the casual employees having prior service:-

"Thus, following these instructions and orders, we are of the view that (1) a casual mazdoor who was engaged either before or after 31.3.85 but

absented from work for a period of more than six months at a stretch without any reasonable explanation for condoning the delay on the two grounds mentioned in Annexures-VI and VII, is not entitled to be considered for re-engagement and regularisation (ii) a casual mazdoor is eligible for casual mazdoor card only if he satisfies the three conditions prescribed in Annexure-V order dated 25.1.89 viz. (a) he was employed prior to 31.3.85 (b) his name was in the Master Rolls and (c) his absence for any spell does not exceed six months (iii) an approved casual mazdoor whose name was already registered in the Employment Exchange if satisfies the condition No. (a) above, on re-engagement would get preference over unapproved casual mazdoors and his juniors and freshers (iv) An unapproved casual mazdoors who satisfies condition No. (a) and (b) above would be eligible to be included in the list of such persons to be maintained by the Department for their future re-engagement in their turn and regularisation as group-D employee provided they are registered with the employment exchange as indicated by the Supreme Court in the Delhi Development Horticulture case it being understood that all approved casual mazdoors are above him."

X

X

X

As per the certificate produced by him, he worked under the first respondent with intermittent breaks upto 1980. Thereafter, till date, he did not work under the first respondent. His case is that the first respondent refused to engage him. But he has no evidence to substantiate this case. He has not sent any representation before the first respondent till date. But, he has stated that a number of casual mazdoors who were junior to the applicant were engaged by the first respondent without considering his claim. It is only when the applicant produces evidence in support of his right and claim before the authority that the respondents will be able to consider his case in the light of the relevant orders. As stated above, he has no evidence to satisfy us that he exercised his right for getting re-engagement at any time and the respondents rejected it or he was prevented from doing the work due to illness or non-availability of work.

X

X

X

However, it is a fact that there is long absence of more than 10 years and there is no reason to condone this period of absence. Under these circumstances, we are of the view that the applicant has no case. It is only to be rejected."

7. It is incumbent upon the respondents to consider the re-engagement of the casual employees following their own instructions as interpreted by this Tribunal in O.A. 713/91.

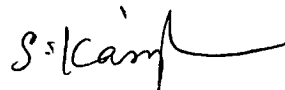
It is also their duty to prepare a list of casual employees in respect of the categories referred to in that judgment and include the names of such of these casual employees who are eligible for inclusion. There is no justification for denying the benefit of the judgment to these casual employees particularly when the judgment in O.A. 713/91 is in the nature of a declaratory one to apply to all casual employees. It is repeatedly held by this Tribunal that if a declaratory judgment is passed by the Tribunal it is incumbent upon the respondents to extend it to similarly situated persons if they approach them with re-engagement requests. The failure of the respondents will adversely affect the interest of the casual labourers and will consume time and wastage of public money.

8. Having considered the matter in detail, we are of the view that the impugned order was passed without adverting to any of the judgments of the Supreme Court of this Tribunal dealing with re-engagement of the casual employees.

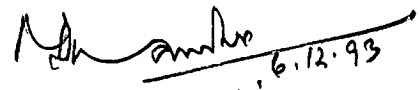
9. In this view of the matter, the impugned order Annexure-I is unsustainable and we quash the same. We direct the first respondent to consider the claim of the applicant applying a uniform principle to be followed in the case of casual employees who are approaching the department with the claim of re-engagement on the basis of prior service in the light of the law laid down by this Tribunal in O.A. 713/91.

10. The application is allowed as indicated above.

11. There shall be no order as to costs.



(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)

 6.12.93

(N. DHARMADAN)
MEMBER (JUDICIAL)