

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 360 of 2000

Monday, this the 11th day of December, 2000

CORAM

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

1. Jabbarkutty,
S/o Abdul Rahman Kunju,
Mavilayil Veedu, Padinjattinkara PO,
Thevalakkara, Kollam.
2. S. Thulaseedharan Pillai,
S/o Sankara Pillai,
Shali Nivas, SRP Market PO,
Thazhava, Karunagappally, Kollam. ...Applicants

[By Advocate M/s Santhosh & Rajan (rep.)]

Versus

1. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi.
2. The Chief General Manager, Telecom,
Kerala Circle, Thiruvananthapuram.
3. Telecom District Manager, Kollam.
4. The Chairman & Managing Director,
Bharat Sanchar Nigam Ltd.,
Sanchar Bhavan, New Delhi.
5. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Kerala, Trivandrum-33 ...Respondents

[By Advocate Mr. N. Anilkumar, ACGSC]

The application having been heard on 11th of December, 2000,
the Tribunal on the same day delivered the following:

O R D E R

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

Applicants, two in number, seek to quash A4 to the extent it excludes them in A4, to declare that non-inclusion of their names in the list of employees eligible for empanelment as illegal, and to direct the respondents to include their names in the list of casual mazdoors eligible for empanelment.

2. Applicants say that the 1st applicant worked as casual mazdoor from the year 1973 to 30-4-1983 and the 2nd applicant

from the year 1973 upto 28-9-1976. In pursuance of the notification issued by the Department they applied in the prescribed proforma along with relevant documents for empanelment. As per A4, applicants' names are not included for the reason that they were not heard of continuously for seven years.

3. Respondents resist the OA contending that the 1st applicant was not heard of for about 12 years and the 2nd applicant for more than 18 years. This Bench of the Tribunal in the judgment in OA 1027/91 has held that if a casual employee on the approved list has not been heard for continuously for seven years, it shall be presumed that he has voluntarily abandoned the casual employment and his name in the approved list shall stand extinguished for all purposes.

4. A4, the impugned order, says the reason for non-inclusion of the names of the applicants. The reason is that they were not heard of continuously for seven years.

5. Reliance is placed by the respondents in the ruling of this Bench of the Tribunal in OA 1027/91, wherein it has been held that it shall be presumed that an approved casual employee, if not heard of continuously for seven years, has voluntarily abandoned the casual work and his name shall stand extinguished from the list.

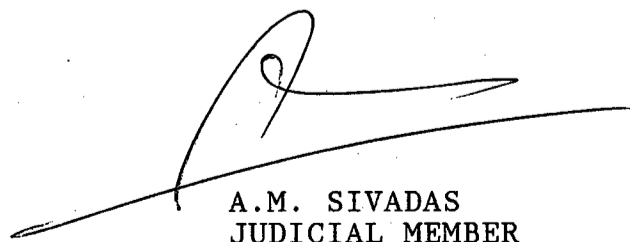
6. Applicants are well aware of the reason for non-inclusion of their names in the list of eligible employees for empanelment. In spite of being well in the know of the reason, they have not stated a single syllable anywhere in the OA even to the effect that they were very much available for

work and it is totally incorrect to say that they were not heard of continuously for seven years. If the applicants were available for work if offered by the respondents, they would have and they could have very well stated in the OA that fact. Keeping the tongue tight on this aspect will lead to the inference that the reason stated by the respondents is correct and the applicants have nothing to say against that.

7. Applicants have taken a ground that they were not removed from the muster roll by giving notice to them. A4 actually is not an order of removal from the muster roll, but an order refusing to empanel the applicants for the reason stated therein. If the case of the applicants is that there is violation of natural justice by not giving them an opportunity before refusing to empanel them, it is to be looked into, if an opportunity had been given or is given, whether the position will improve or not. Respondents have specifically stated that the applicants have abandoned work on their own volition. There is no denial of the same. As already stated, nothing is stated by the applicants that they were available to do work if offered to them. In such a case, even if an opportunity was given or is given to them, it will make no difference for the simple reason that they have nothing to say against the stand of the respondents that they have voluntarily abandoned work and were not heard of for more than seven years.

8. Accordingly, the Original Application is dismissed. No costs.

Monday, this the 11th day of December, 2000



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A4 True copy of the Order No. STE/Empanelment/98/
 99/12 dated 30-3-1999 issued by the 3rd
 respondent.