

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 193 of 2010

Reserved on 16.9.2014

Pronounced on 13th October, 2014

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Raja Ram, aged about 34 years, S/o late Mata Prasad, R/o Village Sohramau, Post Office Rasoolpur, District Lucknow presently working as Mazdoor (Regular) in the office of Assistant General Manager (Administration), BSNL, Mahanagar, Lucknow

.....Applicant

By Advocate : Sri S.K. Singh

Versus.

1. Principal General Manager, U.P. (East) Region, BSNL, Gandhi Bhawan, M.G. Road, Lucknow.
2. Deputy General Manager (Administration), BSNL, PGMID, Lucknow.
3. Assistant General Manager (Administration), BSNL, Principal General Manager, Telecom Department, Ghandi Bhawan, Lucknow.
4. General Manager (Mobile Service) BSNL, Akbarpuri, Aliganj, Lucknow.

.....Respondents.

By Advocate : Sri Pankaj Awasthi for Sri A.K. Chaturvedi.

ORDER

Per Ms. Jayati Chandra, Member (A)

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (i) *quash the impugned order passed by the Opposite party no.2 and 3 dated 9.10.2009 and 31.8.2009 contained in Annexure nos. 1 and 2 to this Original Application respectively.*
- (ii) *direct the Opposite parties to pay his alary for the post of Mazdoor (Regular) in the pay scale of Rs. 4000-120-5800 regularly alongwith arrears from the month of September, 2007 with exemplary interest.*
- (iii) *Direct the Opposite parties to pay all the consequential benefits alongwith arrears for the post of Mazdoor in the pay scale of Rs. 4000-120-5800 w.e.f. 1.6.2007.*
- (iv)

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(v)"

2. The facts of the case are that the applicant was initially engaged as part time casual labour in the year 1994. He was granted the status of full time casual labour vide order dated 31.12.2003 (Annexure no.3). His services were regularized as per Regularization Scheme of the Department by letter dated 1.6.2007 (Annexure no.4). He gave joining report on 6.6.2007 and was paid salary of Regular Mazdoor in the pay scale of Rs. 4000-5800/- for the month of June, July and August, 2007. Suddenly, his pay for the month of September, 2007 was not paid. He gave a representation dated 3.11.2008 for payment of salary on the post of Regular Mazdoor (Annexure no.9). Not getting any remedy, he filed O.A. no. 251 of 2009 before this Tribunal, which was disposed of vide judgment and order dated 8.6.2009 with a direction to dispose of his representation dated 3.11.2008. In compliance of the order of this Tribunal, the respondents decided the representation of the applicant vide order dated 9.10.2009 rejecting the claim of the applicant. According to the applicant, the respondents have continued to treat another similarly situated person vis. Mrs. Anita Gupta as regular Mazdoor. More-over the respondents have rejected his claim on account of the order pronounced by the Hon'ble Supreme Court in the case of Uma Devi and consequential direction from the Head Office. This is in contravention of the true facts being that he was regularized vide order dated 1.6.2007 as per Regularization Scheme of the Department. More-over, he was regularized by the duly constituted selection committee under the said scheme. Against the rejection order dated 8.6.2009, the applicant filed Writ petition no. 2423 (S/S) of 2010 before Hon'ble High Court, which was dismissed vide judgment and order dated 26.4.2010 on the ground of alternative remedy; hence this O.A.

3. The respondents through their Counter Reply have stated that the applicant was never recruited in a regular manner against a regularly sanctioned post, but he was engaged as part time casual labour from the open market without following any laid down procedure and such engagement was for carrying out the work, which was purely of a casual and seasonal nature. Later, in compliance of CGM's letters dated 21.6.2002 and 24.12.2002, the

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applicant was converted from part time casual labour to full time casual labour through letter dated 31.12.2003.

4. The Constitutional Bench of Hon'ble Supreme Court decided Civil Appeal No. 3595-3612 of 1999 (Secretary, State of Karnataka Vs. Uma Devi (3) alongwith the connected matters through the judgment and order dated 10.4.2006 reported in 2006 (4) SCC 1 has held that any appointment made by bye-passing the regular mode of recruitment is illegal. The Corporate Office, New Delhi through letter dated 17.5.2006 circulated the aforesaid judgment for necessary action to all the branch offices. The Departmental Promotion Committee (DPC) was constituted in accordance with CGM Lucknow's letter dated 25.8.2003, 23.1.2006 and 16.5.2006 and in contravention of Headquarters' letter dated 17.5.2006 and after selection the applicant alongwith five others were appointed in Group 'D' regular Mazdoor cadre vide order dated 1.6.2007. By another letter dated 3.8.2007 certain others were similarly appointed. Later-on, it was realized that the letters dated 1.6.2007 and 3.8.2007 are contrary to BSNL Corporate office, New Delhi's letter dated 17.5.2006. Therefore, the two orders dated 1.6.2007 and 3.8.2007 were kept in abeyance through letter dated 31.8.2007 (impugned order).

5. The basic crux of the case is that the initial engagement of the applicant was made by bye-passing the selection process, hence in accordance with the verdict rendered in the case of Ms. Uma Devi, the applicant could not be regularized as one time measure. Thus, the CGM's letters dated 1.6.2007 and 3.8.2007 were kept in abeyance vide letter dated 31.8.2007 awaiting the opinion of Additional Solicitor General of India, who gave opinion vide letter dated 27.12.2007 and the same was circulated by the Corporate office of BSNL, New Delhi vide letter dated 19.3.2008. The applicant although paid as regular Mazdoor for June, July, and August, 2007 is being paid as a full time casual labour. The case of Smt. Anita Gupta is separate as she was appointed as temporary Mazdoor on compassionate ground.

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6. Rejoinder has also been filed by the applicant denying the contentions of the respondents made in the Counter Reply and reiterating the stand taken in the Original Application.

7. During the course of hearing, learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court in the case of Santosh Kumar Vs. State of U.P. & others reported in (2003) SCC 511 wherein it has been held that after regularization the adhoc or stopgap nature of appointment does not survive.

8. We have heard the learned counsel for the parties and perused the pleadings on record.

9. The basic case of the applicant is that he was regularized vide letter dated 1.6.2007, thereafter, no action can be taken for stopping his salary or treating him as anything other than regular Mazdoor without giving him any show cause notice and without following the established procedure. The case of the respondents is that the regularization of the applicant had been carried out in contravention of the instructions passed by the Corporate Head Office by letter dated 17.5.2006, which had been passed after landmark judgment of Hon'ble Supreme Court in Uma Devi's case. Be that as it may, it is not denied by the respondents that the said regularization was carried out in compliance of CGM's letters quoted hereinbefore. At this stage, we are compelled to remark on the very casual attitude of the respondents in filing their reply. They have placed reliance on a crucial letter dated 17.5.2006 issued by the Headquarters after the landmark judgment of Uma Devi and have shown it as Annexure C-3, but not bothered to include it as an Annexure. Even the Annexure no. C-7 is incomplete as it does not include any page after page no.1. Coming to the merit of the action of the respondents, they have admitted that the regularization process was carried out after following a due process as laid down by CGM's letters referred to above. We wonder how is that while no action apparently has been taken against the erring officials, it is the applicant who is made a victim of their belated case of irresponsibility. We fail to understand how in the face of letter dated 17.5.2006 of Headquarters such instructions were allowed to continue. More-

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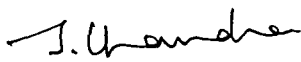
over the impugned order, which has been passed in compliance of CGM's letter's dated 17.5.2006 is purely an intermediary nature.


It reads as under:-

"In view of BSNL Corporate office, New Delhi F. No. 273-5/2006-Pers IV dated 17.5.21006 regarding judgment of Hon'ble Supreme Court dated 10.4.2006 in Civil Appeal no. 3595-3612/1999 and other related appeals, the orders issued for regularization of casual labour vide this office letter no. ST-50/03/2003-07/99 dated 1.6.2007 and no. ST-50/3/2003-07/106 dated 3.8.2007 are being kept held in abeyance.

It is also noticed that the regularization order of the applicant has not been cancelled as yet, but it has merely been kept in abeyance. More than seven years have passed, but no decision has been taken as yet.

10. In view of the above, the O.A. succeeds. The order dated 31.8.2007 and 9.10.2009 are quashed. The applicant is to be treated as Regular Mazdoor as per order dated 1.6.2007 from the date of his joining as Regular Mazdoor. The applicant is also entitled all consequential benefits including back wages. The above exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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