

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

**Transfer Application No. 01 of 2011
(Writ Petition No. 3402 of 2007 (S/S)**

Reserved on 17.3.2015

Pronounced on 31.03.2015

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Rakesh Kumar, aged about 29 years, S/o late Sri Rajjan Lal, R/o House no. 510/79 New Hyderabad, Lucknow

.....Applicant

By Advocate : Sri Y.C.Srivastava

Versus.

1. Bharat Sanchar Nigam Limited through its General Manager, U.P. Telecom East, Lucknow.
2. Deputy General Manager (Admn.) U.P. Telecom East Bharat Sanchar Nigam Limited, Lucknow.
3. Senior Architect, Bharat Sanchar Nigam Ltd, 4-A third Floor, Habibullah state, Hazratganj, Lucknow.

.....Respondents.

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

ORDER

By Ms. Jayati Chandra, Member(A)

The applicant has initially filed Writ petition no. 3402 (S/S) of 2007 before Hon'ble High Court, which was subsequently transferred to this Tribunal by order of Hon'ble High Court dated 24.9.2010 and registered as T.A. No. 1/2011. By the said T.A., the applicant has sought the following relief(s):-

- (i) "to issue a writ, order or direction in the nature of mandamus commanding the Opposite parties to reinstate the petitioner with all consequential benefits including the arrears of salary declaring the petitioner's oral termination w.e.f. 25.5.2007 as null and void.
- (ii) To issue a writ, order or direction in the nature of mandamus directing the Opposite parties to allow the petitioner to continue in service and make the payment of the salary regularly.
- (iii) To grant any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case.

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(iv) *To award the cost in favour of the petitioner."*

2. The facts, as narrated by the applicant, are that the applicant was initially engaged as a 'Danik Safai Karamchari' from September 1989 in the office of respondent no.3 and had worked till 25.7.2007 when his services were orally terminated. Many persons, who had joined service after 1989 and who were performing the same duties as that of the applicant, were regularized whereas the services of the applicant has been orally terminated. The applicant submitted representation to the respondent no.3 on 5.10.2000 (Annexure no.2). The respondent no.2 sent a letter dated 18.12.2003 to all concerned units and directed them to send full details of part time workers who have incidentally been left out from being regularized for any reason upto 7.1.2004 (Annexure no.4). The respondent no.3 sent full details of the applicant for regularization vide letter dated 27.2.2004, which was received in the office of respondent nos. 1 & 2 on 15.3.2004 (Annexure no.5). As the services of the applicant had not been regularized in spite of working for the last more than 18 years, he filed Writ petition No. 9581 (S/S) of 2006 wherein the interim order was passed vide order dated 20.11.2006. It is also averred by the applicant that large number of persons such as Sri Raj Kumar, Ms Geeta Sri Mukesh Kumar and Sri Ram Ashhish placed in the similarly circumstances and junior to the applicant have been retained and even they have been regularized whereas the services of the applicant were terminated orally. Similarly Smt. Shanti Devi, Sujeept Kumar, Smt. Kanti Devi, Smt. Sheela Devi Smt. Krishan and Sri Anup Kumar Verma appointed on part time basis, after the applicant have been appointed on full time basis.

3. The respondents have denied the averments so made by the respondents by means of Counter Affidavit through which they have stated that the applicant had worked as Part Time Casual Worker from September, 1989 on daily wage basis as per need and requirement of sweeping work in the office of respondent no.3. No part time casual worker is entitled for grant of temporary status or regularization in view of Hon'ble Supreme Court's judgment dated 24.10.1997 rendered in the case of Janak Dhari Paswan Vs. Union of India (Civil Appeal No. 12312 of 1997) and also the decision given by Hon'ble Supreme Court in the case of Secretary, Ministry of Communication & Others Vs. Sakku Bhai &

Another reported in 1997 Vol. II SCC 224. According to letter dated 23.5.2001 issued by Department of Telecommunication it was provided that only part time casual labourer, who were engaged between the period 1.9.1999 to 31.8.2000 were eligible for conversion from Part Time Casual Labourer to Full Time Casual Labourer and during the said period, the applicant had worked only 92 days. No sanctioned post of Group 'D' is lying vacant. There is no need and justification for sanction of a Group 'D' post for the office of respondent no.3 for performing the sweeping work keeping in view the carpet area of the office. Only three hours sweeping work is required for sweeping in the carpet area of the office of respondent no.3. Further, the applicant has mentioned names of persons without providing any details. They have lastly stated that the T.A. has no merit and the same is liable to be dismissed.

4. The applicant has filed Rejoinder Affidavit denying the averments made by the respondents in their Counter Affidavit and reiterated the averments made in Transfer Application.

5. During the course of hearing, learned counsel for the applicant has placed reliance the following decisions:-

- (i) Executive Engineer & Another Vs. Lekh Raj & Another reported in 2006 SCC (L&S) 650.
- (ii) Incharge Government Hide Flaying Centre & Another Vs. Rama Ram & Another reported in 2003 SCC (L&S) 1170.
- (iii) Ram Naresh Vs. State of U.P. & Others reported in 2013 (31) LCD 1326.
- (iv) U.P. Power Corporation Limited Vs. Presiding Officer Labour Court, U.P. Gorakhpur & Others reported in LCD 2005 1915.
- (v) Chandra Pal Singh Vs. State of U.P. & Others reported in 2009 (27) LCD 157.

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

7. It is not denied by the applicant that he was a part time casual worker. His services have been terminated orally as there was no work. It is also seen that the applicant has not yet worked as full time casual worker in any of the year since 1989 to 2005. Infact, some months he

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had worked as little as 09 days. It is settled preposition of law that the services of casual labour can be terminated at any time without assigning any reason.

8. Coming to his averment with regard to the retention of services of certain other persons, the applicant has not produced any evidence by the way of salary/wages slip, employment advice, muster roll etc. to establish similarity. The case cited by the learned counsel for the applicant do not come to his assistance as facts and circumstances of the cases are different from the O.A.

9. In view of the aforesaid discussions, T.A. fails and is accordingly dismissed. No costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

VR. Agarwal
(Navneet Kumar)
Member (J)