

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Order:- 30.3.99

Registration No. 109 of 1996

Nand Kishore Das, Son of Sri Brahmdeo Das,
resident of village - Bakhara Bujurug, P.S. Bhagawanpur,
District Vaishali, who was working as Motor
Driver since January, 1991

.. Applicant

Versus

1. The Chief General Manager, Telecom., Bihar Circle, Department of Telecommunication, Government of India, Meghdut Building, G.P.O. Campus, Patna-800001.
2. The General Manager, Telecom, Bihar Circle, Department of Telecommunication, Government of India, Meghdut Building, G.P.O. Campus, Patna-800001.
3. The Assistant General Manager (A), Patna Circle, Telecom., Department of Telecommunication, Government of India, Meghdut Building, G.P.O. Campus, Patna-800001.
4. The Deputy General Manager, Telecom., Bihar Circle, Department of Telecommunication, Government of India, Meghdut Building, G.P.O. Campus, Patna-800001.
5. The M.V.T., Telecom, Department of Telecommunication, Government of India, Meghdut Building, G.P.O. Campus, Patna-800001.
6. The Director Telecom. (Personnel) posted in the office of the Chief General Manager, Bihar Circle, Department of Telecommunication, Meghdut Building, G.P.O. Campus, Patna-800001.
7. The Assistant Director, Telecom (Personnel), posted in the office of the Chief General Manager, Bihar Circle, Department of Telecommunication, Meghdut Building, G.P.O. Campus, Patna-800001.

.... Respondents

Counsel for the applicant Mr. N.P.Sinha

Counsel for the Respondents Mr. H.P.Singh,
Additiinnal Standing
Counsel

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial)

O R D E R

Hon'ble Shri Lakshman Jha, Member (Judicial):-

1. This application under section 19 of the Administrative Tribunals Act, 1985 (For short, A.T. Act) has been filed with prayer for the following reliefs:-

" (a) That the Respondents be directed to work as Motor Driver till no regular appointment is made in view of the facts that his Junior Casual Labour are continuing, whereas, the applicant has been orally told not to come for work;

(b) That, any other relief or reliefs as may be deemed fit and proper.

2. The applicant, having a valid motor Driving Licence as at Annexure-A-1 series, was engaged in January, 1991 for driving official car of Sri D.R.P. Srivastava, the then Assistant Engineer (MARR) posted in the office of the Chief Manager (Development), Abdul Hai Complex Exhibition Road, Patna-1 at the rate of Rs. 1000/- per month. The Assistant Engineer (MARR) posted in the office of the Chief Manager (Development), Shrivastava, issued a certificate ast at Annexure-A-3, to the applicant with regard to his engagement and working experience. While the applicant was engaged as Casual Motor Driver, the Chief General Manager, Respondent No.1, called for names from Employment Exchange for

appointment of Drivers on contractual basis, vide his letter dated 13.10.93. The Employment Exchange, Patna, sponsored the names of 47 candidates, including the applicant, vide letter dated 30.10.93, as at Annexure-A-4. The candidates were interviewed and 5 of them, including the applicant, were selected and appointed as Motor Drivers with the approval of the Chief General Manager for a period of three months with effect from 2.12.93. The applicant, who was already working there^{was}, communicated about his appointment through letter No.CGM/PRO/Veh./92-93 dated 1.12.93 under the signature of the then Asstt. Director, Telecom.(Personnel) as at Annexure-A-5. Accordingly, the applicant was entrusted ^{with} the job of driving Jeep bearing Registration No. BR-IE-2224, allotted to Divisional Engineer (MARR). It is stated that the Chief General Manager, Respondent No.1 extended the period of employment of the aforesaid five motor Drivers including the applicant till the regular recruitment was made vide his Memo. No.CGMT/PRO/Veh./92-94 dated 3.3.94 as at Annexure-6. While the applicant was driving the Jeep of the Divisional Engineer (MARR), Telecommunication, he was allotted to the Assistant General Manager (MM) under the orders of the Chief General Manager vide Memo. No. WLF/VEH/1/89/Vol.-3 dated 18.3.94 issued under the signature of the Divisional Engineer (MARR), as at Annexure-A-7. The Divisional Engineer also issued a certificate as at Annexure-8 certifying that the applicant was working from November, 1993 satisfactorily. The applicant was also directed to take charge of the garage allotted for parking the vehicle which the applicant was driving, as at Annexure-A-9. Accordingly, he (the applicant) was regularly discharging his duties as Casual Motor Driver, for which he was granted

certificate, vide Annexure-A-10 series by the Assistant Engineer and Assistant Director, Telecom. (Personnel) and he was regularly paid the wages also, vide receipts as Annexure-A-11 series.

3. It is the further case of the applicant that on 21.8.94 at about 8.00 A.M. while he was driving the aforesaid Jeep No. BR-IE-2224 with Assistant General Manager (MM), late Rajgiri Singh from his home town Baxar, the break of the Jeep failed and it collided with a Truck, in which he sustained injuries and the aforesaid late Rajgiri Singh, Assistant General Manager, received fatal injuries. Subsequently, the vehicle was examined by the Motor Vehicle Inspector, who found no fault on the part of the applicant and no criminal case was instituted against him. After his recovery he filed an application dated 30.1.95 to the Respondent No.1, Chief General Manager (Telecom.), Bihar, Patna, with request to allow him to work as Driver vide his representations as at Annexure-12 series also dated 7.3.95, 18.4.95, 2.5.95 and 24.8.95/and also personally met the authority concerned, also. However, they failed to pay any heed to his request. ^{He} stated that he himself sustained serious injuries in the accident and was under treatment in the PMCH, Patna, vide prescription and certificate as at Annexure-A-13. The other appointees are still working with the Respondents - Department. It is also stated that during the pendency of the present application, the applicant was allowed to work as Driver with effect from 7.3.97 and he regularly worked till 20.5.97. During this period he was driving Commander Jeep bearing No. BRIF - 0910, used by the Assistant Engineer, Motor Vehicle Incharge, vide Log Book as at Annexure-M/2 series. However, ^{He} was discontinued to be engaged with effect

from 20.5.97. ^{TL} ~~as~~ other four appointees, who were engaged like the applicant, are still being allowed to ~~work~~ work as Casual Drivers ^{under} ~~and order of this Tribunal~~ under the interim order ^{dt} 6.6.97, passed in OA No.353/97 of this Tribunal, as at Annexure-A-9 to the supplementary application. Therefore, the prayer is made for the reliefs as stated above.

4. The Respondents have resisted the claim of the applicant. It is stated that the applicant was engaged as Motor Driver on contractual basis with effect from 2.12.93 with a condition that the said deployment is purely temporary and the petitioner will have no claim for their absorption in the Department ^{after terms} as at Annexure-A-5. Moreover, the Jeep which was being ~~xxxxx~~ driven by the applicant met a serious accident causing death of one officer of the Department and a criminal case was instituted against him (the applicant) by the State of Bihar. The Criminal case filed against the applicant is still pending in the Court of law. Therefore, this Tribunal has got no jurisdiction to entertain the case of the petitioner at this stage. ^{Q1b} In other works, until and unless the applicant is acquitted in the criminal case against him he cannot be considered for deployment/absorption as casual driver in the Respondents Department. The engagement of the applicant from January, 1991, as at Annexure-A-3, is denied, As it is not clear that on what basis he was engaged and work ^{ed} for the period till he was engaged on contractual basis with effect from 2.12.93, as at Annexure-A-5. Accordingly, it is said that as the criminal case against the applicant arising out of the accident of the ~~Jeep driving~~ ^{by him} is still pending he is not entitled to the reliefs prayed for.

5. Heard the learned counsel for the applicant, Shri N.P.Sinha and the learned counsel for the respondents, Shri H.P.Singh, Additional Standing Counsel and perused the record.

6. The admitted position is that the applicant was appointed as Casual Driver after an interview on being sponsored his name by the Employment Exchange, Patna, with effect from 2.12.93 on contractual basis for three months with the approval of the Chief General Manager, Telecom., Bihar Circle, Patna, Respondent No.1, vide Annexure-A-5. The deployment of the applicant as Casual Driver from January, 1991, as per the certificate granted by the Assistant Engineer (MARR) Shri D.R.P. Srivastav, at Annexure-A-3 is not supported by any relevant document. There is also no clear and specific pleading as to who engaged him and what was the mode of the payment during his period of engagement since January, 1991, till he was appointed on contractual basis on 2.12.93. However, in view of the fact that Annexure-A-5 is admitted by the Respondents, I have no hesitation in holding that the applicant was engaged as casual Driver on contractual basis ~~was~~ for three months with effect from 2.12.93. It further appears from Annexure-A-6, that the Chief General Manager, Telecom., Bihar Circle, Patna, Respondent No.1, extended the deployment as Motor Drivers of all the five ^{appointees} including the applicant, till the regular recruitment was made, vide order dated 3.3.94, as at Annexure-A-6. Annexure-A-6 is not denied by the Respondents Department. It stands supported by the certificate granted by the Divisional Engineer and Assistant Director Telecom. (Personnel) as at Annexures-A-8 and A-9. The applicant was also paid for the period of the deployment since after 2.12.93, vide photo-copies of receipts in token of payment of wages as at Annexures-A-11, ^{and} ~~and~~

7. However, it is the case of the applicant that a Jeep bearing No. BRIE-2224, driving by him met with an accident on 21.8.94 at about 8.00 A.M. due to some mechanical trouble, in which the then Assistant General Manager, late Rajgir Singh, received fatal injuries. The applicant also received serious injuries and became unconscious. After his recovery he filed several representations as at Annexure-A-12 series for his deployment as Casual Motor Driver, but without success. It is contended that the accident occurred due to failure of break and no criminal case was lodged against him. On the other hand, it is ^{the} stand of the learned counsel for the Respondents - Department that a criminal case arising out of the aforesaid accident of the Jeep driving by the applicant is still pending in a Baxar Court and, therefore, he is not entitled to the relief of the deployment as prayed for. The learned counsel for the applicant submitted that the Respondents - Department have failed to bring on record a chit of paper to show that any criminal case relating to the accident of the Jeep driving by the applicant is pending in any Court of law or any inquiry is pending with the Respondents - Department. The applicant himself suffered serious injuries and was undergoing treatment in the PMCH, Patna. The prescriptions relating to his treatment are also on record vide Annexure-A-13 series. It appears from the stand of the Respondents - Department as taken in the W.S. that the only hurdle in the way of deployment of the applicant is said to be pendency of the Criminal case against him. But, as said above, there is no paper in support of this stand in the teeth of clear denial by the applicant in the O.A. as well as in the supplementary petition. Moreover, it appears from the supplementary application that the applicant was engaged during the pendency of this

OA from 7.3.97. But, all of a sudden, the applicant was discontinued after 20.5.97. The copy of the log book for the aforesaid period is Annexure-M/2 of the MA-163/97. Thus, it is clear from the Annexure-M/2 read with Annexure-M/3 of the MA-163/97, that the applicant was appointed on contractual basis with effect from 2.12.93 at the first instance for three months. He was allowed to be continued till the regular recruitment was made. It is also clear that the applicant was discontinued with effect from 21.8.94, as a result of fatal accident by the Jeep driving by ^{him} ~~the~~ applicant.

8. But, as said above, the Respondents - Department has failed to bring on record the papers showing that the applicant is involved in the criminal case arising out of the accident. It is also unrebutted position that the applicant was engaged during the period of pendency of this O.A. ~~from~~ the period from 7.3.97 to 20.5.97. The learned counsel for the applicant contended that the applicant was appointed, along with four others in terms of the conditions as stated in Annexure-A-5, read with Annexure-A-6, referred to above. The other four appointees are still working as casual Motor Drivers with the Respondents Department. The name of the applicant, figures at serial No.3 of Annexure-A-5. In other words, Juniors to the applicant are still deployed by the Respondents Department, and, therefore his case is covered by the well established principle of "the last comes first goes". The learned counsel for the applicant also referred to Annexure-A-9, the order dated 6.6.97, passed in OA No.353/97, in respect of the other casual motor Driver appointees of the Respondents Department, and submitted that the Respondents have been restrained from dispensing with

their services as Casual motor Driver and they are still continuing as no regular appointment has been made in terms of Annexure-A-6.

9. The learned counsel for the applicant referred to a ruling of the Hon'ble Supreme Court in Keshav Narain Gupta & Others Versus Zila Parishad, Shivpuri (M.P.) and another, as reported in 1988, Supreme Court Cases (L&S)1119, and contended that an ad hoc appointee has right to continue till regular appointee is available.

10. On a careful consideration of the aforesaid submissions of the learned counsel appearing on behalf of the parties, and in the facts and circumstances of the case, I am of the opinion that the applicant is entitled to the reliefs prayed for. Accordingly, the Respondents-Department are directed to consider the case of the applicant for his deployment as Casual Motor Driver till the regular appointment is made in terms and conditions as per Annexure-A-5, read with Annexure-A-6, within a period of a fortnight from the receipt of a copy of this order. There shall be no order as to costs.

SKS

Lakshman Jha
 (Lakshman Jha)
 30.3.99
 Member (J)