

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.302 of 1996

Date of order 10.7.1997.

Dinesh Prasad, son of Sri Parmeshwar Prasad, resident of Mainpura, P.O. GPO, Patna, District Patna.

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Applicant

-versus-

1. The Union of India through the Secretary-cum-Director General, Department of Telecommunications, Sanchaiv Bhawan, New Delhi.
2. The Chief General Manager, Telecom, Meghdoot Building, Patna-800 001.
3. The General Manager, Telecom, Distt. Patna, R. Block, Patna.
4. Assistant Engineer, Phones, Rajendra Nagar, Telephone Exchange, Patna.

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Respondents

CORAM : Hon'ble Mr. Justice V.N. Mehrotra, Vice-Chairman
Counsel for the applicant : Shri R.K. Choubey.
Counsel for the respondents : Shri P.K. Jaipuria.

O R D E R

Hon'ble Mr. Justice V.N. Mehrotra, V.C.:-

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, with the prayer that the respondents be directed to reinstate the applicant on his post and after giving him temporary status, regularise his services with all consequential benefits.

2. The applicant has alleged that in the year 1975

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he was appointed on the post of Daily Rated Mazdoor ('DRM' for short) in the Department of Telecommunications after his name was sponsored by the Employment Exchange. The applicant worked on the said post of DRM with all satisfaction of the authorities concerned and there was no complaint against him regarding his work and conduct from the day of his appointment till February, 1992. The applicant has further asserted that a policy-decision was taken by the Department of Telecommunications regarding the regularisation of services of Casual Labour and to grant them temporary status for their betterment. Accordingly a Scheme was framed by the Department in the name and style of "Casual Labours (Grant of Temporary Status and Regularisation) Scheme, 1989". In terms of this Scheme, the Casual Labours, who were appointed prior to 30.3.1985 in the Department and had rendered continuous service of 240 days in a year, were entitled for certain benefits, as mentioned in the Scheme. It is then claimed that in March, 1992, the applicant met with serious accident that he was unable to be present on duty till 31.10.1994 with time to time intimation to the Department. The applicant recovered from his illness and approached the authorities vide his application dated 26.11.1994 with a Medical Certificate but he was not permitted to join. The applicant made several representations and ultimately an order dated 8.3.1995 was passed by the authority concerned intimating that the applicant cannot be reinstated as his service break period is more than one year. The applicant represented his case to the higher authorities but no action has been taken. It is contended that in the light of the provisions of the above-mentioned Scheme, the applicant was entitled to be

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reinstated and his service should be regularised.

3. On behalf of the respondents, a written statement has been filed denying the assertions made by the applicant. The claim by the applicant that he was working continuously since the year 1975 ^{and up to the time} when the above-mentioned Scheme was ~~in force~~ has been denied. It has further been asserted that the applicant was not working when the Scheme was ~~enforced~~. It has also been asserted that the services of the applicant were never terminated as he is ~~seeking~~ to make out in para 1 of the O.A. but actually he deserted his post for more than two years. It is also contended that the break in service up to the maximum period of one year could have been condoned in the light of office letter dated 30.8.1989 (Annexure-R-I) but as the period exceeded even two years, the question of condonation could not arise. It has been claimed that the applicant was not entitled to be reinstated nor his services could be regularised.

4. I have heard learned counsel for the parties and have perused the records. The applicant has claimed reinstatement and regularisation of his services in the light of the 1989 Scheme formulated by the Department. A copy of that Scheme is Annexure-A-2. According to this Scheme, a Casual Labour, who was engaged prior to the year 1985 and who had continuously worked for 240 days in a year and also who was currently working in the Department, could be granted temporary status. As will appear from Annexure-A-2, this Scheme came into force from 1st October, 1989. Thus, the applicant has to show that he was engaged prior to 1985 and he worked continuously for a period of 240 days in a year and further that he was employed at the time when the Scheme came into force. The applicant has asserted that

he worked till February, 1992 continuously. This assertion has been denied on behalf of the respondents. The applicant has filed Annexure-A-1 to show the number of days for which he worked for different years. Page 12 of Annexure-A-1 indicates that the applicant was engaged in February, 1975 and in that year he worked for 40 days only. In the year 1976, during the months January to December, the applicant worked for 338 days while in the year 1977 he worked for 80 days only. Page 13 of Annexure-A-1 shows the work done in the years 1991 and 1992 only. According to this document, the applicant worked during the months ~~of~~ September to December in the year 1991 for 92 days only and he also worked for 32 days in January and February, 1992. There is no other document to indicate as to whether the applicant had worked from April, 1977 to August, 1991. The respondents have denied the assertion by the applicant that he had worked continuously from the year 1975 and it has been specifically asserted that the allegations made by the applicant in paras 4.1 and 4.2 of the O.A. are not correct and that he mostly remained absent and not rendered continuous service as required for DMR which was obvious from his work report charge (Annexure-A/1). In view of this denial, it was for the applicant to show that he actually worked since the year 1975 till February, 1992 and that he was working as DRM when the 1989 Scheme was ~~enforced~~. The applicant has, however, totally failed to establish this fact. In the circumstances, the 1989 Scheme could not be applicable to him.

5. The applicant has in para 1 of the O.A. asserted that his services have been terminated by the Department on the ground of break. This contention is obviously

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wrong as the Department had not terminated the services of the applicant but he absented himself since March, 1992 and allegedly reported for duty on 31.10.1994.

The respondents have asserted that the break in service up to one year only could have been condoned in the light of circular (Annexure-R-1) and break for a period exceeding one year could not have been condoned. Annexure-R-1 provides for condonation of break in service up to the period one year only by the Chief General Manager and according to ~~it~~ break in service beyond one year cannot be condoned.

The learned counsel for the applicant has, however, placed reliance on the decision of this Bench in O.A. 650/91 (Ram Uchit Vishwakarma & another vs. Union of India & others) decided on 3.9.1992. The facts of that case were totally different. In that case both the applicants were engaged prior to the year 1985. They had worked for more than 240 days in the year 1989 and also in the year 1990. They were working even in the year 1991 when their services were terminated. Obviously, both those applicants were in employment when the Regularisation Scheme was ~~enforced~~. They had also worked for more than 240 days in a year. It is true that there was break in their service prior to the year 1989 but as obviously they were entitled to continue in service and claim temporary status on the ground of their having worked for more than 240 days in a year and were continuing to work when the Scheme was in force, they could be conferred temporary status ~~under~~ the Scheme. The question of condonation of break in their service which was prior to the year 1989 was considered and was allowed in view of the fact that as regards other similarly placed employees, the break in service was condoned. The case of the present

applicant is not on the same footing. As mentioned earlier, the 1989 Scheme cannot be made applicable to him as it has not been established that he was working when the Scheme was ~~enforced~~. Similarly, break in his service which exceeded one year could not also be condoned in the light of the provisions of Annexure-R-1.

6. In view of the above discussion, the applicant is not entitled to claim reinstatement to the post held by him nor any direction can be issued for granting him temporary status or to regularise his services. This O.A. is accordingly dismissed. No order as to costs.

V.N. Mehretra
10.7.1997

(V.N. Mehretra)
Vice-Chairman