

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No. 56 of 1996.

Date of Decision : 27<sup>th</sup> MAY-98

1. Circle Secretary, All India Telecom Employees Union Line Staff and Group 'D', Bihar Circle Branch, through its Circle Secretary, Shri Mahabir son of late Ram Ashish Yadav, Vikash Nagar, Dhanbad, Post Office Dhanbad, Police Station Dhanbad, District Dhanbad (in brief AITEULS & Gr.'D', Bihar Circle Branch).
2. Shri Niwas Pandey, son of Shri Bhushan Pandey, aged about 32 years, resident of village Gobindpur, Police Station Ghoshi, District Jahanabad and at present posted as a DRm Telephone Exchange, Dhanbad.
3. Sunil Kumar Sinha, son of Shri Sheo Narain Prasad, aged about 31 years, resident of village Salimpur, Police Station Tekari, District Gaya and at present Posted as DRM in the office of the SDO (Phones) No.1, Dhanbad.
4. Birendra Kumar Sinha, son of late Sitaram Prasad Sinha, aged about 37 years, resident of village Jurahi, Police Station Madanpur, District Aurangabad and at present posted as DRM office

of the SDO (Phones) No.1, Dhanbad.

..... APPLICANTS.

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1. Union of India through Secretary, Department of Telecommunication, Govt. of India, New Delhi-1.
2. Chairman, Department of Telecommunication, Govt. of India, New Delhi-1.
3. Shri K.Ranganathan, Chief General Manager Telecommunication, Bihar Telecom Circle, Patna-1.
4. Shri B.K.Sinha, General Manager Telecommunications (South), Gaya.
5. Shri Moti Lal, Telephone District Manager, Dhanbad.

..... RESPONDENTS.

Counsel for the applicants : Shri N.P.Sinha.  
Shri I.D.Prasad.

Counsel for the respondents: Shri J.N.Pandey,  
Sr. Standing Counsel.

C O R A M

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

O R D E R

V.N.Mehrotra, V.C.:

This O.A. has been filed on behalf of 39 applicants praying that the orders passed by respondent no.5 by letters dated 26.09.1995 & 25.09.1995, which have been mentioned in para-8(a)

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and 8 (aa) of the O.A. be quashed and respondents be directed to grant temporary status to all the 39 casual mazdoors from the date due with all consequential reliefs as detailed in Annexure-A/3.

2. The applicants have alleged that they were casual mazdoors and were engaged as such prior to 30.03.1985. It is asserted that they have worked for long periods since their engagement. They have also worked for 240 days in one year. They assert that according to the scheme framed by the Govt. of India relating to regularisation of casual labourers, they were entitled to be granted temporary status as they were working since prior to 30.03.1985 and were also working on 01.10.1989 when the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme of the Department of Telecommunication, 1989, (for short, Scheme, 1989) came into force. The applicants have further        asserted that O.A. 225 of 1995 was filed before this Bench praying that the respondents be directed to grant temporary status to the applicants. That O.A. was disposed of on 01.05.1995 by which the District Manager, Department of Telecommunication, Dhanbad (now, respondent no.5) was directed to dispose of the representations of these 39 pRMs within a period of three months after

giving them an opportunity to be heard and by speaking and reasoned orders. A copy of that order ~~was~~ was served on the respondent no.5 on 25.05.95. The respondent no.5 passed a stereo type order in all these 39 cases on 25.09.1995 & 26.09.1995. The respondent no.5 has in this order mentioned that there were break periods in the service of the applicants and they did not work continuously. That the DRMs concerned could not produce any order or letter as to how they were allowed to work. That there names were not sponsored through employment exchange. That there were no sanctioned posts. That no vacancies were notified to employment exchange nor were openly published and there very appointments were illegal and irregular and was also against the constitutional mandate so they could not be considered for grant of temporary status. The applicants asserted that the above orders by the respondent were clearly arbitrary, illegal and malafide and also against the policy decision of the Govt. of India. They also asserted that these orders were discriminatory as the respondent no.5 <sup>had</sup> himself granted temporary status to 28 DRMs who were all similarly situated. The applicants further assert that regards the objection that there were break p

and the DRMs did not work continuously, it is to be considered that the applicants were not regular Group 'C' or 'D' employees but their services as DRMs were utilised as and when necessary. Thus, their break period in service was <sup>due to</sup> the condition of their working as DRMs. It is further asserted that the Department of Personnel, Training, Administrative Reforms & Public Grievances had issued an order dated 07.05.1985 (Annexure-A/4) waiving the condition regarding sponsorship of names of DRMs from employment exchange. Apart from this, all the DRMs have produced their service cards in O.A. 225/95 which are with the respondents. It is also asserted that the DRMs were not regular employees so the question of sanction of posts in their case does not arise. It is also contended that there was nothing irregular or illegal in their engagement as DRMs. It is claimed that as they had fulfilled the conditions laid down by the 1989 Scheme, they were entitled to be granted temporary status.

3. The respondents have filed W/s opposing this O.A. They have asserted that the O.A. has no merit and the orders in question have been passed by the appropriate authority after thoroughly examining the matter. It is contended that the appli-

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applicants have worked in the department occasionally and they could not produce any letter or order to show as to how they were allowed to work. It is further asserted that there was no sanctioned post and and            so their appointments were illegal and irregular. It is            further asserted that there was break in services of the applicants for very long periods as detailed in paragraph 5 of the supplementary written statement. It is asserted that these break periods have not been condoned nor the same can be condoned as they exceeded one year so the question of their grant of temporary status does not arise. It is further asserted that the applicant no.2, Shri Niwas Pandey, had not worked prior to 30.03.1985. It is thus asserted that the present O.A. has no merit and is liable to be rejected.

4. The applicants have filed rejoinder and supplementary rejoinder reiterating their assertions. It has further been asserted that applicant no.2 was working since prior to 30.03.1985 as will appear from the documents Annexure-A/13 & Annexure-A/14 annexed to the supplementary rejoinder. It is claimed that the applicants were entitled to be granted temporary status by the appropriate authority.

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5. I have heard the learned counsel for the parties and perused the material on record. In the present case, excepting for applicant no.2, there has not been any specific denial that the applicants were engaged prior to 30.03.1985. As regards applicant no.2, it is asserted that he was engaged after that date. However, from documents, Annexure-A/13 & Annexure-A/14, annexed to the supplementary rejoinder it is apparent that the applicant no.2 was also engaged prior to 30.03.1985. Further, the applicants have asserted that all of them have worked for at least 240 days in one year. There is also <sup>no</sup> specific denial of this assertion. The applicants claim that according to 1989 Scheme casual labourers who had been engaged prior to 30.03.1985 and <sup>were</sup> still working on 01.10.1989, were to be granted temporary status provided they had worked for at least one year out of which they must have been engaged on work for a period of 240 days.

6. The contention on behalf of the respondent is that as the applicants were not sponsored by the employment exchange, they could not be granted temporary status. The learned counsel for the applicant has referred to the O.M. dated 7th May, 1985 issued by Govt. of India, making exception to the sponsorship of names by employment exchange in the case

casual labourers who were recruited before this O.M. was issued. Thus, the objection by the respondents on this point does not have any merit.

7. It has next been contended that the posts on which the applicants were engaged were not sanctioned posts. In my view, this assertion also has no force. The applicants were engaged as casual labourers as and when necessary taking into consideration the requirement according to the work available. They were not appointed to any sanctioned posts so the question of sanction of posts does not arise.

8. The most important point which has been raised on behalf of the respondents is that there was break in service of the applicants extending to several years as will appear from the written statement filed by the respondents and as these break periods have not been condoned, they could not be conferred temporary status. The learned counsel for the applicants has argued that the break in service of the applicants has been occasioned due to the reason that they were not engaged during these periods as work might not have been available during these periods. It is contended that there was no deliberate action on the part of the applicants in not working

during these periods. The learned counsel for the applicants has further argued that in any case these break periods can be condoned as will appear from the letter dated 17.10.1990 issued by the Department of Telecommunication (Annexure-A/11). The learned counsel for the applicants has further argued that applicants are even now prepared to apply for condonation of break periods which should be considered by the appropriate authority in the light of the Government directions at the time when these breaks were caused. The respondents have, however filed copy of the letter dated 06.11.1992 (Annexure-2 to the written statement) and have asserted that as the break periods exceeded one year, the same could not be condoned. It will appear from this letter (Annexure-2 to the W/s) that break periods beyond one years cannot now be condoned and only break period upto one year can be condoned by various authorities. The contents of this letter came into force on 06.11.1992. The respondents have not filed any other direction by the Govt. of India ~~which~~ for the period prior to 06.11.1992 which can show that the break periods exceeding one year could not be condoned. In the case of the applicants it appears that the break periods were prior to 06.11.1992 so the question of condonation of these periods could be considered by the appropriate authorities.

9. In view of the above discussions, though a direction at this stage cannot be issued to the respondents to grant temporary status to the applicants but direction can be issued for considering the question of condonation of break periods of applicants in case the applicants so apply. Only after the consideration of the same, the appropriate authority will consider the question of grant of temporary status to the applicants.

This O.A. is allowed to the extent that in case the applicants ( 39 in all) apply to the respondent no.2 for condonation of break periods in their service within a period of one month from the date of this order, those applications will be considered by the appropriate authority in accordance with the directions of the Govt. of India. The question of grant of temporary status will thereafter ☐ be re-considered by the appropriate authority and orders be passed regarding the same in accordance with law/directions/rules issued by the Govt. of India within a period of ~~six~~ months from the date on which a certified copy of this order is produced before the appropriate authority.

No order as to costs.