

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-65 of 1996

(Date of order 4.6.1998)

Bharat Bhushan Sharma, S/o Sri Parmeshwar
Shrama, resident of Mohalla Murarpur,
Biharsharif, P.S. Murarpur,
District Nalanda Applicant
By Advocate: Mr. Gautam Bose

Versus

1. The Union of India through the Secretary,
Department of Telecommunication,
Government of India, New Delhi.
2. The Chief General Manager (Telephones),
Bihar Telecommunication Circle, Patna,
G.P.O. Campus, 1st Floor, Budha Marg,
P.S.Kotwali, Patna-1.
3. The General Manager (Telephones), Budha Mar g,
Patna.
4. The District Manager (Telephones), R.Bloc k,
P.S.Kotwali, Patna-1.
5. The Sub-Divisional Officer (Telephones),
District Nalanda at Biharsharif,
Police Station Biharsharif, Distt. Nalanda
..... Respondents
By Sr. Standing Counsel, Mr. J.N.Pandey

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

ORDER

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

This OA has been filed under Section 19 of
the Administrative Tribunals Act, 1985 with the
prayer that the order dated 1st July, 1996 pa ssed

by the Respondent No.2 be quashed and the action of the respondents in terminating applicant's services as D.R.M. should be declared illegal and the verbal order of the respondents be set aside and that the respondents be directed to consider applicant's case for regularisation since he has already worked for more than 1730 days. The applicant has also prayed that the benefit of the judgment passed by this Bench in OA 650 of 1991 be also extended to the applicant.

2. The applicant has asserted that he joined as D.R.M (Daily Rated Mazdoor) on 1.8.1988 in the Department of Telecommunication and worked continuously. The respondent No.5, who was regularly taking work from the applicant since the date of his joining did not allow him to work from 9.1.1991 for the reasons best known to him though other workers like the applicant were retained. The respondent no.5 has granted a certificate to the applicant regarding his work. The applicant was issued identity card by the department. The employment of one other employee named Ashok Kumar Choudhary was also terminated along with the applicant. The applicant as well as Ashok Kumar Choudhary filed OA No. 492 of 1991 challenging the termination order. That OA was disposed of by judgment dated 23.4.1993 directing the respondents that at the time of filling up the vacancies, they should consider the cases of the applicant also after giving due and proper weightage to the services already rendered by the applicant and acquired experience by them subject to their fulfilling the qualifications prescribed under the rules. In pursuance to that order the applicant along with Ashok Kumar Choudhary was taken back in service as DRM and were allowed to work in SW & Power Room at Bihar-sharif with effect from 1.6.1993. The applicant worked

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with all sincerity and respondent no.5 granted a certificate Annexure-A/4, in respect of the same. All of a sudden, without any reason, the applicant's services were verbally terminated by respondent no.5 with effect from 1.10.1995 and he was asked not to sign the attendance register. The applicant asserts that there are many persons who have been employed much after the applicant joined and are junior to him but they have been retained in service but the applicant had been arbitrarily terminated. The applicant also claims that a number of posts are lying vacant under respondent no.5 and the services of the applicant could have been utilised in all these places. The applicant's claim that he is entitled to the benefit of the judgment dated 3.9.1992 in OA-650 of 1991.

3. The respondents have filed written statement asserting that the applicant never worked as a D.R.M. It has further been asserted that the applicant occasionally worked with the contractor. It is also claimed that the alleged certificate Annexure-A/4 does not bear the signature of SDO (T) and it was a forged document. It is also asserted that only regular staff could sign attendance register, so the question of applicant signing the attendance register did not arise. The respondents have further asserted that no casual labour has been recruited for the work of a regular nature in view of the policy regarding engagement of the casual labours issued by the Central Government. It is claimed that the case of the applicant was not similar to the applicants in OA-650 of 1991. It is also asserted that the representation by the applicant was considered by the respondent no.2 and the same was rejected after considering all the facts. The respondents also assert that ^{as} the applicant had not worked as DRM, the question of termination of service does not arise.

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4. The applicant has filed rejoinder in reply to the written statement filed by the respondents. He has reiterated that he had worked as DRM/Casual labour in the department as has been specifically asserted by him. He has also asserted that all the necessary documents were filed by him in OA-492 of 1991 and those documents were also available with the department. The applicant also filed the photostat copies of the attendance register starting from October, 1994 in support of his contention. After the decision in the earlier OA he was re-engaged and was working as DRM. The applicant has reiterated that Ashok Kumar Choudhary was still working as DRM.

5. I have heard the learned counsel for the parties and perused the material on record. As mentioned above, the applicant has asserted that he was engaged as DRM on 1.8.1988 and worked till 9.1.1991 when his services were orally terminated. Thereafter he filed OA-492 of 1991 in which he had mentioned that he had worked for 881 days regularly from 1.8.1988 to 8.1.1991. The applicant along with Ashok Kumar Choudhary prayed that the termination of their services be set aside and they be regularised in service together with back wages and other consequential benefits. The respondents contested the application asserting that the engagement of the applicant was purely casual in nature and only for a limited period depending on the exigencies of work on daily wages basis. The purpose of their engagement was limited and on completion of the specific work the engagement was discontinued. The respondents had thus admitted that the applicant had worked as casual labourer on daily wages basis though not continuously. I have referred to the pleadings in OA-492 of 1991 in order to indicate that the plea taken by the respondents in present OA that the applicant never worked as DRM but had worked

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for the contractor occasionally is quite contrary to the stand taken in the earlier OA. In the circumstances there is no reason to disbelieve the assertions by the applicant that he was engaged as DRM/Casual labourer on 1.8.1988 and had worked upto 8.1.1991 when he was disengaged. In fact, in OA-492 of 1991 this Bench has directed that though no blanket order for regularisation of the services of the applicant can be passed, however, at the time the respondents fill up the vacancies, they should consider the cases of the applicants also, after giving due and proper weightage to the services already put in by the applicants and the consequent experience gained by them subject to their fulfilling other qualifications prescribed under the rules. It will thus be apparent from this judgment that this court accepted the assertions of the present applicant that he had worked as DRM/casual labour and it was only due to that that the above mentioned direction was issued.

6. The applicant has asserted that after the order passed in OA-492 of 1991 on 23.4.1993, the respondents re-engaged the applicant along with Ashok Kumar Choudhary on 1.6.1993 and he was disengaged on 1.10.1995. The applicant has filed a certificate Annexure-A/4 which indicates that the applicant has been working as casual labour since 1st June, 1993. The applicant has asserted that this certificate has been signed by respondent no.5. The respondents have, however, asserted that this documents was forged and was not signed by respondent no.5. However, no affidavit by the respondent no.5 has been filed in order to show that the certificate was not actually signed by him. The applicant has also filed photostat copies of attendance register Annexure-A/12 in order to indicate that

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he had worked after his re-engagement on 1.6.1993. In the second written statement filed by the respondents after amendment of the pleadings by the applicant, the respondents have in para 12 alleged that the allegations made by the applicant in para 4.9 of the OA were not correct and hence denied and that the applicant and A.K.Choudhary were never taken in service as DRM. However, in para 13 of the same it was mentioned that the statement of the applicant in para 4.10 (this para refers to the certificate Annexure-A/4) it has been alleged that the certificate refers to the working of the applicant as casual labour but not as DRM. Hence it is clear that he had worked casually as casual labour but not as DRM on regular basis. Thereafter, the respondents have mentioned that the applicant was never terminated from service whereas he has worked as a casual labour for specific period of work. Obviously the stand taken by the respondents appears to be contradictory. While at one stage the respondents deny that the applicant was ever re-engaged, at another stage they have mentioned that the applicant had worked as casual labour occasionally and not as DRM. From the material on record it can be inferred that the applicant was re-engaged as a casual labour on 1.6.1993 and his engagement was verbally terminated on 1.10.1995. However, there is no sufficient material on record to indicate as to for how many days the applicant had worked as casual labour during this period.

7. The applicant has asserted that after he was disengaged by oral order dated 1.10.1995, he filed OA-65 of 1996 before this Bench. That OA was disposed of by order dated 6.2.1996 Annexure-A/7 by ex-parte order at the admission stage directing the respondent no.2 to dispose of the representation filed by

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by the applicant within two months. In pursuance of that order the respondent no.2 has passed the impugned order dated 1st July, 1996 Annexure-A/11. In this order the respondent no.2 has emphasised that the applicant never worked as DRM nor his name was included in the muster roll. It was due to this reason that the representation of the applicant for regularisation was rejected.

8. It has been contended on behalf of the applicant that as will be apparent from the decision in OA-492 of 1991, the applicant had actually been engaged as DRM/casual labour and had worked for a long time and further that from the material on record it is also apparent that the applicant had worked as casual labour after he was re-engaged on 1.6.1993 till he was disengaged from 1.10.1995. It is asserted that the respondent no.2 was not right in rejecting his representation. It is further claimed that in any case he should have been engaged as work was available and persons junior to him were still working. The learned counsel for the applicant has also asserted that the benefits provided to the applicants of OA-650 of 1991 Ram Uchit Vishwakarma Vs Union of India should also be given to him. In that case a direction was issued for re-engaging the casual labours whose services had been terminated and it was also directed that those persons should be deemed to be in continuous service from the date of their disengagement to the date of re-engagement but back wages for that period were not allowed. In my view benefits of decision in OA-650 of 1991 Ram Uchit Vs. U.O.I's case cannot be extended to the applicant as the same were denied by this Bench while deciding OA-492 of 1991. The applicant had been disengaged prior to the filing of OA-492 of 1991 and he had prayed that his termination should be

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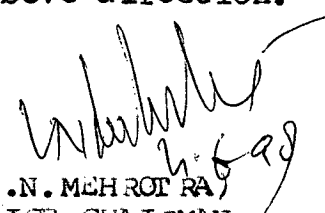
set aside and he should be regularised together with back wages and other consequential reliefs. This Bench placing reliance on a decision by the Hon'ble Supreme Court in the case of State of Haryana Vs. Pyara Singh and Others, AIR 1992 SC 2130 did not allow the relief regarding the re-engagement or payment of back wages to the applicant. Instead, it only directed the respondents that at the time of filling up vacancies they should consider the cases of the applicants also. So, the applicant cannot now assert that the termination of his engagement should be set aside and he should be re-engaged with all consequential benefits. Thus the benefits of Ram Uchit's case cannot be extended to the applicant of the present case.

9. The applicant has also prayed for direction to the respondents to regularise his services as he has worked for more than 1730 days. The respondents have asserted that after the decision in the earlier OA, no vacancies have been filled up. There is no material on record to indicate that though some vacancies were available, the case of the applicant was not considered even though he was entitled to be considered for regularisation. In the circumstances, it will not be possible to issue any other direction for regularisation of the services of the applicant. The earlier direction issued in OA-492 of 1991 still continues and has to be followed by the respondents.

10. The learned counsel for the applicant has, however, asserted that though the applicant was disengaged by verbal order on 1.10.1995, several persons junior to

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him who had worked for lesser number of days are still engaged and they are working. He, in the circumstances, claimed that his case for re-engagement should be considered. The respondents have, however, denied that person junior to the applicant was still working. This denial may be due to the fact that the respondents were not even prepared to accept that the applicant had worked as casual labour. Instead they have asserted that the applicant was engaged by the contractor which assertion is not correct as mentioned earlier. In view of these circumstances the respondents may be directed to consider the engagement of the applicant as casual labour if work is available and if persons who had worked for lesser number of days as casual labour were still working. For this purpose the respondents shall find out the number of days for which the applicant has worked as casual labour. This can be decided on the basis of the documents which may be furnished by the applicant and also on the basis of the record available with the department. After working out the number of days for which the applicant has worked as casual labour the respondents shall consider the re-engagement of the applicant as casual labourer in case work was available and the persons who have worked for lesser number of days as compared to the applicant were still working. The applicant is not entitled to any other relief claimed by him. The OA is disposed of with the above direction. No order as to costs.


(V.N. MEHROTRA)
VICE-CHAIRMAN