

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

S

O.A. No. 179/91

198

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DATE OF DECISION 15-11-91

Nagpur Telephones Casual Labour ~~petitioner~~
Union, Nagpur

Ms. Sulekha Kumbhare Advocate for the Petitioner(s)

Versus

The Union of India and ors Respondent

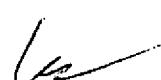
Mr. M.G. Bhangade Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE U.C. SRIVASTAVA, Vice-Chairman

The Hon'ble Mr. M.Y. PRIOLKAR MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

LP

ORIGINAL APPLICATION NO: 179/91

Nagpur Telephones Casual Labour
Union Through its President, Adv.
Ms Sulekha Kumbhare, Kamptee,
Dist.Nagpur.& ors.

....Applicant

V/s

The Union of India
through its Secretary
Dept. of Telecommunication,
North Block, Central Secretariate,
New Delhi and ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE U.C.SRIVASTAVA, Vice-Chairman
HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance

Ms.Sulekha Kumbhare
Adv.for the applicant

Mr.M.G.Bhangade, Adv
for the respondents

JUDGEMENT

DATED: 15/11/91

(PER : U.C.SRIVASTAVA, V/c)

This application has been filed by the Nagpur Telephones Casual Labour Union, which has given a list of persons on behalf the application is being filed alongwith Mr. Bharatkumar Mandal, who is one of them. There is a list of 12 persons, out of whom 5 members are still continued in service and alongwith said Mr.Bharatkumar Mandal, who has retined in service has filed this application claiming and praying, that the direction be issued to the respondents to withdraw the termination order dated 11.10.1990, and direct the respondents to reinstate the enlisted workers with full back wages by absorbing the workman on regular employment where the vacancies are available. Earlier the instructions issued by the Ministry on 30th March 1985 to stop recruitment of casual labour after that date,

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~~The date~~, which was the date on which a scheme was fixed, which are formulated by the department in pursuance of the direction given by the Supreme Court. A reference has been made hereinafter. It was also directed by the Ministry, that the casual labour should be engaged after 30th March 1985 in projects and rectification circulars only for a specific work and on its' completion they were to be retrenched. The matter regarding regularisation of service in P and T Department came up before the Supreme Court in the case of P and T Department through Bhartiya Dak Tar Mazdoor Manch and Union of India and others LLJ 370 , in which the following observations are made "If persons are kept as Casual Labourers for years for paying them lower wages, then it amounts to exploitation of labour. The Labourers belonging to the skilled, unskilled and semi-skilled classes can be shifted from one Department to another, if there is no work to be done in the given place. By keeping the worker idle the country losses the wealth that he would have produced, Non-utilisation of man-power leads to loss of valuable human resources. 'Produce or Perish' is not an empty slogan. Viewed in this back-ground non-regularisation of temporary employees of Casual Labourers for a long period is not wise Policy. A scheme on rational basis for absorbing as far as possible the Casual Labourers who have been continuously working for more than one year in the post and Telegraphs Department is directed to prepare within 6 months and arrears of wages payable to Casual Worker shall be paid within 4 months."

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In pursuance of the same/scheme was framed by that department and it has been placed on the record, The Scheme was part of that scheme.

"Eligibility for confirmation of temporary status to the Casual Mazdoors :

- 1) All these Casual Mazdoors are eligible for conferring temporary status:
 - a) Who are employed before 30.3.1985 and who have completed continuous service of 240 days during any 12 calendar months before 30.3.1985 without any consideration of break of service either due to departmental or own reasons.

b) Who were employed before 30.3.1985 but could not completed continuous service of 240 days before 30.3.1985. They however did so after 30.3.1985 during any 12 calendar months.

Thus, eligibility conditions are only two :

i) The Casual Mazdoors should have been employed before 30.3.1985 and

ii) He should have worked continuously for 240 days during any 12 calendar months.

(ii) Now the period of the absence for the purpose of granting temporary status to the Casual Mazdoors can be cordoned by the concerned TED without any limit provided he has worked for 240 days continuously during any 12 calendar months. This will however be a one time concession.

Casual Mazdoors employed after 30.3.1985 in violation of DOT's orders:

In respect of those Casual Mazdoors who have been employed after 30.3.1985 and who have worked continuously for 240 days during any 12 calendar months, status quo will be maintained. They will not be granted temporary status until DOT accords approval in this regard.

Such grant of temporary status would be effected without reference to the creation/availability of regular Gr.D Posts

Grant of temporary status to the Casual Mazdoors would not involve any change in his duties and responsibilities. He will continue to work as he is working now in the capacity of Casual Mazdoor and his engagement will be on daily rates of pay on the basis of need. He may be deployed anywhere within the recruitment/territorial circle on the basis of availability of work.

Such Casual Mazdoors who acquire temporary status will not be brought on to the permanent establishment at par with the Gr.D posts.

Benefits of temporary status :

Temporary status would entitle the Casual Mazdoors to the following benefits.

i) Wages at daily rates with reference to the minimum of the pay scale for a regular Gr.D official including DA, HRA, and CCA.

ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for atleast 240 days (205 days in administrative offices observing 5 day's a week) in the year.

... It is understood that there should not be any occassion to effect retrenchment to the temporary Mazdoor. However keeping repeate chance in view, the procedure in this regard is given below:



The applicants all of who are members of Union including Bharatkumar Mandal, who is the petitioner of this application, were employed in the year 1987 except one Mr. Rajendra who was employed on 5.1.1985. The services of all these persons were terminated vide order dated 11.10.1990 with effect from 11.12.1990. The plea of the applicants is that juniors to the enlisted workmen are retained in service while their services are being terminated and about 57 workers working with the enlisted workers have approached the Central Administrative Tribunal, which has entertained their application and has granted status-quo upto 11.12.1990. The position thereafter is not known. The applicant have also pointed out that no combined seniority list been prepared as directed by the department and the list of Akola unit where the applicants were working along have been prepared and this is how they have been aces. Though, if the list as per direction would have been prepared there would not have been any occasion to aces them.

The Respondents have resisted the claim of the applicants and have pleaded, that, after 30th March 1985 the casual labour were permitted in projects and Electrification Circles and on completion of the work they were so engaged were required to be retrenched. The workers in question were employed on the railway electrification project and in the letter dated 7.11.1989, which was circulated alongwith the scheme relied on, which provides that casual labourers who were in employment upto 30.3.1985 alone, subject to satisfying other conditions, were entitled to be conferred with temporary status, and in the instant case there are number of labourers none of them were in employment on 30.3.1985. In the retrenchment a question has been resorted due to non-availability of the work, and in view of the paragraph 8 of the aforesaid scheme, that the applicants are not entitled to any relief. The paragraph 8 reads as follows:

" 8. Despite conferment of temporary status, the services of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947 on the ground of non availability of work. A casual labourer with temporary status can quit service by giving one month's notice."

The Respondents have stated that, initially there were 12 Divisions in the Telecommunication, Railway Electrification Project, Circle Nagpur, which was established on 1.4.1984. The instant case pertains to Akola Division and seniority list of Akola Division exists. The work for which these persons were engaged were of the temporary nature that is of shifting or re-aligning of lines, pursuant to electrification of railwaytracsk. Furthermore, because of the nature of the work involved and the matter of execution referred to above, it is neither practical nor possible to arrange to transport labourers from Divisional headquarters to the project sites. Out of 77 casual labourers of Akola Division 32 Casual labourers have been retrenched with effect from 11.12.1990 due to non-availability of work. 7 Casual labourers have accepted the notice of retrenchment and have not accepted retrenchment compensation offered to them. The remaining casual labourers viz.25 refused to accept the notice and the retrenchment compensation. In the list of workers filed by the applicant Sr.6,7,8,9 and 12 are still in the service and they have not been retrenched and one of them who is at Sr.No.9 is not casual worker but the casual Driver. And the applicants have already been retrenched are not entitled to absorbtion in the regular employment. The applicant have placed seniority list of casual labourers of the 30th March 1985

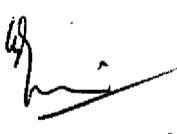


the work was continuously for 240 days and in terms of scheme, the conferment of temporary status and has also been placed on record. The applicant have stated that in Akola a correct seniority list has not been prepared as has been prepared in Nagpur Division and also made reference to the direction issued by the Department regarding preparing of combine seniority list. The instructions which were issued that the combined seniority list of casual labourers in respect of the recruitment unit will be maintained. This list will include all casual labourers working within the territorial jurisdiction of recruitment unit for various functional units such as Telecom/Project/Maintainance/Electrification/Quality Assurance etc to which they are attached. The plea on behalf of the applicants is that, in respect of Akola unit, as the casual labourer working on all the functional unit has not been prepared as has been done in the case of Nagpur, which has also been placed on the record. In case such list would have been prepared the applicants' position could have been much higher and they would not been retrenched and even otherwise could have been entitled to preferclaim for appointment than others. The facts stated above indicate that the seniority list of casual labourers of all the functional unit in Akola Division has not been prepared. If the seniority list would have been prepared, it was possible that some by virtue of the seniority and status which they have again would got a preference if life could get appointments in other unit where the work still is going or the work is likely to start.

The facts also made it clear that even those who were taken as casual labourer, subsequently have been retained for those who were taken earlier have been retrenched and no clear explanation for the same given except that subsequently they worked for some regulisation. If after retrenchment they have been allowed to do work few more days the addition of those days will not make them senior. As a seniority in all these casual labourers was to be counted from

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the date on which they entered in the service. It is thus clear that no seniority list of retrenching employees has not been fixed and no instructions has been followed and deviation from the norms and guidelines, legal position has also been maintained. Accordingly, this application deserve to be allowed in part and respondents are directed to prepare a seniority list of all the casual labourer working within the territorial jurisdiction of the Akola Unit for various functions i.e. Telecom/Maintanance/Project/Electrification etc as existed when the termination notices were issued to the applicants within a period of two months and after preparing the list in respect of the work availability, the senior should be given preference and in case the work of unit has come to an end then priority and preference will be given to those who are senior in the seniority list in the other units and those who cannot be accommodated they will be as their services has been retrenched and in view of the provision of G NH 25 of the Industrial Dispute Act, 1947 they will be given priority and preference in the matter of appointment wherever work is available. After the preparation of list no delay will be caused in giving appointment strictly and with in accordance with the seniority and as directed above. There will be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(U.C. SRIVASTAVA)
Vice-Chairman