

OP 39/93
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 957/93 & DA.NO.939/93

Presented this the 15th day of JANUARY 1996

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawaja, Member (A)

Vijay Kisan Gujer,
Ramrajya Chawl,
Shastri Nagar,
Pokharan Road No.1.
Thane.

D.N.Patil,
C/O.S.R.Patil,
Kajuwadi, Chandrakiran Store,
Highway, Near Luhiswade,
Thane.

By Advocate Shri S.S.Karkera

... Applicants

V/S.

1. Assistant Engineer,
Microwave Maintenance,
Kopari Colony, Thane.
2. Divisional Engineer,
Telecommunication Maintenance,
Microwave Building, 1st Floor,
Kopri Colony, Thane,
3. Chief General Manager,
Maintenance, Western,
Telecommunication Region,
Veer Savarkar Marg,
Prabhadevi, Bombay.
4. Director General,
Department of Telecom,
Sanchar Bhavan,
Ashoka Road, New Delhi.

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

... Respondents

O R D E R

(Per: Shri D.S.Bawaja, Member (A))

These two DAs. have been heard together
and are being disposed of by a common order as the
facts are similar in both the DAs. and same question
of law is involved.

2. The case cited by the applicants in both the OAs. is based on the identical averments and the reliefs prayed for are also same except that in OA.NO. 957/93 the applicant was engaged as a General Mazdoor in April,1992 while in the case of OA.NO.939/93, the applicant was engaged in January,1992. The applicants submit that they were engaged as a General Mazdoor under Assistant Engineer, Microwave Maintenance, Kopari Colony, Thane(East) on oral orders. Their nature of duty was of equipment cleaning and taking battery reading and all other ancillary work which a General Mazdoor is required to do in the general department. The applicants were initially working on six days basis with a weekly paid off rest. However, from April,1993 their roster was changed to that of 5 days a week with no weekly paid rest. The applicants submit that somewhere in August, 1993 the respondents orally told them not to report for work and physically prevented them for attending the duty. The applicants made a representation dated 25.8.1993 against the same. Immediately, thereafter, the present OAs. have been filed on 1.9.1993 claiming the following reliefs :- (a) to direct the respondents to reinstate the applicants with continuity of service and full backwages. (b) to direct respondents to give the applicants the status of a permanent employee with effective from the date of engagement and grant them all the consequential benefits. (c) to direct the respondents to restore the weekly paid rest.

3. Through an amendment application filed subsequently, the applicants have brought on record the additional averments and also to challenge the termination order. The applicants have brought out that through letter dated 8.10.1993 the services of the applicants have been terminated and this order has been challenged and copy of the same has been brought on record with a prayer to quash the same.

4. The applicants have submitted that a scheme was introduced as per letter dated 7.11.1989 for grant of temporary status to the casual labourers in the Telecom Department. This scheme was framed in pursuance of the directions of Hon'ble Supreme Court in the case of Daily Rates Casual Labourers under Post & Telegraph Department. As per this scheme, the casual labourers engaged upto 30.3.1985 were entitled for regularisation in Group 'D'. Subsequently, as per letter dated 17.12.1993 the scheme was modified and was made applicable to casual labourers who were engaged for the period between 31.3.1985 to 22.6.1988. The applicants contend that they were engaged on full time basis on 2.1.1988 and therefore covered by the scheme and entitled to be regularised. The applicants have further stated that they had put in 240 days of working in two years from the date of the Circular dated 17.12.1993 and therefore the respondents should have regularised their services and also granted temporary status and other benefits thereafter. The applicants contend that non grant of the benefit of temporary status and regularisation of the applicants is illegal and violative of Articles of 14 & 16 of the Constitution of India.

5. The respondents have filed the written reply opposing the application. The respondents while admitting the facts with regard to the engagement and termination of services of the applicants in both the OAs, have stated that the services of the applicants had to be terminated as regular Mazdoor were available for the posting against the vacancies against which the applicants were engaged as these regular Mazdoors had become surplus. The respondents, therefore, contend that they have not acted in malafide manner and termination of services after complying with all the provisions for retrenchment is legal. As regards the grant of temporary status, the respondents submit that the applicants were not meeting with the eligibility criterium as laid down as per Department of Telecommunications letter dated 17.12.1993. Similarly, the Circular dated 7.11.1989 does not apply to the case of the applicants as they were not engaged before 30.3.1985. This scheme was further modified as per & 17.12.93 letters dated 30.8.1993 and the applicants are not covered by the modified scheme also as this scheme applies to those who were engaged between 31.3.1985 to 22.6.1988. The respondents contend that keeping both these facts in view, the applications do not have any merit and deserve to be dismissed.

6. The applicants have not filed any rejoinder reply to the written statement of the respondents.

7. We have heard Shri S.S.Karkera, learned counsel for the applicant and Shri M.I.Sethna along with Shri V.D.Vadhavkar, learned counsel for the respondents. The material brought on record has been carefully considered.

8. In the present OA, two distinct issues need to be gone into. The first is with regard to termination of services and second is with regard to grant of temporary status. Taking the first issue, it is noted that the services of the applicants in both the OAs, had been terminated as per order dated 11.10.1993. As indicated earlier, the termination of services had been done after both the OAs, had been filed on 1.9.1993. From the order of termination, brought on record as 'Ex.1' to the written statement, it is noted that the services had been terminated after giving one month's notice period and pay of one month in lieu of notice period. The respondents have submitted that the applicants were engaged against the regular vacancies as casual labour as a stop-gap arrangement. It is further stated by the respondents that two regular Mazdoors had become surplus due to closure of one sub-division and therefore the surplus regular Mazdoors were transferred and posted against the vacancies against which the applicants were engaged as casual labour. The applicants while contesting this claim of the respondents brought out that the two regular Mazdoors who are said to have been posted in place of the applicants were working as Chowkidar while the applicants were working as ^{general} Mazdoor dealing with the work of equipment cleaning and taking battery reading etc., that is the work done by ^{a regular general} Mazdoor. The applicants contended that transfer of Chowkidars to fill up their vacancies was with malefide intention to terminate their services. The respondents, on the other hand, pleaded that the applicants were engaged against the ^{vacant} posts of Chowkidar and therefore the

vacancies against which they were engaged had been filled up by proper staff and no illegality had been committed in terminating the services of the applicants. From the material brought on record, we are not impressed by the contention of the applicants. The applicants have not brought out whether the vacancies against which the applicants were engaged were that of the General Mazdoor and not of the Chowkidar. Further, it is for the respondents to decide as to how to fill up the vacancies. If the vacancies are filled up by a regular staff and not by replacing one casual labourer by another casual labourer, then the applicants cannot have any grievance in the event of being dis-engaged due to filling up of the vacancies against which they were engaged as casual labour as stop gap arrangement. It is further noted that services have been terminated after following the due process as provided in the Industrial Dispute Act by giving one month's notice and one month's pay. In the background of these facts, we do not find that any illegality has been committed by the respondents in terminating the services of the applicants in both the OAs, and therefore the claim of the applicants for reinstatement by setting aside the termination order does not merit any consideration.

9. The second issue concerns grant of temporary status and regularisation. The applicants have based their claim referring to the scheme of grant of temporary status and regularisation laid down as per order dated 7.11.1989 and subsequently modified as per orders dated 19.8.1993 and 17.12.1993. Copies of these letters have been brought on record by the applicants. We have

carefully gone through these orders. In the order dated 7.11.1989 which is the first letter laying down the scheme for grant of temporary status and regularisation in Telecommunication Department, it is noted that the scheme was made applicable only to those casual labourers who were engaged upto 30.3.1985 and not thereafter as there was a ban on engagement of casual labour after this date. It appears that even after putting the ban on engagement of casual labour, the field units continued to engage casual labour and therefore the Department of Telecommunication as per letter dated 19.8.1993 called for details of the casual labourers who had been engaged between 31.3.1985 to 22.6.1988 for Project/Railway Electrification works. Thereafter, as per letter dated 17.12.1993, the scheme of grant of temporary status and regularisation had been extended further to the casual labourers who were engaged between 31.3.1985 and 22.6.1988. Referring to these letters, the respondents have contended that the applicants are not covered by the scheme as laid down by the three letters referred to above and which have been relied upon by the applicants in support of their claim as the applicants had been engaged in both the OAs. in 1992 only. On the other hand, the learned counsel for the applicants though not averred in the OAs. ^{but} strongly argued during the oral submissions that the cut-off date for grant of temporary status and regularisation as stipulated in the various letters of the Department of Telecommunications is not sacrosanct as the scheme as laid down by the letter dated 7.11.1989 does not lay down any cut-off date and therefore the applicants in both the OAs. are

entitled to be considered for the benefit of the scheme even though having been engaged in 1992. For these submissions, the learned counsel for the applicants relied upon the orders of the Tribunal, namely, (a) Manas Kumar Mity & Ors. vs. Union of India & Ors., (1997) 36 ATC 450, (b) Shri Suresh Keshavrao Garad vs. Union of India & Ors., 1995(1) ATJ 40. (c) S.K.Karande vs. Assistant Engineer, Microwave Maintenance, Thane (E), OA.NO. 933/93 dated 19.2.1997.

10. We have carefully gone through the orders cited by the applicants. It is noted that in OA.NO. 933/93 the applicants belonged to the Department of Telecommunication and were engaged as Casual Labourers from 1.2.1988 onwards. Their services were terminated on 17.2.1993. The Tribunal in its order has held that Para 2 of the Circular dated 17.12.1993 covers the case of the applicants as they were engaged within the period from 31.3.1985 to 22.6.1988 and therefore were covered by the scheme. In the present OA., the applicants were engaged in 1992 and therefore on facts and circumstances, the present OA. is distinct from OA.NO. 933/93.

The case of Suresh Keshavrao Garad also concerns to the casual staff of the Department of Telecommunications. In this case, the applicant was engaged as casual labour on 16.5.1985 and continued till 6.4.1989 with breakes in service. The applicant had worked for a period of more than 264 days between 16.5.1985 to 31.3.1986. The services of the applicant were terminated with one month's notice on 6.3.1989.

The applicant challenged his termination and claimed entitlement for grant of temporary status and regularisation in terms of the scheme of grant of temporary status and regularisation effective from 1.10.1989 onwards as laid down by Department of Telecommunications as per order dated 7.11.1989. The services of the applicant were terminated on account of the fact that the applicant had been engaged during the ban period commencing from 31.3.1985. The Bench has held that the applicant was entitled for the benefit of the scheme effective from 1.10.1989 and termination of services were illegal. The OA. has been decided with the direction to confirm temporary status on the applicant and set aside the termination order with the direction that the applicant will be given suitable employment as and when available in the unit.

In the case of Manas Kumar Mity & Ors., the issue involved was different than in the present OA. and not of casual labour of Department of Telecommunication. Here, the matter related to the applicants in the various connected OAs. in the Income Tax Department and the casual staff was regulated by the instructions laid down by the Department of Personnel and the scheme of "Grant of temporary status and regularisation" laid down by the Department of Personnel as per O.M. dated 10.9.1993. The applicants had been engaged without going through the Employment Exchange. The applicants agitated the matter when the department called for the candidates from the Employment Exchange for filling up the posts in Group 'D' and the case of the applicants was not considered for regularisation on the ground

that their initial engagement as casual labourers was not through the Employment Exchange. The Bench had not accepted the claim of the applicants praying for preference over those who were engaged from Employment Exchange. However, the OA. was disposed of with the direction that the applicants shall be considered for regular appointment in Group 'D' posts against available vacancies along with candidates, if any, sponsored by the Employment Exchange. It is further directed that till such time, the applicants should not be dis-engaged from service, provided there is need of their work. The Bench also directed to grant temporary status.

11. As per the details of the scheme brought out in various letters relied upon by the applicants, we note that the grant of temporary status and regularisation against Group 'D' posts has been allowed to casual labour engaged during a certain specific periods. Therefore, the case of the applicants is not covered by the instructions laid down by the Department for implementation of the scheme of grant of temporary status and regularisation which had come into force from 1.10.1989. The only plea of the applicants is that ^{as per} the scheme of grant of temporary status as laid down by the letter dated 7.11.1989, no cut off date for implementation had been laid down and therefore irrespective of date of engagement, the applicants are entitled to the grant of benefit if they meet with the criteria of working laid down in the scheme. On going through the scheme, we agree with the contention of the applicants that no cut off

date has been laid down for implementation and any casual labour who had worked for the stipulated period mentioned in the scheme is entitled for the benefit. However, the Department of Telecommunication has placed some restrictions with regard to entitlement due to the fact that the engagement of the casual labour had been banned from 31.3.1985. Further, we note that the casual labour continued to be engaged by the Department even after imposing the ban from 31.3.1985 and the Department itself has relaxed the scheme while implementing the same it applicable to by making those who had been engaged after imposing the ban between the period from 21.2.1985 to 31.3.1986. It is admitted fact that the applicants were engaged by the field unit when ban on the engagement of casual labour was in operation. In view of this, the engagement of the applicants was in violation of the extant instruction and per-se irregular. Any direction for granting temporary status to the applicants will only put stamp on the irregular engagement. This will encourage unscrupulous officers in the field units to violate the departmental instructions and continue to engage and keep the casual labour in service till they become entitled for the benefits of the scheme. Such casual labour irregularly engaged will then may agitate for grant of temporary status and regularisation knowing that such engagements can get benefit. will only give irregular impetus to suchengagements. This system is certainly a back door entry as the engagement of casual labour is not generally done by any process of screening/selection. Tribunal has to be cautious in its approach in exercising judicial discretion in such cases. In this connection,

we seek support of the judgement of Hon'ble Supreme Court in the case of Delhi Development Horticulture Employees' Union vs. Delhi Administration, 1992 SCC (L&S) 805. Their Lordships have observed as under in Para 23:-

"23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years."

We are therefore of the considered view that keeping in view the ratio of the orders cited by the applicant and reviewed above and the observations made by the Hon'ble Supreme Court that the direction be issued to the respondents to consider the case of the applicants for grant of temporary status in relaxation of the ban imposed for engagement due to the fact that the applicants had been engaged by the field unit and

had been working continuously thereafter.

12. In the result of the above, both the OAs. are partly allowed with the direction that the respondents shall consider the claim of the applicants for grant of temporary status in terms of the scheme as laid down in the Annexure to letter dated 7.11.1989 in relaxation of the ban on engagement as done as per the letter dated 17.12.1993 in case the applicants meet with the criteria of working days as laid down in the scheme. The applicants shall also be considered for regularisation against Group 'D' posts as per their turn. The benefits which will accrue to the applicants on grant of temporary status shall be granted in case the temporary status is allowed in relaxation of rules. Action as directed shall be taken within three months from the date of receipt of the order. No order as to costs.

(D.S.BAWER)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

C.P. 21/99 in OA 939/93
C.P. 22/99 in OA 957/93

the 20th day of JANUARY 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member (J)

Dagadu Namdeo Patil

...Applicant in
OA 939/93

Vijay Kishan Gujar

...Applicant in
OA 957/93

By Advocate Shri S.S.Karkera

v/s

Union of India and others

...Respondents.

By Advocate Shri M.I.Sethna alongwith Shri Vadhavkar.

O R D E R

{Per Shri S.L.Jain, Member(J)}

The applicants in OA 957/93 and 939/93 have filed this application under Rule 4 of CAT (Contempt of Court) Rules 1986 for a declaration that the respondents had committed wilful and deliberate Contempt and be punished according to law.

2. In OA 957/93 and OA 939/93 which were decided by common order on 18th day of January 1999, the following order was passed.

" In the result of the above, both the OAs are partly allowed with the direction that:

the respondents shall consider the claim of the applicants for grant of temporary status in terms

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of the scheme is laid down in the letter dated 7.11.1989 in relaxation of the ban on engagements as per letter dated 17.12.1993 in case the applicant meet criteria of working days as laid down in the scheme.

The applicant shall also be considered for regularisation against group 'D' post as per terms.

The benefits which will accrue to the applicant on grant of temporary status shall be granted in case temporary status is allowed in relaxation of the rules.

The aforesaid action are to be taken within three months from the date of receipt of the order.

3. As stated above the benefit which provided to the applicant is " in relaxation of the ban on engagement as done as per the letter dated 17.12.1993" the rest of the conditions are to be complied with by the applicant.

4. The applicants have alleged that the respondents have taken no initiative action ~~of~~ whatsoever for honouring the judgement of the Tribunal, in spite of the fact that the order have been served on 21.1.1999 on the respondents. They further alleged that their

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exists 100 vacancies in Group D posts and the respondents failed to grant temporary status of regularisation of the service of the applicants within the prescribed period of three months.

5. The respondents denied that the said allegation and alleged that it is not true that 100 vacancies in group D posts exists. They further alleged that after receipt of the order of the Tribunal the same has been sent to the Director Sat Maintenance vide No.CAT/VKG & DNP/98-99 dated 27.1.1999 and in turn to DGM, Office of CGM Maintenance, WTR, Mumbai vide LetterNo. DSM-7/Court Cases dated 1.2.1999.Further AGM Legal, Office of CGM Mainatence, Mumbai sent this to Telecom Commission, New Delhi vide their letter No. CGMM/Court/CAT-MB1/A-957/93 and 939/93/98-99/42 dated 8.2.1999, as the matter can only be dealt by Telecom Commission.The respondents state that there is no wilful or deliberate dis-obedience on the part of the respondents. The respondents have carefully gone through the judgement and the Telecom Commission vide their letter No. 271-9/99-STN-II dated 19.4.1999 and has expressed their inability to take the applicant, which was conveyed to the applicant vide office letter No. M/W Thane/CAT/VKG/99-2000 dated 24.4.1999 and also to the counsel for the petitioner, Shri S.S.Karkera by registered post. It is further alleged that respondent No.2 is not a competent authority to either recruit or re-employ and he only implements the orders of Telecom Commission given through proper channel. The matter was examined and decided in accordance with law.

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5. This Tribunal directed the respondents to re-consider the matter and a further affidavit has been filed by the respondents alleging that the department has once again re-considered the case of the applicant particularly in the light of the direction and points made in the order dated 15.1.1999 of the Tribunal. The department has not been able to take a decision to regularise the case of the applicant and therefore in the employment he was retrenched from his job, because he was engaged for a specific job and for specific period of gap of about six years in such a factor that defies all solutions in as much as, despite diligent search the department could not lay its hands on any statutory provision empowering the department to regularise the break for a period which is more than one year as there is ban on engaging casual labourer. Hence at present this offer cannot be made to the applicant. It is further requested that any solution which the Hon'ble Tribunal directs as a mandatory order will however will have to be complied by the Department.

6. If we peruse the scheme it is suffice to say that on 17.12.1993 the applicant must be in the job. As the service of the applicant were terminated vide order dated 8.10.93 and the same has been upheld by the Tribunal in the order dated 15.1.1999, the scheme vide letter dated 7.11.1989 and 17.12.1993 does not help the applicant in any way.

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9. Regarding regularisation we do not find as fact that 100 posts do exist. Hence in our considered opinion no contempt is made out.

9. In the result C.P. stands dismissed and notices issued to respondents are dis-charged.

S.L.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur
(B.N.Bahadur)
Member(A)

NS

dd. 20/11/2000
order/Judgement despatched
to Applicant/Respondent(s)
on 27/11/2000
27/11/2000