

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 933/93

Transfer Application No.

Date of Decision 19.02.1997

S.K.Karande

Petitioner/s

Shri S.S.Karkera

Advocate for
the Petitioners

Versus

Asst.Engineer, Microwave Maintenance, Thane & Ors.

Respondent/s

Shri Pandya for Sh.M.I.Sethna

Advocate for
the Respondents

CORAM :

Hon'ble Shri. M.R. Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ☒

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 933/93

Wednesday this the 19th day of February, 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

S.K.Karande
C/o. Ugade Baba Chawal
Near Hanuman Temple,
Upvan Road No. 1, Thane.

By Advocate Shri S.S.Karkera

... Applicant

V/S.

1. Asst.Engineer,
Microwave Maintenance,
Kopari Colony, Thane East.
2. Divisional Engineer
Telecommunication Satellite
Communication maintenance,
Microwave Building 1st Floor,
Kopri Colony, Thane East.
3. Chief General Manager,
Maintenance, Western,
Telecommunication Region,
Telephone House, 12th Floor,
Veer Savarkar Marg, Prabhadevi,
Bombay.
4. Director General,
Department of Telecom,
Sanchar Bhavan,
Ashoka Road, New Delhi.

By Advocate Shri Pandya for
Shri M.I.Sethna, C.G.S.C.

... Respondents

O R D E R (ORAL)

(Per: Shri M.R.Kolhatkar, Member (A))

It is not disputed in this DA. that the applicant worked as Temporary Mazdoor with the respondents and that his services were terminated. There, however, appears to be a difference as to the date of engagement. The applicant contends that he was engaged from 1.2.1988 but according to the written statement of the respondents, the applicant was engaged as a Casual Labourer w.e.f. August, 1989.

It may also be noted that applicant had filed an M.P. No.129/96 seeking amendment of the OA. M.P. was allowed on 28.2.1996 and the applicant has served amended copy to the respondents on 13.3.1996. Although the case came up before the Tribunal on 9.7.96 and on 12.11.96, the reply to the amended OA. has not been filed till today. I, therefore, proceed on the basis of available material.

2. Exhibit-'E' shows that the applicant in fact was employed from 1.2.88. This is a statement from the office to Divisional Engineer Satellite Commn. Maintenance, Bombay. Exhibit-'B' shows that the applicant had worked as below in three successive years :-

"From August '89 to March '90 - 185 days	
April, 1990 to March '91 - 240 days	
April, 1991 to March '92 - 332 days	
Total	<u>757 days</u>

The services of the applicant were terminated by the order dtd. 8.10.93 and the applicant has impugned as per the amended OA. the termination order dtd. 8.10.93 and has prayed that the applicant should be held to have continued in service from 1.2.88 and should be given the benefit of the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme"

3. It would appear that under Circular dtd. 7.11.89 from Director General, Department of Telecom on the subject of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme", a scheme for conferring temporary status on casual labourers was circulated. For the purposes of this Circular, 30.3.85 was the crucial date and in regard to the casual labourers engaged after this date, the Circular envisages that specific approval of DG Telecommunications was to be obtained for grant of temporary status.

Clearly, the applicant was appointed after the crucial date. The Circular was issued on 7.11.1989 when the applicant was in service and it is contended by the applicant, rightly in my view, that in terms of this Circular the respondents ought to have approached the DG for considering the question of grant of temporary status. Subsequently, the department issued another Circular dated 17.12.1993 at page 16 in which in Para 2 it is stated that :-

" all those Casual Mazdoores who were engaged by the circles during the period from 31.3.85 to 22.6.88 and who are still continuing for such works in the Circles where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the above said scheme."

It is clear that the applicant is covered by the reference date of this Circular in as much as he was engaged, as observed above, from 1.2.1988. However, perhaps it could be considered that he was not covered by the second part of the para quoted above according to which the employee should have been in service as on the date of Circular, namely, 17.12.1993 whereas the services of the applicant stood terminated on 8.10.1993. In this connection, counsel for the applicant invites my attention to Division Bench judgement of this Tribunal in Suresh Keshavrao Garad vs. Union of India vide OA.No. 257/90 decided on 29.6.1994 reported at 1995(1) ATJ 40 in which the Tribunal dealt with the earlier Circular, namely, the Circular dated 7.11.1989 and held that when the scheme for temporary status has come into force w.e.f. 1.10.1989 a date prior to the

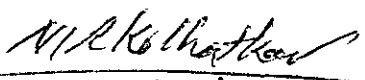
termination order then the termination order was liable to be set aside. The Tribunal observed as below in Para 4 :-

"4. It is inconceivable that Department of Telecommunication which had admittedly a large number of casual labour to attend day to day work, there would be no need of employment of casual labour. The applicant has already had a claim for confirmation of temporary status which became due to him due to the unintended action of Respondent No. 3. Thereafter, the application succeeds. We hereby set aside the notice of termination and direct the respondents to confer on him a temporary status and all other benefits thereto. He may be offered suitable employment as and when one is available in the unit where he was employed."

4. In view of this, I am required to hold that the termination order dated 8.10.1993 is bad in law and is required to be ignored. If it is so ignored, then Para 2 of the Circular dated 17.12.1993 has to be applied to the case of the applicant and it has to be considered whether the applicant had worked for last more than 365 days counting from the date of issue of order. From the data available with me, especially, when it was not disputed in the written statement that the services of the applicant were terminated only on 8.10.1993 and when the applicant had put in 757 days as in March, 1992, then he must be held to have put in additional service for the period from April 1992 till 8.10.1993 when his services were actually terminated. I am, therefore, required to hold that para 2 of the Circular applies to the case of the applicant and that he is required to be given the benefit of this Circular, which incidentally was not in issue in S.K.Garad's case.

5. Counsel for the applicant has prayed for direction to respondents to give all the benefits as per the Casual Labourers (Grant of Temporary status and Regularisation) Scheme. He has also stated that he does not press for back wages. Taking into account earlier discussion and these submissions, I dispose of the OA. by passing the following order :-

OA. is allowed. The termination order dated 8.10.1993 is quashed and set aside. The respondents are directed to consider the case of the applicant for being covered under the Circular/instructions dated 17.12.1993 on the footing that the applicant worked from 1.2.1988 and give all the benefits as per the Casual Labourers (Grant of Temporary status and Regularisation) Scheme including seniority but excluding back wages. The applicant should be reinstated within one month from the date of communication of the order and he should be given other benefits within two months thereafter. There would be no order as to cost.


(M.R. KOLHATKAR)
MEMBER (A)

mrj.

C.P. no 30/97
had 6 applicants,
but had in
order on 21/9/97.

115

17) O.A. 933/93 02.05.1997.

Shri S.P. Kulkarni for
Shri S.S. Karkera, Counsel for
the applicant.

Issue notice on C.P. No.
30/97 to the respondents to
file reply.

Returnable on 11.07.1997 for
orders.

(P.P. SRIVASTAVA)
M(A).

(B.S. HEGDE)
M(J).

Notices issued to
Applicant/Respondents on

28.5.97

35)

11.7.1997.

29/6/97

Shri S.S. Karkera
for the applicant.

Shri R.N. Pananya
for Shri M.I. Sethna,
counsel for the Respondents
seeks time to file reply.

Adjourned to
29/9/97 for orders.

Mekolhatkar
(M.R. Kolhatkar)
M(A)

(B.S. Hegde)
M(J)

05

Dated: 29/9/97 (6)

Heard Sh. M. I. Sethna Counsel for the Respondents. It is reported that the Counsel for the Applicant is busy in Court No. I.

The Counsel for the Respondents submits that they have complied with the directions of the Tribunal. He seeks time to file an affidavit in this behalf.

Adjourned to 20/10/97.

Reply of Respondent
to Op. 30/97 read
on 3/10/97

AS
8/10

M.R. Kolhatkar

(M.R. Kolhatkar)
MCAI

B.S. Hegde

(B.S. Hegde)
MCT

B
=

Per Tribunal

Date: 20/10/97

Applicant in person by Mr. S. S. Karlekar
Advocate / Respondent by Mr. V. A. Karlekar
Counsel. For want of fine

The matter adjourned to 1/12/97
for order in CO 30/97

Dy. Registrar

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

C.P. 30/97 in
Original Application No. 933/93

Monday the 1st December 1997.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.
Hon'ble Shri P.P. Srivastava, Member (A).

S.K. Karande ... Applicant.

By Advocate Shri S.S. Karkera.

V/s.

Shri K.A. Pajapathi and others. ... Respondents.

By Advocate Shri Wadavkar for Shri M.I. Sethna.

O R D E R (ORAL)

Per Shri Justice R.G.Vaidyanatha, Vice Chairman

The applicant has filed this C.P. alleging that the respondents have not complied with the order of the Tribunal dated 19.2.97 in OA 933/93. The respondents have filed their reply stating that the respondents have complied with the order of the Tribunal.

The learned counsel for the applicant stated that now the applicant has been reinstated as per the order of the Tribunal. The grievance of the applicant is that his seniority has not been fixed. But in the affidavit filed in reply to the C.P., in para 4, it is stated that the applicant has been given temporary status and seniority is fixed with effect from 17.12.93.

The learned counsel for the applicant states that the applicant must be given the exact position on the seniority to enable him to know his position for future promotion. The learned counsel for the respondents seeks time to furnish the same.

The C.P. is disposed of with a direction that the respondents to inform the applicant the exact position in the seniority list with number and date within a period of two months from today.
No costs.



(P.P. Srivastava)
Member (A)



(R.G. Vaidyanatha)
Vice Chairman

NS

0120

order/12/12/97
to Applicant despatched
on 12/12/97
Respondent (A)

24/12/97