

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1270/94

DATE OF DECISION: 29.11.2000

Shri Digambar Kashinath Lambole Applicant.

Shri D.V. Gangal Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Shri S.S. Karkera for Shri P.M.Pradhan Advocate for
Respondents

CORAM

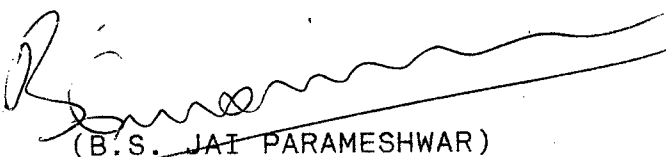
Hon'ble Shri B.S. Jai Parameshwar, Member(J)

Hon'ble Smt. Shanta Shastri, Member(A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.


(B.S. JAI PARAMESHWAR)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1270/94

WEDNESDAY the 29th day of NOVEMBER 2000

CORAM: Hon'ble Shri B.S. Jai Parameshwar, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

Digambar Kashinath Lambole
Bhoi Lane, Dharangaon,
Tq. Erandol, Dist Jalgaon.

...Applicant.

By Advocate Shri D.V. Gangal.

V/s

1. The Executive Engineer,
Telecom Civil Division.
Coaxtal Exchange Bldg.,
City Tele Exchange Compound,,
N.D. Patel Road, Nashik.

2. The Superintending Engineer,
Telecom Civil Circle, Nagpur.

3. The Chief General Manager,
Telecommunication,
Maharashtra Circle , Bombay.

...Respondents.

By Advocate Shri S.S. Karkera for Shri P.M. Pradhan.

ORDER (ORAL)

{Per Shri B.S. Jai Parameshwar, Member (J)}

The applicant herein had been engaged as a Casual Labour (Office Assistsant) in the respondent's department from 1.6.1993 to 20.5.1994. He was dis-engaged with effect from 21.5.1994.

2. The applicant submitted a representation for re-engagment as seen from the representation dated 6.7.1994 and reminders dated 19.7.1994 abd 29.7.1994.



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3. ~~The~~ The applicant relies upon the decision of the Hon'ble Supreme Court in the case of Daily Rated Casual Labour under P&T V/s Union of India (reported in AIR 1987 SC 2342) and in the case of N.Gopal and others V/s Union of India and others (reported in 1990(14) ATC 11).

4. ~~He~~ He also relied upon the decision of the Supreme Court in the case of Abdul Buriyain O.H. V/s Kerala Water Authority reported in 1991 SCC L & S 25. He submits that dis-engagment from the casual service is illegal and dis-criminatory. Further he has stated the names of casual employees who were engaged on and from 1.8.1994. Hence he has filed this OA for the following reliefs:

- a) To kindly direct the respondents to reinstate the applicant with seniority and continuity in service with back wages from the date of retrenchement.
- b) To hold and declare that the Applicant is entitled to be regularised in accordance with the law.
- c) To hold and declare that the non-re-engagement of the Applicant from 1st August, 1994 and engagement of a Contractor and other employees through him is illegal and contrary to law and
- d) To hold and declare that the break-in-service is illegal and should be quashed.

5. The respondents have filed the reply. They contend that the applicant was not a Casual Labour, but was engaged on hourly basis. It is their case that the division was shifted from Bombay to Jalgaon. On administrative difficulties and



inconvenience, some of the staff members were not transferred and shifted to Jalgaon unit. Hence in order to meet the work load the applicant was engaged on hourly basis to complete the targeted work and he was given clear understanding that as soon as any departmental person was posted his services would be dis-engaged. Thus they submit that the applicant was not at all appointed by the respondent No.1 as he had worked on purely on hourly basis. The respondents denied the completion of 305 days of casual service as alleged in the application. They submit that the work was managed by the departmental staff and retired employees.

6. They submit that the applicant is not entitled to the reliefs claimed in the OA and the same is liable to be dismissed.

7. The respondents have filed papers to show that the wages paid to the applicant while he was engaged for the work in the department.

8. The applicant has filed a rejoinder stating that he had worked in the department from 1.6.1993 to 20.5.1994 without any break. He submitted a representation for re-engagement. The department had not sent any reply to his representation. That he was engaged by the department for doing the office work and he worked for full day and he was paid on hourly basis. Thus he claims the relief as prayed for in the OA.

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9. During the course of the arguments the learned counsel for the applicant submitted that the applicant was working continuously from 1.6.1993 to 20.5.1994 without any break. The respondents have denied and stated that even while engaging the applicant for the work, no specific order was issued.

10. The learned counsel for the respondents submitted that the applicant was engaged purely on hourly basis and that he was paid after the work was completed. The applicant cannot be regarded as ^aCasual Labour^{-er} and that the applicant is not entitled to any of the benefit of the Casual Labour^{er} (Grant of Temporary Status on Regular Basis scheme 1989 which came into force with effect from 1.10.1989).

11. As the applicant has been dis-engaged from the service by the department, a direction that can be given to the respondents is that they may consider the case of the applicant whenever there is work, in preference to persons from the open market.

12. During the course of the arguments the learned counsel for the applicant submitted that applicant having worked ~~for~~^{for} (1.6.1993 to 20.5.1994) 240 days continuous service during that period is entitled to the benefit for the grant ^{of} temporary Status under the Scheme of 1989. In support of his contention he relied upon the decision of the Principle Bench of this Tribunal in the case of Vishwas V/s Union of India and others reported in 1997(1) ATJ 287. In that case the Princip^{al} Bench of this Tribunal considered the Casual Labour working for half an hour on contract



basis. Further the learned counsel for the applicant relied on the decision of the Ernakulam Bench of this Tribunal in OA 907/96 decided on 12.8.1996 in the case of K.M. Badarudeen and others V/s Union of India and others to contend that if there is continuing requirement of work and the prescribed days of service is attained by a casual labour, the Government may consider for issuance of a clarificatory order for conferment of temporary status, without attaching special sanctity to the fixed date of the Scheme, i.e. 1.9.1993, which is arbitrary.

13. The fact that the applicant was engaged by the respondent department from 1.6.1993 to 20.5.1994 is not at all in dispute. The respondents further state that the applicant remained absent during the said period. The applicant has categorically asserted that he had worked in the respondents department without any break from 1.6.1993 to 20.5.1994, during that period. Hence if the applicant has completed 240 days of continuous service, then we feel that the applicant is entitled to the benefits under the Scheme 1989.

14. Hence we issue the following directions:

(a). The respondents shall consider the case of the applicant for re-engagement whenever there is work and there is need to engage casual labourers in the department, in preference to others from the open market.

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(b). On such re-engagement the respondents shall consider the case of the applicant for grant of temporary status and for regularisation under the Scheme 1989 for the continuous work rendered by him during the period from 1.6.1993 to 20.5.1994.

(c). With the above directions the OA is allowed. No order as to costs.

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(Ms. Shanta Shastry)
Member(A)

[Signature]
(B.S. Jai Parameshwar)
Member(J)

29.11.2023

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P.No.23/2002 in O.A.1270/1994
C.P.No.20/2002 in O.A.1281/1994
C.P.No.22/2002 in O.A.1283/1994

Dated: 7th June, 02

These are three Contempt Petitions. C.P.No.23/2002 has been filed in OA-1270/1994, C.P.No.20/2002 in O.A.No.1281/1994 and C.P.No.22/2002 in OA-1283/1994.

The three applicants have approached this Court for punishing respondent no.1 to 3 for wilful disobedience of orders passed in above cases. Separate judgements have been given in above cases giving rise to above C.P. though the judgements being similar the grievance raised is also similar. The relevant facts have been given in judgement of O.A.No.1270/1994 while in other two cases judgement passed in OA No.1270/1994 has been followed. We take-up CP-23/2001 as leading case.

The operative part of order of OA, in respect of which wilful disobedience is alleged by applicant is as under:

(a) The respondents shall consider the case of the applicant for re-engagement whenever there is work and there is need to engage casual labourers in the department, in preference to others from the open market.

(b) On such re-engagement the respondents shall consider the case of the applicant for grant of temporary status and for regularisation under the scheme 1983 for the continuous work rendered by him during the period from 1/6/1993 to 20/5/1994.

(c) With the above directions the OA is allowed. No order as to costs.

The order was passed as applicant claimed themselves to be casual labourer and they were not re-engaged subsequently. In these CPs the applicants have claimed wilful dis-obedience of directions given in OAs.

B. Singh

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The learned counsel for applicant has argued that though the judgement was delivered in November, 2000 and there are vacancies in the offices of respondents, yet respondents have advertised the vacancies for filling them up from open market without engaging applicants despite specific directions of this Tribunal.

We have heard Shri D.V.Gangal Counsel for applicant and Shri V.S.Masurkar counsel for respondents and have examined the contempt petitions. The respondents were directed in OAs to consider the case of applicants for re-engagement as casual labourers, whenever work is available and there is need to engage casual labourers, in preference to others from open market. It is at such time when engagement is to be made that respondents were directed to consider case of applicants for grant of temporary status and for regularisation under 1993 scheme. The applicant's case is that nothing has been done by the respondents for granting temporary status/ regularisation. According to them, certain casual labourers are already working whereas the applicants, who are senior to them, have not been re-engaged. He has also stated in the Contempt petition that he has already given names of casual labourers/contract basis employees who are working and have procured the place held by applicants which is in violation of rules. Their grievance is that still they have neither been considered nor they have been engaged. It is true that the applicants were not re-engaged when other casual labourers who were working were engaged but this fact was already before Tribunal when OA was decided and yet the orders were passed by this Tribunal which means that the Tribunal did not consider it necessary to undo whatever stands done.

B. Singh

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The applicants have approached this Tribunal in Civil Contempt. We went through CP and ~~when~~ we neither find anything in the CP on the basis of which any charge for wilful disobedience could be framed nor proposed charges required to be filed under Administrative Tribunal (Contempts of Court) Rules, 1992 have been filed with CPs. The learned counsel for applicant in reply, contented that under CAT (Contempts of Court) Rules 1992 framing of proposed charges are not to be filed by applicant in case of Civil Contempt. He took us through the various rules and Form no.3 of the said rules and subsequently gave up his argument by conceding that charges are to be framed even in a case of Civil Contempt.

The Civil contempt arises only when there is wilful disobedience of an order. Beside that, we do not find any averment in the CP to make respondents liable for punishment as there is no breach of our order in question. Our direction in OA is that "whenever there is work and there is need to engage casual labourers in the department, in preference to others from the open market." There is nothing on the record that ~~applicants~~^{respondents} have made any appointment from open market after passing of said order. The applicants are to be considered for re-engagement as and when the work is there and casual labourers are to be engaged. As there is nothing on record that anyone from open market has been preferred over applicants or any engagement has been made from open market, we are unable to accept the contention of learned counsel for applicant that there is wilful disobedience of direction given in the order.

The learned counsel for applicant has also tried to make out case of wilful disobedience by arguing that despite there

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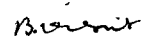
being vacancies, the applicants have not been engaged. As it is not our order that vacancies are to be filled up, it in no way amounts to wilful disobedience of order for the purpose of making applicant liable for Civil Contempt. It could be when Respondents had work and they had engaged casual labourers from open market without preferring applicants that the question of considering wilful disobedience could arise. Thus, no case for wilful disobedience of orders being made out, the three CPs fail.

Before parting with the case, we feel that this is a fit case where heavy cost should be awarded. The reason is that the respondents have been dragged to this Court without any reasonable basis. The applicants have been ill advised in filing the CPs when none from the open market has been appointed. In aforesaid circumstances, we award cost of Rs.3000/- in each case. As there are three respondents, we direct that each Respondent will be paid Rs.1000/- in each case. The department will see that if costs are not realised or paid till the time applicants are re-engaged as casual labourers then whenever each of them is re-engaged, the said amount shall be deducted by the department from remuneration/wages payable to them and the same shall be paid by the Officer realising the costs in equal proportion to respondents of each case as per above direction.

For aforesaid reasons and subject to above directions, CP-23/2002 in OA 1270/1994, CP-20/2002 in OA 1281/1994 and CP-22/2002 in OA 1283/1994 are dismissed with costs, the cost in each case being Rs.3000/- payable to respondents.



(SMT. SHANTA SHASTRI)
MEMBER(A)



(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

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