

DA.383/98/92

DA.384/98/92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA. NOs. 383/98 & 384/98

this the 8th day of April 1999.

CORAM : Hon'ble Shri D.S.Bawaja, Member (A)

DA. NO. 383/98

Madan Shankar Pawar
R/o Ward No. 12,
At & Post : Mehtkar,
Dist. Buldhana.

By Advocate Shri S.P. Inamdar

V/S.

1. Union of India through Chief General Manager, Telecom, Maharashtra Circle, Mumbai.
2. The Telecom District Engineer, Buldhana at Khamgaon.
3. Sub Divisional Officer, Phones, Buldhana at Buldhana.

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

... Applicant

... Respondents

DA. NO. 384/98

Janardhan Laxman Ingle,
R/o Wardada,
Post : Lawhala, Tq. Mehtkar,
Dist. Buldhana.

By Advocate Shri S.P. Inamdar

... Applicant

V/S.

1. Union of India through Chief Gen. Manager, Telecom, Maharashtra Circle, Mumbai.
2. General Manager, Telecom, CTO Compound, Nagpur.
3. Telecom Dist. Engineer (Manager), Akola.
4. Telecom Dist. Engineer (M), Buldhana at Khamgaon.

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

... Respondents

ORDER

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

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

2. The facts of the OAs. and reliefs prayed for are as under :-

OA. NO. 384/98

The applicant in this OA. was engaged as a casual labourer under Sub-Divisional Officer, Buldhana (Telephones) under Telephone Dist. Engineer, Akola in the month of October, 1981. Thereafter, he worked in various spells upto May, 1985 for the period of 499 days. The applicant was again engaged in February, 1987 and worked for a period of 43 days till April, 1987. Thus, the applicant has worked for a period of 542 days from October, 1981 to April, 1987. The applicant submits that he was disengaged from employment as casual labourer from June, 1987 onwards for want of project work. He was informed that as soon as the new project work starts, his re-engagement on the project will be considered. Thereafter, the applicant made several representations starting with first representation on 13.3.1988 and last representation being on 20.9.1990. The applicant's case is that he is entitled for grant of temporary status and regularisation in his turn under the Scheme of regularisation laid down by the Department

of Telecommunication as per order dated 7.11.1989. The applicant further submits that as per order dated 6.5.1991 Telecom District Engineer, Akola, Respondent No. 3 issued an order condoning the absence of the applicant and directed the applicant to report for further employment. Thereafter, the applicant had approached Telecom District Engineer, Buldhana through his representation dated 20.5.1991 followed by reminders but did not get any response. The applicant has also stated that he had filed application in 1995 before Assistant Labour Commissioner (Central) Nagpur for redressal of his grievance. However, reconciliation proceedings had failed and Asstt. Labour Commissioner closed the application filed by the applicant. Feeling aggrieved by inaction on the part of the respondents, the present application has been filed by the applicant on 1.5.1998, seeking the following relief :- (a) to direct the respondents to regularise the applicant to the post of Group 'D' in the Department of Telecommunication. (b) to direct the respondents to maintain the seniority list of casual labourers including the applicant and inform the applicant his position in the seniority list. (c) to direct the respondents to grant him temporary status in accordance with the scheme laid down by the Department of Telecommunication.

OA.NO. 383/98

The averments made and the grounds taken in this OA. are more or less the same in the case of OA.NO. 384/98 as detailed above. The applicant in this OA. was engaged as a casual labourer from 1.10.1983

and worked for a period of 563 days till April, 1987. Here also the applicant was disengaged from employment as casual labour without any written communication. Here the applicant has stated that he has been visiting the office at Akola but he was being informed that he should contact the Telephone District Engineer, Khamgaon for the job as the Telephone District Akola has since been bifurcated. Since personal contacts did not bear any results, the applicant made a representation dated 18.12.1995 followed by a reminder on 5.11.1996. But still/did not get any reply. Thereafter, the present OA. has been filed on 1.5.1998 seeking the same reliefs as detailed above in respect of OA.NO. 384/98.

3. In both the OAs, the applicants have taken the following grounds in support of the reliefs prayed for. (a) The applicants have worked for 240 days in a year and therefore entitled for grant of temporary status and regularisation in terms of the Scheme laid down by the Department of Telecommunication vide Circular dated 7.11.1989 followed by letters dated 17.10.1990 and 17.12.1990 through which further clarifications have been furnished with regard to implementation of the scheme. The applicants have also relied upon O.M. dated 8.4.1991 of Department of Personnel & Training and Public Grievances. (b) The respondents have not maintained any seniority list of casual labourers for the purpose of regularisation of casual labourers and Department

continues to recruit fresh casual labourers denying the benefits of the scheme of grant of temporary status and regularisation to the applicants. (c) The applicants had not abandoned the work but were not allowed to continue to work and no notice or written order was given to them.

4. The respondents have filed written statement in both the OAs. The averments made in both the written statements are more or less same except for changes with reference to the specific pleadings in the two OAs, which are different from each other. In case of OA. NO. 384/98 the respondents at the outset have opposed the application on two technical grounds. The first being that the applicant had agitated the matter before Assistant Labour Commissioner and reference against the decision of Assistant Labour Commissioner had also been rejected by the Ministry of Labour. In view of this, the applicant could have challenged the decision of Ministry of Labour before the appropriate Court but the applicant cannot approach the Tribunal with the same grievance. Therefore, in the opinion of the respondents, the present application is not maintainable and deserves to be dismissed. The second ground is that the application is time barred. As regards the merits, the respondents contend that the applicant had not been told orally not to work after April, 1987. The applicant did not come forward for the work/ and at no stage he made any representation against his grievance of not being engaged. The respondents deny having received any of the representations referred to by the applicant in the OA. The respondents have also contended that

the applicant is not entitled for regularisation as per the Scheme framed by the Department of Telecommunication because the applicant does not fulfil the eligibility criteria as laid down in the Scheme. As regards the order dated 6.5.1991 issued by Telecom District Engineer, Akola with regard to re-engagement of the casual labourers including the applicant, the respondents have clarified that the same was directed to be held in abeyance as the letter was issued in a hurry without verifying the details of the casual labourers with regard to their eligibility for re-engagement etc.

In OA.NO. 383/98, the written statement covers the same averments except that the respondents have submitted that the applicant had worked from 1.10.1983 till April, 1985 and not April, 1987 as stated by the applicant. Further, the applicant had worked for 507 days as per details furnished by him and not for 563 days as claimed in the application. Here also the applicant was not informed that his services are discontinued and he would be engaged on job as and when the work is available. But, on the other hand, the applicant did not come forward for the work. The respondents deny of having received any representation dated 18.12.1995 from the applicant. This application is also opposed on the ground of limitation.

5. The applicants in both the OAs. have filed rejoinder reply reiterating the contentions taken in the OAs. while controverting the submissions of the respondents. In OA. No. 383/98 the applicant has refuted the submissions of the respondents that he has worked only upto April, 1985 and worked for 507 days only by submitting documentary evidence to show that he had worked for a period of 56 days during February, 1987 to April, 1987 and thereby for a total period of 563 days.

6. I have heard the arguments of Shri S.P. Inamdar, learned counsel on behalf of the applicant and Shri S.S.Karkera on behalf of Shri P.M.Pradhan, learned counsel for the respondents.

7. Before going into merits of the reliefs prayed for, the technical objections raised by the respondents in opposing both the OAs. will be taken up. In both the OAs. the respondents have taken a plea that the application is barred by limitation. In addition, in OA.NO. 384/98 the respondents have opposed the application stating that the applicant had earlier agitated the matter under the provisions of Industrial Dispute Act and therefore for the same grievances, he cannot seek a remedy through filing an OA. before the Tribunal. As regards the seeking of relief or grievance under the Industrial Dispute Act in OA.NO. 384/98, the applicant has made mention of the same in the OA. but details of the orders passed by the Assistant Labour Commissioner and Ministry of Labour have not been brought on record. Copies of these orders, however, have been brought on record by the

respondents with the written statement. However, either of the party has not brought on record as to what was the relief of the applicant before the Assistant Labour Commissioner. The applicant however during oral submission/brought out that he had sought relief with regard to termination of his services as casual labourer in violation of provisions of Industrial Dispute Act. He further stated that in the present OA, he has prayed for grant of temporary status and regularisation and therefore the matter of the present OA, is different from the matter what had been agitated before the Assistant Labour Commissioner. In the absence of any details, I accept the contention of the applicant. On going through the reliefs prayed for, it is noted that the applicant though has made a prayer for interim order for directing the respondents to utilise his services as casual labourer till he is regularised under the scheme but has not made any prayer/in the reliefs prayed for. The applicant has also not challenged termination of/services as casual labourer. His main prayer is confined to regularisation and grant of temporary status. Keeping these facts in view, I am not inclined to accept the contention of the respondents that the present OA, is not maintainable in view of the fact that the matter had been agitated by the applicant before the Assistant Labour Commissioner and a reference made to the Ministry of Labour against the decision of Assistant Labour Commissioner had also been rejected. As regards the plea of limitation raised by the respondents for both the OAs., keeping in view the facts of both the cases, I am inclined to accept

the stand of the respondents. In both the OAs, the applicants were initially engaged upto 1985 and subsequently re-engaged for some period in 1987. The Scheme of regularisation and grant of temporary status was laid down by the Department of Telecommunication as per Circular dated 7.11.1989. The applicants are claiming benefits of grant of temporary status and regularisation under the Scheme. The present applications seeking the reliefs under the Scheme dated 7.11.1989 had been filed on 1.5.1998. In case of OA.NO. 384/98, the applicant has explained that he had been representing the matter from 1988 onwards and a few representations have also been brought on record. On going through the representations at Annexures- 'A-6' & 'A-10', it is noted that three representations had been submitted before the Scheme for grant of temporary status and regularisation had been laid down as per Circular dated 7.11.1989. There are two representations subsequent to 7.11.1989 but in both the representations there is no mention with regard to grant of temporary status and regularisation. Therefore, the contention of the applicant in this OA, that the application is not barred by limitation as he had been repeatedly representing does not have any substance. The applicant has not put in claim for grant of temporary status and regularisation at any time in all representations till 1990. Thereafter, no representation appears to have been submitted. The cause of action arose when the Scheme was laid down on 7.11.1989 and the present application/ is filed on 1.5.1998 for seeking relief which

under this Scheme is certainly time barred, particularly as in the absence of any reasons for delay in filing the present OA. and submission of any application for condonation of delay. On the point of limitation, the applicant also made a submission that his case was also considered for engagement as per letter dated 6.5.1991 by the Telecom District Engineer, Akola which was subsequently held in abeyance as per the order dated 24.10.1994. This plea has no merit, firstly the order dated 6.5.1991 did not concern about the grant of temporary status and regularisation and secondly, even taking reference of the letter dated 24.10.1994, the present application has been filed after a period of four years. Therefore, looking from any angle, I have no hesitation to hold that the OA. is barred by limitation.

As regards the OA. NO. 383/98 is concerned, the facts are similar and this OA. is also barred by limitation. Here, the applicant has stated that he made the first representation only in 1995 followed by reminder dated 5.11.1996. The applicant has not made any averment that he had represented in writing earlier. Even in the representation dated 18.12.1995, there is no mention with regard to regularisation and grant of temporary status. Only in his representation dated 5.11.1996 he has mentioned that he is entitled for temporary status and regularisation as per orders issued by the Department. The applicant has not made any averments to the effect that/why he did not agitate the matter after the Scheme for grant of temporary status and regularisation/laid down as per

Circular dated 7.11.1989. The only reason which he has indicated for delay is that he has been visiting the concerned office but no reply was received by him. If the applicant has been aggrieved by the ^{no} action being taken on behalf of the department, the applicant should have sought legal remedy at the appropriate time and not waited for several years. Keeping these observations in view, this OA, is also barred by limitation.

8. Although it has been held above that both the OAs. are barred by limitation, I am still going into the merits of the reliefs prayed for. The applicants have claimed that they are entitled for temporary status and regularisation citing the Department of Telecommunication Circular dated 7.11.1989 followed by Circulars dated 17.10.1990 and 17.12.1990. The applicants have also relied upon the Circular dated 8.4.1991 of Department of Personnel & Public Grievances. The applicants in both the OAs. through a M.P. have also brought on record one more Circular dated 7.6.1990 issued by Chief General Manager Telecom, Mumbai through which the guidelines regarding grant of temporary status to the casual labourers have been laid down. The applicants in both the OAs. have made a plea that they meet with the requirements laid down in the Scheme as they had worked for more than 240 days during the year 1984 and also had been engaged before 30.3.1985. The respondents, on the other hand, have stated that the applicants do not meet with the eligibility criteria laid down in the

Scheme and therefore not entitled for the grant of benefits under the scheme. Keeping these rival contentions in view, I have carefully gone through the Circulars cited by the applicants in both the QAs. The Department of Telecommunication has laid down the scheme for grant of temporary status and regularisation as per Circular dated 7.11.1989. The other two Circulars dated 17.10.1990 and 17.12.1990 have only issued ^{certain} clarifications with regard to the implementation of the scheme. The Circular dated 7.6.1990 of Chief General Manager, Telecom, Mumbai is also based on the scheme as per Circular dated 7.11.1989 laying down the guidelines for implementation of the Scheme. On going through the Circular dated 7.11.1989, it is noted that this scheme is applicable to those who were currently employed as casual labour on the date of issue of operation of scheme, i.e. 1.10.1989. This is clear from Para 1 of the Circular dated 7.11.1989 as well as from the Annexure to this letter wherein the details of the Scheme have been laid down. Para 5 of the Scheme in the Annexure ^{also} stipulates that temporary status would be conferred on all those casual labourers who are currently employed. Keeping these observations in view, it is quite clear that the Scheme as laid down as per Circular dated 7.11.1989 was applicable only to those of casual labourers who were in service on 1.10.1989. The applicants were not in service as per the details furnished by them. They were in service only upto April, 1987. In view of this, the applicants are not covered by this Scheme and therefore not entitled for the benefits of the Scheme dated 7.11.1989. In this

connection, I refer to order of Hyderabad Bench in the case of C.R. Ramamohan vs. Telecom District Manager, 1998 (38) ATC 606, wherein the same view has been taken that scheme for regularisation and grant of temporary status issued under Circular dated 7.11.1989 and effective from 1.10.1989 only applies to casual labourers who were in employment on 1.10.1989. The applicant has cited the judgement in the case of Inder Pal Yadav & Ors. vs. Union of India & Ors. 1985 SCC (L&S) 526. This judgement is not applicable to the case of the applicant as the matter refers to the casual labour of Railways. Further, as per the directions of the Hon'ble Supreme Court, the scheme for grant of temporary status and regularisation of project casual labour has been covered in this judgement. This is not the issue in the present OA, as the scheme of regularisation and grant of temporary status has already been laid down by the Department of Telecommunication and the applicants are seeking reliefs under the scheme. The order dated 5.6.1998 in OA.NO. 1016/93 Shri Dilip Hilal Thakur vs. Union of India & Ors. cited by the applicants is also not relevant to the present OA, as the matter pertains to part-time casual labour. The next order cited is dated 6.1.1999 in OA.NO. 1094/97 in the case of Hanmant Vishnu Gaikwad vs. Union of India & Ors. This OA. is also distinguishable on facts and circumstances from the present OA. In the present OA., the applicants were not in service at the time when the scheme was introduced for grant of temporary status and regularisation.

Therefore, the ratio of what is held in the order dated 6.1.1999 does not apply to the present OAs. The applicants have also relied upon the letter dated 8.4.1991 of Department of Personnel and Training at Annexure-'A-18'. On going through this letter, it is seen that this letter of Department of Personnel has been circulated by Director General of Posts and is applicable to that Department and does not indicate that the same is applicable to the Department of Telecommunication and the scheme of regularisation and grant of temporary status laid down by the Department. Even otherwise this letter only refers to the relaxation of upper age limit and condition of recruitment through the employment exchange. The issue involved is quite different in the present OAs. Concluding, I hold that the applicants are not entitled for grant of temporary status and regularisation under the scheme laid down as per the Circular dated 7.11.1989.

9. The counsel for the applicant has also cited the order dated 19.12.1991, Kesavan Nair Alias Omanakuttan vs. Sub-Divisional Officer, Telegraphs, Mavelikkara & Ors. (1992) 20 ATC 348. This order has been cited to controvert the stand of the respondents that the applicants in both the OAs, did not come forward for engagement as casual labour had and abandoned the work. In this order, it is held of work that onus to prove the abandonment/lies on the respondents. Though the pleadings have been made by the applicants with regard to oral termination of their services and

not allowing them to be engaged but the termination of services has not been challenged in both the OAs. In view of this, I am not going into the rival submissions on this issue and citing of this order has therefore no relevance.

10. One of the reliefs prayed for by the applicants in both the OAs. is that respondents be directed to maintain the seniority list of casual labourers including the applicants and inform the applicants of their position in the seniority list. On the contention The applicants have prayed for this relief/that in the absence of seniority list, the respondents have been engaging new faces and not giving the benefit of regularisation and temporary status as per the scheme laid down as per their seniority. The applicants in both the OAs. have not furnished any details of the new faces who have been engaged overlooking the claim of the applicants. A mere statement has been made to allege discrimination without any supporting material brought on record. If the discrimination is alleged, it is for the party who alleges discrimination has to prove that as to how the discrimination has been caused. Since no merit has been found in the relief of applicants with regard to grant of temporary status and regularisation, the prayer with regard to directing the respondents to maintain a seniority list of the casual labourers does not survive and as such the issue is not being gone into merits.

11. In view of the above reasons, I am unable to find any merit in both the OAs. Both the OAs, are therefore dismissed both on account of being hit by limitation as well as lacking merits. No order as to costs.

(D.S.BAWEDA)

MEMBER (A)

mrj.