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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::

O.A.No.469/1992.

Date: 24.8.1993

N. Babaiah

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Applicant

And

1. The Union of India, rep. by
the Director General,
Telecommunications, New Delhi-1.
2. The General Manager, Telecom Dist.,
Hyderabad, Suryalok Complex,
Hyderabad-500 033.
3. The Divisional Engineer, Cable
Construction, 5th floor, Room No.510,
Taramandal Complex, Secretariat Road,
Hyderabad-500 004.
4. The Asst.Engineer, Cable Construction,III
H.No.9/1C, Green High colony,
Ramakrishnapuram, Hyderabad-500 660. .. Respondents

HEARD:

For the applicant : Sri J.V.Lakshmana Rao, Advocate
For the respondents : Sri N.R.Devaraj, Senior CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

THE HON'BLE MR.P.T. THIRUVENGADAM, MEMBER (ADMN.)

{ JUDGMENT OF THE BENCH AS PER HON'BLE SRI P.T.THIRUVENGADAM,
MEMBER (ADMN.) }

The applicant was appointed as a Casual Mazdoor
with effect from 1.8.1983. He was absent from duty from
31-3-1991 onwards. It is the case of the applicant that
he fell sick from 31.3.1991 and underwent medical treatment

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for "Amoebic Hepatitis" from 31.3.1991 to 17.11.1991. It is submitted by him that he reported for duty on 18.11.1991 along with medical certificate issued by a Private Medical Practitioner, but he was not taken back to duty by the A.E., CC.II, Hyderabad Telephones (R-4) on the plea that the approval of R-3 is required to condone his absence. As per the applicant he was contacting R-4 every day but he was not taken back to duty. This O.A. has been filed praying for a direction to condone his absence from 31.3.1991 to 17.11.1991 and for the grant of all consequential benefits.

2. In the counter affidavit on behalf of respondents, it has been denied that the applicant reported on 18.11.1991. As per the respondents, the applicant reported to R-4 only on 25.1.1992 along with Medical Certificate covering the period from 31.3.1991 to 17.11.1991. Since R-4 did not have ^{he} power for condoning the absence during 31.3.1991 to 24.1.1992, R-4 forwarded the representation of the applicant to R-3. A reference was also made by R-4 to A.G.M. (Administration) with an endorsement to R-3 bringing out the details of the absence of the applicant. Later the Asst. Engineer (Recruitment), O/o G.M., Hyderabad Telecom Dist. vide his letter dt. 11.5.1992 returned the representation of the applicant to R-3 with instructions to dispose of the case at the latter's end as per the D.O.T. rulings enclosed. Thereupon R-3 in his letter addressed to the applicant dt. 27.5.1992 advised as under:-

"As per your representation stated above, you were absent for more than 6 months due to your ill-health. As per orders of the D.O.T. any

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break in service upto 6 months can be condoned by the DE concerned on the merits of the individual cases, and break-in service beyond 6 months cannot be condoned on illness basis. Hence, your representation for condonation of break-in service could not be acceded to."

3. The respondents had expressed a doubt about the genuineness of the Medical/Fitness Certificate given on the same day by a Private Medical Practitioner without date and countersigned by a Civil Surgeon, also without date. Hence, the concerned Private Medical Practitioner was summoned for appearance before the Tribunal on 4.8.1993. The said Practitioner deposed that he had treated the applicant for about 7½ months from 31.3.1991 and that the said Medical Certificate had been issued by him. Since the statement in the counter filed by R-4 that the applicant reported for duty only on 25.1.1992 and not on 18.11.1991 was not acceptable to the applicant, R-4 was summoned on 4.8.1993 for examination. During examination R-4 maintained the position taken by the respondents in the counter.

4. We do not propose to analyse the deposition by the Medical Practitioner or R-4 since the main thrust of the learned counsel for the applicant was with regard to condonation of absence. The learned counsel for the applicant referred to the Circulars issued by D.G., P&T dt. 10.10.1980 and 26.7.1984. The relevant paras from the said circulars read as under:

Extract from Circular dt. 10.10.1980:

"..... .."

The absence of more than six months may, however, be condoned by the D.E. on one of the two grounds,

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namely, illness on medical certificate or non-employment due to non-availability of work. In cases of absence beyond six months at a time on account of illness for the past years the production of medical certificate may not be insisted upon and the period of break may be condoned if the D.E. is satisfied about the genuineness of the absence."

Extract from letter dt. 26.7.1984.

" The benefit of increased rates of daily wages will not be admissible to the casual semi-skilled/skilled labour in whose case the continuous spells of duty are intervened by a period of more than six months. The absence of more than six months may, however, be condoned by the Divisional Engineer on one of the two grounds namely, prolonged illness on production of medical certificates or non-employment due to non-availability of work. In the case of absence beyond six months at a time on account of illness for the past years, the production of medical certificate may not be insisted upon and the period of break may be condoned if the Divisional Engineer is satisfied about the genuineness of the absence."

It was the contention of the applicant that in view of the provisions in the above circulars the Divisional Engineer himself was the competent authority to condone the absence eventhough it was byond six months and such condonation should have been done in favour of the applicant.

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5. Against the above contention the respondents referred to D.O.T. letter dt. 30.8.1989 which reads as under:-

Extract from D.O.T. Letter No.269/29/87-
STN Vol.I dt. 30.8.1989.

"Any break in service upto 6 months can be condoned by the D.E. concerned on the merit of the individual case. Any break in service upto one year arising due to department's inability to engage them for want of work may be condoned by the D.E. concerned, provided they were subsequently engaged, when work become available. The criterion for deciding whether the break was due to non-availability of work would be that no labourer junior to the casual labourer whose case is considered was engaged on work under the same SDO/AE in the same station during the period requiring condonation."

It was pleaded that only breaks upto six months can be condoned except in cases of inability of the department to provide the work. As per the instructions dt. 30.8.1989 even the higher authorities have no competency for condoning breaks beyond six months arising on medical grounds.

6. The learned counsel for the applicant then referred to the department's letter dt. 21.10.1992 which was issued in supersession of earlier orders. As per these instructions Chief General Managers had been conferred with the power of condonation of break in service upto one year on the merit of each case, Even in cases of sickness after

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Copy to:-

1. Director General, Telecommunications, Union of India, New Delhi-1.
2. The General Manager, Telecom District, Hyderabad, Suryalek Complex, Hyderabad-033.
3. The Divisional Engineer, Cable Constructions, 5th floor, Room No.510, Teramandal complex, Secretariat road, Hyd-004.
4. The Asst. Engineer, Cable Construction, III H.No.9/1C, Green High colony, Ramakrishnapuram, Hyd-660.
5. One copy to Sri. J.V.Lakshmana Rao, advocate, CAT, Hyd.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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checking the medical certificates. These instructions would not be relevant to the case of the applicant which arose in the year 1991. With regard to the instructions dt. 30.8.1989 the learned counsel for the applicant ~~xx~~ raised two issues viz: (i) only an extract had been produced and not the full circular; and (ii) that the instructions dt. 30.8.1989 did not explicitly state that this supersede the previous circulars/instructions. We do not find any force in these objections.

7. The learned counsel for the applicant has also placed reliance on the order passed by CAT-Ernakulam Bench in O.A.No.1047/91 X 1992(2)(CAT) 312 X which deals with abandonment of service. We do not find this judgment to be relevant in the instant case.

8. Therefore, it has to be held that the applicant's case was covered by the instructions dt. 30.8.1989 and accordingly the stand taken by R-3 that break in service beyond six months cannot be condoned on illness basis has to be accepted as correct. Still, considering the service put in by the applicant, we feel that it would be just and proper if the applicant is taken as a fresh casual mazdoor in preference to other fresh candidates and subject to availability of work.

9. Accordingly the O.A. is disposed of with a direction ^{to} that Respondent No.3 to engage the applicant as a fresh casual mazdoor in preference to other fresh casual labourers as and when there is any requirement. No costs.

P.T. Thiruvengadam
(P.T. Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice. Chairman

Dated 24th Aug., 1993.

grh.

By Registrar (Admn.)

(contd. - 7/-)

O.A. 469/92

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. EIRUVENGADAM : M(A)

Dated: 24/8/1993

ORDER/JUDGMENT:

M.A./R.A./G.A.No.

O.A.No.

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

pvm

