

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.670/92

dt.11-11-1996

Between

B. Mallesha

: Applicant

and

1. Chief General Manager
Telecommunications
Suryalok Complex
Hyderabad

2. Divisional Engineer
Telecommunications
Hyderabad Rural
Hyderabad

Sub-Divnl. Officer
Telecommunications
Secunderabad 3, Hyderabad

: Respondents

Counsel for the applicant

: T. Panduranga Chary
Advocate

Counsel for the respondents

: N.V. Ramana
Addl. CGSC

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HON. MR. JUSTICE M.G. CHAUDHARI, VICECHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

OA.670/92

dt.11-11-1996

Judgement

Oral order(per Hon. Mr. Justice M.G. Chaudhari, VC)

Mr. T. Panduranga Chari for the applicant. Mr. V. Rajeswara Rao for Mr. N.V. Ramana for the respondents.

1. The applicant B. Mallesha was appointed as a part-time sweeper-cum-waterman at the Telephone Exchange, Aziznagar, under Respondent-3 with effect from 2-10-1978, on consolidated pay of Rs.15/- per month. The appointment was styled as temporary. The services of the applicant were, however, continued and his pay was consolidated. The consolidated pay was enhanced to Rs.300/- p.m. and subsequently to Rs.321/- p.m. It is contended by the applicant that he has put in a total service of 14 years and 8 months from 2-10-1978 without break in the aforesaid office. The said period was calculated upto the date of filing of the OA on 5-8-92. The learned counsel for the applicant states that the engagement of the applicant has continued and even now he is working under Respondent-3. It is the case of the applicant that he has acquired intermediate educational qualification and is eligible to hold any Group-D or C post under the respondents (Department of Telecommunications, AP Circle, Hyderabad). He submitted a representation to R-3 initially in the year 1988 and continued to make similar representation in 1989 and 1990 seeking regularisation of his service in as much as he had put in more than seven years of service as on 31-3-1987. As no response was received, he made representations to the Divisional Engineer for the same purpose. To that also there was no response. He, therefore filed the instant OA seeking

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direction to the respondents to regularise his service in Group-D post as regular Mazdoor in the grade of Rs.750-940 with effect from 1-4-1987 or alternatively with effect from 1-8-1989 and to give him all consequential and attendant benefits including arrears of pay, seniority, and further promotion to Group-C post. The applicant has based his application mainly on the decision in the case of one Smt. Sakkubai since according to him she is similarly placed and who has been granted the relief of regularisation by this Tribunal with effect from 1-8-1989. Mr. Panduranga Chari submits that reference to Smt. Sakkubai is to the application in OA.912/92 of this Bench. She belongs to the Postal wing.

2. The respondents resisted the application. They contend that the applicant was engaged as Part-time Sweeper-cum-waterman for half an hour work only per day with effect from 1-3-1979 and consequently as per the DG, Telecom letter No.269-1/89-STN dated 9-5-1989 he is not eligible for regularisation. It is stated that part-time labourers who have been performing duties for four hours or more per day will be eligible for consideration for regularisation. Hence as the applicant has been performing only ^{an} half-hour work from 1-3-1979 to 30-6-1988 and two hours per day with effect from 1-7-1988 onwards he does not come under the purview of consideration for regularisation as per the above mentioned letter of the DG, Telecom. The respondents, however, ^{do not} dispute that the applicant has put in more than 13 years of part-time service. (The reply is dated 11-1-1993).

3. The respondents also submit that under the circular dated 18-11-1989 issued by the DG, Telecom, part-time

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labourer/Casual mazdoor who have put in seven years of continuous service as on 31-3-1987 alone are entitled for consideration for regularisation and consequently the applicant is not entitled to the relief claimed by him. The respondents also submitted that the applicant cannot compare himself with any other part-time labourer said to be working in Mahanagar Telecom District as that is a separate entity. ^{Presumably, he} The ~~presumable~~ reference is to Smt. Sakkubai. On this contention the respondent contend that the OA is liable to be dismissed.

4. It is not in dispute that in so far as Telecommunication Department is concerned, the scheme called "Casual labourers (grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989" has been brought into effect from 1-2-1989. The scheme applies to the Casual labourers employed by the Department of Telecommunication. Para-5 of the Scheme provides in clause-I as follows :

"Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of office observing 5 days week). Such casual labourer will be designated as Temporary mazdoor."

5. Similar scheme has been formulated in the Postal Department of Telecommunication. Clause (i) of that scheme also provides for grant of temporary status on the same lines as provided in Clause (v) (i) quoted from the scheme applicable to Telecommunication Department.

6. Two part-time employees of the Postal Department viz. Smt. Sakkubai and Sri N.J. Ramulu made similar claim for



seeking direction to the Department of Telecommunications to confer on them temporary status pending absorption in Group-D posts in OA.912/92 and OA.961/92. These two cases were referred to Full Bench and the Learned Full Bench decided the cases by a common judgement dated 7-6-1993 (At this Bench) reported at 1993(2)ATJ 197 (Smt. Sakkubai and another vs. Secretary, Ministry of Communications, New Delhi and others). Full Bench was pleased to agree with the view of the Ernakulam Bench of the Tribunal and held as follows :

"the benefit of "Casual Labourer (Grant of Temporary Status and Regularisation) Scheme" in so far as it pertains to the grant of temporary status and further absorption in Group-D posts is equally applicable to part-time casual labourers" and was further pleased to hold that the applicants in those two cases were entitled to be granted relief. This decision was followed by this Bench in OA.1288/93 in the case of Prathap Singh (Postal Deptt) in which it was held that the said applicant ^{who} was a part-time sweeper doing five hour work per day, was entitled to be granted temporary status and there after for consideration of his case for regularisation under the scheme 1991 (applicable to the Postal Deptt.). Against that order a review application was filed which was rejected by this Tribunal by order dated 15-3-1994 in RA.19/94.

7. The position of part-time labourers like the applicants to be considered for grant of temporary status/regularisation, therefore, would ordinarily be ^{governed} ~~granted~~ by the above mentioned decisions and since the case of the applicant is similar to those cases, the applicant is justified in contending that he is entitled for grant of



relief as prayed, by following those decisions. Such a course, however, is not possible to ^{be} ^{-ed} adopt ~~by us~~ in view of the fact that against the Full Bench Decision, in OA.912 and 961 of 1992 the official respondents have preferred Special Leave Petitions in the Hon'ble Supreme Court being SLP(Civil) No.15559 and 15560 of 1993. Supreme Court has been pleased ~~by~~ interim order dated 20-9-1993 to ^{stay} ~~stay~~ the operation of the Full Bench Decision until further orders on the SLP. Likewise, the respondents have preferred civil appeal No. 3318 and 3319 of 1995 to the Supreme Court against the order dated 18-10-1993 of this Bench in OA.1288/93 and order dated 15-3-1994 in RA.19/94 in that case. By interim order dated 6-3-1995 the Supreme Court has been pleased to stay operation of the said order till the disposal of the appeals by the Supreme Court. In view of the stay currently in operation granted by the Hon'ble Supreme Court in both the matters on which reliance is being placed by the applicant in support, it is neither possible to grant the relief to the applicant finally in this OA at this stage nor to proceed to hear the question on its own merits since it is involved in the matters pending before the Supreme Court for its consideration.

8. Mr. V. Rajeswara Rao, therefore, submitted that the hearing of this OA may be adjourned sine die until the result of the matter pending in the Supreme Court will be known. Earlier on that ground, we had adjourned the hearing. However, we think that the matter can be disposed of at this stage taking the note of the order of stay from the Supreme Court in other matters in a manner which will protect the interest of the applicant depending upon the result of the ^{matters in the being} Supreme Court favourable to him.

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9. Hence, we propose to dispose of the present OA in the following manner :

i) A copy of the OA shall be forwarded to Respondent-1 and Respondent-2 respectively alongwith the copy of the order.

ii) On receipt of aforesaid copies, the respondent-1 and respondent-2 shall treat the copies of the OA as representation filed by the applicant to the said respondents claiming the relief from them as prayed in the OA.

iii) The respondent-1 may instruct Respondent-2 to deal with the said representation or may himself decide the same in due course.

iv) Respondent-1 and 2 shall keep the representations pending on their file and shall not take a decision thereon until Hon'ble Supreme Court renders decisions on the question involved in SLP.15559 and 15560 of 1993 (decision ~~either in SLP.15559 or 15560 of 1993~~ and arising out of the Full Bench decision in OA.912 and 961 of 93).

10. The respondents shall dispose of the representation in the light of decision of the Hon'ble Supreme Court when rendered and consistently therewith and communicate the result to the applicant within a period of two months from the date of decision of the Hon'ble Supreme Court.

11. While deciding the representation in the light of decision of the Supreme Court in the event of Full Bench decision being upheld, the respondents shall not deny consideration of the claim of the applicant on the ground that he was not a party to OA.912 and 961 of 1992.

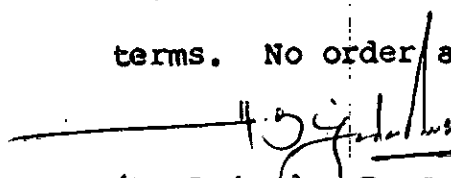
12. Learned counsel for the applicant shall make two copies of the OA available to the office for the purpose of




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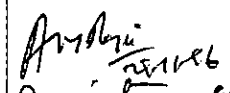
being transmitted to Respondent-1 and Respondent-2 as
representations mentioned above.

13. The OA is disposed of in terms of the aforesaid
terms. No order as to costs.


(H. Rajendra Prasad)
Member (Admn.)


(M.G. Chaudhari)
Vice Chairman

Dated : November 11, 96
Dictated in Open Court


Deputy Registrar (D) cc.

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O.A.670/92.

To

1. The Chief General Manager,
Telecommunications,
Suryalek Complex, Hyderabad.
2. The Divisional Engineer,
Telecommunications, Hyderabad Rural,
Hyderabad.
3. The Sub Divisional Officer,
Telecommunications,
Secunderabad 3, Hyderabad.
4. One copy to Mr.T.Panduranga Chary, Advocate, CAT.Hyd.
5. One copy to Mr.N.V.Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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17/12/96

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

✓
THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND ✓

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

Dated: 11 - 11 - 1996

~~ORDER~~ / JUDGMENT

~~M.A./R.A./C.A. No.~~

in

O.A. No. 670/92

T.A. No.

(w.p.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with directions

~~Dismissed~~

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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No Spare Copy

