

ANNEXURE - I

List of Papers in Original Application No.

791/92

Sl.No. of Papers	Date of Papers Or Date of fol-ing.	Description of Papers.
	<u>Part - I</u>	
	2-11-92	O Original Judgement O.A & Material Papers. Counter Reply Counter

PART - I, PART- II and PART --- iii
Destroyed.

A
20/4/99

Central Administrative Tribunal

HYDERABAD BENCH

O.A. No./ T.A. No.

791/ 1992

A. Kishan

Applicant (s)

Versus

The S.D.O. Phoney, Karimnagar & others

Respondent (s)

Date	Office Note	Orders
15-9-92		<p>Issue notice before admission to the Respondents for filing counter within 6 weeks with an advance copy to the counsel for the applicant. It is made clear that no further extension of time for filing counter will be granted as the matter is stated to be amply covered by the several decision of this Tribunal as also of the Apex Court. List the case on 27-10-92.</p> <p>(HRBS) M(A) (HCJR) M(J)</p>
27-10-92	<p>Mr. C. Suryanarayana</p> <p>Mr. N.R. Reddy</p> <p>Secy</p>	<p>Heard on the two arguments on both side & reserved orders C.A.</p> <p>(HRBS) M(A) (HCJR) M(J)</p>
2-11-92		<p>Judgement- pronounced. The OA is allowed with no order as to costs - orders vide separate sheets.</p> <p>(HRBS) M(A) (HCJR) M(J) (P.T.O.)</p>

NBA 17/9

OA 791/92

Pre-delivery Judgment as per Hon'ble Shri C.J. Roy, Member(J)
for perusal/concurrence please.

H.M.J.

29/10/92

For posting on 2-11-92

Lj

30/10/92

H.M.A.

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

D.A.No. 791/92

~~xxxxxx~~.

Dt. of Decision: 2.11.94

Mr. A.Kishan

Petitioner

Mr. C.Suryanarayana

Advocate for
the Petitioner
(s)

Versus

SDO, Phones and 3 others

Respondent.

Mr. N.R.Devaraj

Advocate for
the Respondent
(s)

CORAM:

THE HON'BLE MR. R.Balasubramanian, Member (Admn.)

THE HON'BLE MR. C.J.Roy, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice-Chairman on Columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

avl/

HRBS
M(A)

HCJR
M(J)

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.791 of 1992

DATE OF JUDGMENT: 2nd NOVEMBER, 1992

BETWEEN:

Mr. A.Kishan

..

Applicant

AND

1. The Sub Divisional Officer,
Phones,
Karimnagar - 505 001.
2. The Telecom District Engineer,
Karimnagar.
3. The Chief General Manager,
Telecom, A.P.,
Hyderabad-500001.
4. The Chairman,
Telecom Commission
(Representing Union of India),
New Delhi-110001.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. C.Suryanarayana

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Sr.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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Page

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDL.)

The applicant herein was recruited and employed as Casual Mazdoor in the jurisdiction of the 1st respondent with effect from 1.6.1986. He was employed for 205 days from 1.6.1986 to 28.10.1987; 300 days from 15.5.1988 to 30.4.1989; 240 days from 1.5.1989 to 30.4.1990; ~~xxxx~~ 360 days from 1.5.1990 to 30.4.1991 and for 231 days from 1.5.1991 to 31.12.1991. He is in employment under the 1st respondent even today.

2. The applicant was paid his daily wage at the rate of 1/30th of the monthly wage of a Group 'D' employee during the entire period of his employment and even now he is being paid accordingly. He states that he registered his name in the District Employment Exchange, Karimnagar under Registration No.01/81/11187 (NPO No.XO110), dated 24.11.1981.

3. The applicant made a representation on 13.1.1992 to the 2nd respondent for absorption and regularisation in service in view of the directions of the Hon'ble Supreme Court in "Daily Rated Casual Labour in P&T Vs. Union of India and others (AIR 1987 SC 2342)" according to which, a casual labourer continuously engaged in service for one year or more has to be absorbed and regularised in the Department in accordance with a scheme to be prepared as directed by the Hon'ble Supreme Court in the Judgment dated 27.10.1987.

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4. The applicant states that there was no reply to his representation dated 13.1.1992. The applicant had drawn the attention of the 4th respondent in his representation, to the 3rd respondent's letter No.TA/LC/1-2/III, dated 21.10.1991 wherein it was requested to issue necessary guidelines on the Judgment dated 27.3.1991 of the Central Administrative Tribunal, Hyderabad Bench in O.A.No.367/88 and batch, between J.L.Babu Rao and others Vs. The Telecom Department etc.

5. The applicant, therefore, filed this application for a relief to direct the respondents herein to absorb him in the Telecom Department and regularise his services as a Group 'D' employee or as a regular Mazdoor according to his turn in the seniority list of Casual Mazdoors of Karimnagar Telecom District.

6. We have heard the learned counsel for the applicant Mr. C.Suryanarayana and the learned Senior Standing Counsel for the Respondents, Mr. N.R.Devaraj.

7. During the course of the arguments, the learned counsel for the applicant produced a copy of the Judgment of the Hon'ble Supreme Court reported in 1992 AIR SCW 2315 (State of Haryana and others Vs. Piara Singh and others).

8. We have perused the Judgment cited by the learned counsel for the applicant. We have also perused the Judgment

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of this Tribunal in O.A.No.367/88 and batch wherein a direction was given to the respondents to prepare a seniority list as per the various instructions issued by the Director General, Telecom and also to re-engage the applicant therein in accordance with their seniority subject to the availability of work and also to extend such other benefits as per the letters issued from time to time by the Director General, Telecom, taking into consideration the Judgment of the Hon'ble Supreme Court, after preparing the seniority list/confirmment of temporary status as per the circulars of the Director General. It was also directed that, "it is open to the applicants in these cases to make a representation in regard to termination of their services despite being no break in service, to the competent authority, who will pass appropriate orders in regard to the said representation. If the applicants are aggrieved thereby, it is open to them to seek appropriate remedies."

9. In the Judgment cited by the learned counsel for the applicant viz., 1992 AIR SCW 2315, it was held that- "It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees as the case may be. As it often said, the State must be a model employer. It is for this reason, it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or adhoc appoint-

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ment is continued for long, the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation."

10. It was also held by the Hon'ble Supreme Court in the case cited supra that, "The Government orders say that all those who have been sponsored by Employment Exchange or have been appointed after issuing a public advertisement alone should be regularised. We see no unreasonableness or invalidity in the same". It was further held that, "employee must have possessed the prescribed qualifications for the post at the time of his appointment on adhoc basis is equally a valid condition." Their lordships further held that, "Blanket direction to regularise all of them on completion of one year's service is unsustainable. Similarly, direction to regularise persons ~~of various categories~~ who are 'workmen' on completion of 4 or 5 years of service is also unsustainable." It was further held that, "Court cannot direct regularisation to help employees who could not satisfy the stipulated conditions." Further, their lordships held that, "Efforts must be made to regularise them as early as possible subject to they being qualified and subject to availability of work."

11. We find that this case is squarely covered by the Judgment of this Tribunal in O.A.No.367/88. Following the

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Copy to:-

1. The Sub Divisional Officer, Phones, Karimnagar-001 .
2. The Telecom District Engineer, Karimnagar.
3. The Chief General Manager, Telecom, A.P. Hyderabad.
4. The Chairman, Telecom Commission (Representing Union of India), New Delhi.
5. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
7. one spare copy.

Rsm/-

[Handwritten signature and date]
19/11/52

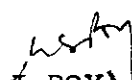
.. 6 ..

Judgment in O.A.No.367/88 and also following the guidelines of the Hon'ble Supreme Court cited supra viz., 1992 AIR SCW 2315, we direct the respondents to prepare a seniority list as per the various instructions issued by the Director General, Telecom, if not prepared, and continue the applicant in ~~xxx~~ service in accordance with his seniority subject to the availability of work and also to extend such other benefits as per the Director General's letters issued from time to time taking into consideration the Judgments of the Supreme Court, after preparing the seniority list/confirmation of temporary status as per the circulars issued by the Director General, Telecom. We also direct the respondents to consider the representation of the applicant dated 13.1.1992 and dispose of the same within a period of 3 months from the date of receipt of a copy of this order.

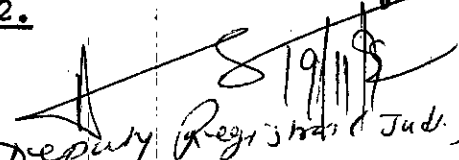
12. The application is accordingly allowed to the extent indicated above. There will be no order as to costs.



(R. BALASUBRAMANIAN)
Member (Admn.)


(C.J. ROY)
Member (Judl.)

Dated: 2nd November, 1992.


Deputy Registrar (Judl.)

Contd. 71-

13/11/92
TYPED BY

O.A. 791/92

CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

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

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 2/11/1992

ORDER/JUDGMENT:

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

in

O.A. No.

791/92

T.A. No.

(wp. No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

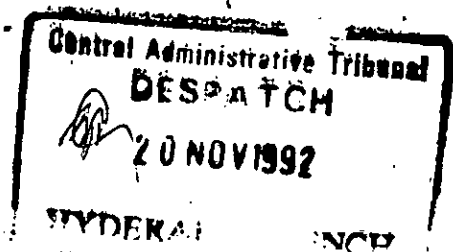
Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

pvm



JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDL.)

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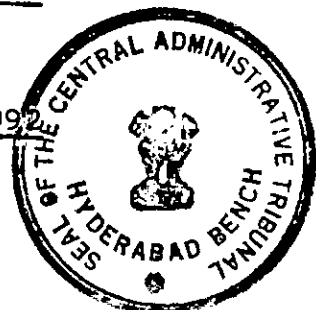
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.791 of 1992

DATE OF JUDGMENT: 2nd NOVEMBER, 1992



BETWEEN:

Mr. A.Kishan

..

Applicant

AND

1. The Sub Divisional Officer,
Phones,
Karimnagar - 505 001.
2. The Telecom District Engineer,
Karimnagar.
3. The Chief General Manager,
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4. The Chairman,
Telecom Commission
(Representing Union of India),
New Delhi-110001.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. C.Suryanarayana

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Sr.CGSC

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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of this Tribunal in O.A.No.367/88 and batch wherein a direction was given to the respondents to prepare a seniority list as per the various instructions issued by the Director General, Telecom and also to re-engage the applicant therein in accordance with their seniority subject to the availability of work and also to extend such other benefits as per the letters issued from time to time by the Director General, Telecom, taking into consideration the Judgment of the Hon'ble Supreme Court, after preparing the seniority list/confirmment of temporary status as per the circulars of the Director General. It was also directed that, "it is open to the applicants in these cases to make a representation in regard to termination of their services despite being no break in service, to the competent authority, who will pass appropriate orders in regard to the said representation. If the applicants are aggrieved thereby, it is open to them to seek appropriate remedies."

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12. The application is accordingly allowed to the extent indicated above. There will be no order as to costs.

CERTIFIED TO BE TRUE COPY

[Signature]
19/11/92
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

ment is continued for long, the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation."

10. It was also held by the Hon'ble Supreme Court in the case cited supra that, "The Government orders say that all those who have been sponsored by Employment Exchange or have been appointed after issuing ~~a~~public advertisement alone should be regularised. We see no unreasonableness or invalidity in the same". It was further held that, "employee must have possessed the prescribed qualifications for the post at the time of his appointment on adhoc basis is equally a valid condition." Their lordships further held that, "Blanket direction to regularise all of them on completion of one year's service is unsustainable. Similarly, direction to regularise persons ~~of a certain class~~ who are 'workmen' on completion of 4 or 5 years of service is also unsustainable." It was further held that, "Court cannot direct regularisation to help employees who could not satisfy the stipulated conditions." Further, their lordships held that, "Efforts must be made to regularise them as early as possible subject to they being qualified and subject to availability of work."

11. We find that this case is squarely covered by the Judgment of this Tribunal in O.A.No.367/88. Following the

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Case Number OA-791192
Date of judgement 2-11-92
Copy made ready 10-11-92
Sgt. M. O. H. 2 (1)

and should have at least four years continuous service from the date of registration with employment exchange.

Para 6—Non-Test Category Posts.

Renumber the existing item (iv) as item (v) and insert the following as item (iv).

(iv) Part-time casual labourers.

Para 10—Seniority.

Renumber the existing item (v) as item (vi) and insert the following as item (v).

(v) Part-time casual labourers.

Order of merit in the test.

Page 253-255, Part II. App. 12 (as inserted by C.S. No. 159 dated 1-8-66 (under Section I. Subordinate units Para 5. Test Category post, Sub para (d) casual labourers :

Add the following words to the last sentence to this sub para :

“and should have at least 2 years continuous service from the date of registration with the employment exchange.”

Appointment of casual labour to regular establishments.

DGP&T No. 204/22/66-STB-I dated 14.5.69.

In continuation of this office letter No. 204/22-66-STB, dated 9-1-67 on the subject mentioned above, I am directed to forward herewith a copy of Ministry of Home Affairs O.M. No. 14/1/68-Estts. (C) dt. 12-2-69 which is self explanatory for information and guidance.

Copy of Office Memorandum No. 14/1/68-Estts. (C), dated 12.2.69 from Government of India, Ministry of Home Affairs.

According to the Ministry's Office Memorandum No. 16/10/66-Estt. (D), dated 2nd December, 1966, casual labourers are eligible for appointment to posts on regular establishment in an office/establishment, provided they have rendered a minimum of two years continuous service as casual labour in the office/establishment to which they are so appointed. A question has been raised whether the two years' spell of service mentioned in the Office Memorandum of 2nd December, 1966, should be strictly continuous or whether some allowance should be given for periods of absence for reasons like those of sickness or a cessation of work which is not due to any fault on the part of the casual labourers or other unavoidable

causes. The matter has been considered and it has been decided that a casual labourer may be given the benefit of the orders of 2nd December, 1966, if he has put in at least 240 days of service as a casual labourer (including broken periods of service) during each of the two years of service referred to above.

3. The Ministry of Finance etc. are requested to bring these instructions to the notice of all concerned.

✓ **Recruitment of casual labour/work charged staff etc. through Employment Exchange.**

DGP&T No. 269/21/68-STB (Pt. I) dated 29-9-72.

I am directed to invite a reference to this office letter No. 269/21/68-STB.I dated 13-8-68 wherein copy of Ministry of Home Affairs O.M. No. 14/22/65-Estt. (D) dated 12-6-65 on the subject above was forwarded with instructions that no casual labour or work charged staff irrespective of the period required should be recruited without the nomination of the Employment Exchange. The difficulties experienced by the P&T Department in obtaining casual mazdoors for work of casual nature in the out of the way places where no employment exchange is located was taken up by the Director General, Employment and Training, New Delhi and after examination it has been agreed that :

(i) Within 16 K.Ms (10 mile) radius of the towns where there are Employment Exchanges casual mazdoors should be recruited through the Employment Exchanges.

(ii) In other places, the P&T Department may make the recruitment of casual mazdoors direct from among persons *registered at the Exchanges and the list of persons* who are recruited must be sent to the Employment Exchange concerned.

(iii) Only such of the persons who have been engaged as per (i) and (ii) above and who have been with the P&T Department for a minimum period of two years including broken periods and have put in at least 240 days of work each year will in future be considered for regular appointments as Linemen etc.

2. These instructions should expeditiously be brought to the notice of all concerned under your control for strict compliance.

3. As it has been reported that a number of casual mazdoors have already been employed in some of the P & T Circles/Distts in accordance with the old procedure outside the agency of Employment Exchange, the case regarding granting of exemption to such mazdoors has also been taken up with Director General of

Employment and Training. It is now proposed to grant exemption to those mazdoors who have been engaged by the P & T Department directly prior to 1-1-1970 and who have been with P & T for a minimum period of two years including broken periods and have put in at least 240 days of work in a year for purpose of their recruitment to the cadre of Lineman. For issue of formal orders by the Director General, Employment and Training, you are requested to intimate number of such casual mazdoors who are to be granted exemption together with their names and other full details (in duplicate) immediately. This information should reach this office by 30-10-1972 at the latest.

4. Copies of D.O. letter No. EE-21/0/72 dated 11-9-72 from Shri Iswar Chandra, Director General, E & T and Jt. Secretary to Shri K. R. Nair, Director (TE) and Shri Nair's DO No. 18-41/72-NCG dated 23-8-72 to which the above is a reply are enclosed for information.

Casual Labour—Recruitment.

Copy of D.O. No. 18-41/72-NCG dated 23.8.72 from Shri K R. Nayar, Director (TE) to Shri Iswar Chandra, DG E&T.

This refers to the discussions we had in your office room on 19-8-1972 regarding recruitment of casual labour for the P&T Department, which was referred to the Ministry of Labour and Rehabilitation under this office U.O. No. 269/21/68-STB. I dated 9.2.1972 acknowledged under your office letter No. EE21(9)/72 dated 3.3.72.

During the discussions, the difficulties experienced by P&T Department in obtaining casual mazdoors for work of casual nature in out of the way places where no Employment Exchange is located, have been indicated. The unrest and dissatisfaction amongst the casual mazdoors who have been with the P&T for quite a few years and who were recruited in accordance with the old practice outside the agency of the Employment Exchange, have also been explained. The situation has now arisen whereby those officials are not having an opportunity of regular absorption as Linemen in accordance with the recruitment rules of P&T Department because they have not been granted exemption of being sponsored by the Employment Exchange. This situation has been brought to the notice of the Minister of Communications who is considerably concerned at the situation. The matter is, therefore, to be expeditiously settled on two considerations, namely:—

(i) to remove the administrative bottlenecks of the P&T Department in getting adequate casual labourers at places where no Employment Exchange is situated and;

(ii) to alleviate the grievances of the casual mazdoors already with the P&T Department for making them eligible for recruitment as Linemen by waiving the conditions of appointment through the agency of the Employment Exchange. After consideration of the various points I presume that the following have been arrived at:

(i) In towns where there are Employment Exchanges, casual mazdoors for the P&T will be obtained through the agency of Employment Exchange.

(ii) In towns where no Employment Exchange is located the P&T Department may obtain casual labourers without the agency of the Employment Exchange but they are to be registered in an Employment Exchange and the list of persons who have been so taken by the P&T, will be furnished to the Employment Exchange along with the registration No.

(iii) For appointment to the cadre of Linemen (who are exclusively from the cadre of casual mazdoors), who have worked on line construction/maintenance work in the P&T for a minimum of 365 days as per recruitment rules of the P&T Deptt. the following procedure has been suggested:

(a) In respect of casual mazdoors, who have come through the agency of the Employment Exchange and who, in turn, will come in the list of persons who are to be considered for selection as Linemen dependent upon the date of registration with the Employment Exchange, names will be furnished by the P&T Department to the Employment Exchange.

(b) In respect of mazdoors, who have been taken directly by the P&T Department, either on the basis of no objection certificate or in places where no employment exchange is located, a similar list as at (a) above will be furnished to the concerned Employment Exchange.

(c) In respect of casual mazdoors, who have been engaged by the P&T Department directly prior to 1-1-1970, exemption from the procedure of recruitment by the DGP&T in cases where such casual labour have been with the P&T Department for a minimum period of 2 years, and having put in at least 240 days of work in a year. The P&T Directorate will intimate separately the approximate number of such casual mazdoors, who are to be granted exemption from the prescribed procedure of appointment through the agency of Employment Exchange.

I request that the above points may kindly be confirmed at an early date and all concerned informed accordingly.

- 6.
- (c) Casual labourers recruited in an office/establishment direct without reference to the Employment Exchange, but working on the date of the issue of the office memorandum should not be considered for appointment to regular establishment, unless they get themselves registered with the Employment Exchange, render, from the date of such registration, a minimum of two years continuous service as casual labour, and are subsequently sponsored by the Employment Exchange in accordance with their position in the register of the Exchange.

Casual Labour—Recommendations of the Pay Commission

DGP&T No. 205/22/66-STB dt. 9-1-67

I am directed to invite a reference to para 3 of Ministry of Home Affairs O.M. No. F. 6/22/60-Est (A) dated 16-2-61, a copy of which was forwarded to you vide this office Memo No. 204/11/61-STB dated 5-5-61, according to which casual labourers, who were initially recruited through the Employment Exchange and have acquired long experience in such employment should be preferred to others for employment to regular establishments including appointment as gangmen, if they are otherwise considered suitable for such appointment. The question as to the period which should be deemed as constituting "long experience" has been under consideration of that Ministry. The Ministry of Home Affairs vide their O.M. No. 16/10/66-Estt (D) dated 2.12.66 (copy enclosed for ready reference) have now decided that a minimum period of two years continuous service as casual labour should be deemed to constitute "long experience". The recruitment as well as absorption of casual labour to Class IV posts borne on the regular establishment will henceforth be made subject to the conditions laid therein. The date of effect of these orders will be 2-12-66, as desired by Ministry of Home Affairs in para 2 of their O.M. dated 2-12-66 forwarded herewith.

Recruitment of Casual Labour, work charged staff etc. through the Employment Exchange.

G.O.I., MHA O.M. No. 14/22/65-Estt (D) dt. 12-6-68

The undersigned is directed to say that in paragraph 6 of this Ministry's O.M. No. 71/49-DGS (Appts) dated the 11th December, 1949, it was laid down that all vacancies in Central Government Establishments, other than those filled through the Union Public Service Commission should be notified to the nearest Employment Exchanges and that no Department or office should fill any vacancy by direct recruitment unless the Employment Exchanges certified that they were unable to supply candidates.

7

It has been brought to the notice of this Ministry the Directorate General of Employment & Training, Ministry of Labour & Employment, that contrary to the above instructions some Ministries/Departments viz. the C.P.W.D., Posts & Telegraphs, are still resorting to direct recruitment of casual labour, work charged staff and other such posts, under the impression that these posts are not covered under the O.M. under reference. It is hereby clarified that the O.M. cited above does not make any distinction between casual work charged staff and other such staff. All vacancies arising under Central Government Offices/Estts. irrespective of the nature and duration are not only to be notified but also to be filled through the National Employment Service, unless a different arrangement in this regard has been agreed to in consultation with this Ministry and D.G. P&T.

It is accordingly requested that the Ministry of Finance, etc. may once again bring the aforesaid instructions to the notice of all the appointing authorities working under their administrative control.

A copy of the instructions issued in this regard may be endorsed to this Ministry as well as to Directorate General of Employment & Training, Shram Shakti Bhavan, New Delhi.

Recruitment of casual labour/work charged staff etc. through the Employment Exchanges.

DGP & T No. 269/21/68-STB I dated 13-8-68

I am directed to invite reference to the enclosed copy of Ministry of Home Affairs O.M. No. 14/22/65-Estt. (D) dated 12.6-68 on the subject mentioned above and to request you to issue necessary instructions in the matter for information of the respective concerned authorities under your administrative control clearly stating that no casual labour or work-charged staff irrespective of the period required should be employed without the nomination of the Employment Exchange. In case, however, some difficulty is experienced, and the employment exchange is unable to provide required number of persons and some different arrangement is desired, a letter to that effect should be obtained from the Employment Exchange. In all such circumstances prior approval of this office may be sought for.

2. It is not necessary that only the employment exchange in the headquarters of the recruiting unit should be addressed. If need be all the Employment Exchanges located within the jurisdiction of the recruiting unit should be addressed.

3. A copy of the instructions issued in this regard may be endorsed to this office expeditiously, so as to reach this office by the 25-8-1968.

Appointment of part-time casual labour to regular establishment

DGP&T No. 160-25/66-SPB-1 dt. 25-4-69 received under D.G. P&T letter No. 47-4/71-SPB-1 dt. 27-1-71.

I am directed to enclose a copy of M.H.A. OM No. 16/5/68-Estt (D) dated 5-7-68 on the above subject for information and necessary action. The orders will not be applicable to E.D. Employees, Non-departmental Telegraphists and short duty Telephone Operators. The part time casual labourers may be placed after the casual labourers in the matter of their preference for appointment to Class IV posts. MHA's OM dated 2-12-66 mentioned in their OM dated 5-7-68 circulated under P & T Directorate's letter No. 204-22/66-STB dated 9-8-61 and 16-9-61 were incorporated under this Directorate letter No. 204-11/61-STB dated 25-8-61 and 9-10-61 respectively.

Amendment to Part II of Appendix 12 of P&T Manual Volume IV as inserted by C.S. No. 159 dated 1-8-66 is forwarded herewith.

MHA O.M. No. 16-5/68-Estt (D) dated 5.7.68

As the Ministry of Finance are aware casual labourers who have rendered a minimum period of two years continuous service can be appointed to Class IV posts, borne on regular establishment which are required to be filled by direct recruitment, subject to certain conditions vide para 2 of this Ministry's Office Memorandum No. 16/10/66-Estt (D) dated 2nd December, 1966. A question has been raised as to whether casual labourers appointed on part-time basis should also be made eligible for appointment to Class IV posts borne on regular establishment, which are required to be filled by direct recruitment. It has been represented that, in certain offices casual labourers are employed for a number of years on part time basis, the work load there being not such as to justify their employment on whole time basis. It has accordingly been decided that casual labourers appointed on part-time basis may also be made eligible for the concession sanctioned in para 2 of the aforesaid Office Memorandum No. 16/10/66 Estt (D) dated 2-12-1966. Accordingly, with effect from the date of the issue of this O.M. part-time casual labourers shall be eligible for appointment to Class IV posts borne on the regular establishment, which are required to be filled by direct recruitment, provided they were appointed through Employment Exchange and had acquired experience of a minimum of four years continuous service of part-time casual labour in the office-estt to which they were appointed through Employment Exchange. These part-time casual labourers who were recruited in an office/estt. direct, without reference to the Employment Exchange and who are working on the date of issue of this Office Memorandum should not be considered for appointment to the

regular establishment, unless they (i) get themselves registered with the Employment Exchange (ii) render from the date of such registration a minimum of four years continuous service as part-time casual labour and (iii) are subsequently sponsored by the Employment Exchange in accordance with their position in the register of the Exchange.

2. The orders contained in this Ministry's Office Memorandum No. 4-9/61-Estt (D), dated 9th August, 1961 and 16th Sept., 1961 granting certain age concession to casual labourers in the matter of appointment to posts borne on regular establishment will be applicable also to part-time casual labourers. In other words, such labourers should be allowed to deduct from their actual age the period spent by them as part-time casual labourers and if, after deducting this period, they are within the maximum age limit prescribed for the service or post in the regular establishment they should be considered eligible in respect of maximum age. Broken periods of service rendered as part-time casual labourer will also be taken into account for the purpose of age relaxation for appointment to the regular establishment, provided that one stretch of such service is for more than six months.

3. Ministry of Finance etc. are requested to bring these instructions to the notice of their attached and subordinate offices.

Amendments

Page 253-255, Part II, Appendix 12 (as inserted by C.S. No. 159 dated 1.8.66) under Section I Subordinate units Para 5. Test Category Posts.

(I) Renumber the existing (iv) as item (v) and insert the following as item (iv).

(IV) Renumber the existing sub-para (e) as sub-para (f) and insert the new sub para (e) as follows :

(e) Part time casual labourers :

They will be selected and appointed up to the number of vacancies in the order of merit in which they pass the literacy test. They will be entitled to the benefit of having the service rendered by them in the department deducted from their age at the time of absorption in a regular post as outside candidate for arriving at age limit of 24. All broken periods of service rendered as part time casual labour shall be taken into account for this purpose provided that one stretch of that service is for more than six months. They should, however, apply through the Employment Exchange if they were originally not employed through that agency

unscheduled employments as are fixed for comparable scheduled employments under the Central Government, under the Minimum Wages Act. Or, if it is considered that the rates should bear some relationship to the local rates, they may be fixed with reference to the minimum wages prescribed by the respective State Governments for comparable scheduled employment.

1.3 All casual labour under the Central Government including those to whom the minimum wages law is not applicable, should have the benefits and safeguards provided by rules, 1950, relating to weekly holidays, working hours, night shifts and payment for over-time.

1.4 Long experience as casual labour should be taken into consideration while making selections for appointment to regular establishment.

2. The President has been pleased to decide that except where there are statutory rules or provisions in support of the existing practice, the recommendations of the Pay Commission regarding Casual Labour should be accepted.

3. Of the two alternatives mentioned in recommendation (2) referred to in paragraph 1, the latter alternative may be uniformly adopted by all the Ministries/Departments employing casual labour, namely, that the casual labour should be remunerated at market rates subject to the condition that where the market rates are lower than the minimum wages fixed by respective State Govts. for comparable scheduled employments, the wages shall be the minimum wages fixed by the State Governments.

4. Detailed instructions on recommendations No. (4) mentioned in para 1 would be issued in due course by the Ministry of Home Affairs.

5. The Ministries and Departments employing casual labour are requested to ensure that the terms and conditions of employment of casual labour are regulated accordingly.

6. These orders take effect from the date of issue.

Casual Labour to regular establishments—Recommendations of the Pay Commission regarding.

Endt. DGP&T No. 204/11/61-STB dt. 5-5-61.

A copy of the Ministry of Home Affairs Office Memo No. F.6/52/60-Est (A) dated the 16th February, 1961 is in continuation of this office endorsement No. 14-7/61-P&A dated the 9th February 1961.

2. It has been decided that recruitment of casual labour should henceforth conform to the conditions for recruitment of staff of corresponding grades in the regular establishment so that at the time of their eventual absorption in the regular establishment the difficulties like relaxation of recruitment procedure or upper age limit etc. may not arise.

Copy of Memorandum No. F.6/52/60-Est. (A) dt. 16-2-61 from Ministry of Home Affairs. (Fdd. under DG P&T No. 204/11/61-STB, dt. 5-5-61)

The undersigned is directed to say that the Pay Commission have in Chapter XLVI of their Report, recommended inter alia that long experience of casual labour should be taken into consideration while making selections for appointment to regular establishments, including those of gangmen.

2. This recommendation of the Pay Commission has been accepted by Government (vide Ministry of Finance O.M. No. F 8 (2)-Est. (Spl)/61 dated the 24th January 1961).

3. It has accordingly been decided that casual labourers, who were initially recruited through the Employment Exchange and have acquired long experience in such employment, should be preferred to others for appointment to regular establishments, including appointment as gangmen, if they are otherwise considered suitable for such appointment.

4. Casual labourers, who were not initially recruited through the Employment Exchange, should however, be required to get themselves registered with the Employment Exchange and take their chance for appointment to regular establishments in accordance with their position on the registers of the Employment Exchange.

5. It should, however, be ensured that when casual labourers, who were initially recruited through the Employment Exchange are appointed to regular vacancies, the resultant vacancies are notified to the Employment Exchanges and filled through them.

Casual labourers—Absorption in the regular establishment—Relaxation of age limit

DGP&T No. 204/11/61-STB dated 25-8-61

I am directed to invite a reference to this office endorsement No. 204-11/61-STB dated the 5th May, 1961 forwarding a copy of Ministry of Home Affairs office memo. No. F.6/52/60-Est (A) dated the 16th February, 1961 and to say that a question has been raised whether casual labourers should be allowed to deduct the period of service rendered by them in the Department from their age at

the time of absorption. It has been decided by Government that casual labourers may be allowed to deduct the total service rendered by them in the Department from their age at the time of absorption and if the resultant age be within the prescribed upper age limit they may be deemed to satisfy the condition of upper age limit for appointment to regular establishment.

DGP&T No. 204-11/61-STB dated 9-10-61

In continuation of this office letter of even number dt. 25-3-61 I am directed to say that broken periods of service rendered as casual labourer may also be taken into account for the purpose of age relaxation for appointment in regular establishment provided that one stretch of such service is for more than six months.

Casual Labour—Recommendation of the Pay Commission

DGP&T No. 14-55/59-TE dated 13-6-1961

I am directed to refer to this office letter No. 14-7/61-P&A dated the 9th February, 1961 wherein Govt's decisions on Pay Commission's recommendations regarding Casual Labour have been decided therein, inter alia, that long experience as Casual Labour should be taken into consideration while making selections for appointment to regular establishments. A question has been raised as to in which cadre the Casual Labour in our Department should be absorbed. It has since been decided that the Casual Labour can be absorbed as Mazdoors in the regular establishment in our Department.

2. It is also pointed out that Heads of Telephone Districts have been taking steps to de-casualise "Labour". Reference is invited to letter No. 5-16/54-TE dated the 29th June, 1959 to all Heads of Telephone Districts. In some Districts there are ex-company cadres of Mazdoors with conditions of employment and service benefits as laid down in the orders for departmentalisation of ex-company staff or orders issued subsequently in this behalf.

3. It will therefore be necessary to designate the Mazdoors in the regular Posts and Telegraphs cadre as "Mazdoors" while those already taken over from ex-company conditions of service as Mazdoors (ex-company).

4. The required number of posts in the cadre of Mazdoors may be created by the authority competent to create such posts. It is, however, emphasized that the number of posts should be commensurate with the work so as to ensure that the officials appointed in these posts can be usefully and advantageously employed throughout the year keeping fully in view the spirit of the recomm-

endations and the orders issued by the Govt. of India in this regard. It should be ensured that there is no wastage of man power.

Clarification

DGP&T No. 269/13/63-STB dated 4-3-63

2. This Ministry has already issued orders relaxing the upper age limit for appointment of casual labourers who have been brought on to regular establishment, as a result of the recommendations of the Second Pay Commission. These orders will also be applicable in the case of work-charged staff who are brought on to the regular establishment, as the term casual labourers covers persons on the work-charged establishment. The D.G. P&T presumption in the above note is therefore confirmed. E

Casual labour—Recommendation of the Pay Commission

M.H.A., O.M. No. 16/10/66-Estt (D) dated 2.12.66

According to this Ministry's Office Memorandum No. F/6/62/60-Estt (A) dt. 16th February, 1961 on the above subject, casual labourers recruited initially through the employment exchange and having acquired long experience in such employment should be preferred to others for appointment to regular establishments, including appointment as gangmen, if they are otherwise considered suitable for such appointment.

2. A question has been raised as to the period which should be deemed as constituting "long experience" in terms of the above mentioned Office Memorandum. The matter has been examined carefully and it has been decided that minimum of two years continuous service as casual labour should be deemed to constitute long experience in terms of the said office memorandum. Accordingly with effect from the date of issue of this office memorandum, appointment of casual labourers to Class IV posts, borne on the regular establishment, which are required to be filled by direct recruitment, will be made subject to the following conditions:—

- (a) No casual labourer not registered with the Employment Exchange should be appointed to posts borne on the regular establishment.
- (b) Casual labourers appointed through Employment Exchange and possessing experience of a minimum of two years continuous service as casual labour in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment in the office/establishment, without any further reference to the employment exchange.

RECRUITMENT

Relaxation of procedure of recruitment through the Employment Exchange.

G.O.I., MHA OM No. 71/121/58-CS (C) dated 19.2.59.

As the Ministry of Finance, etc. are aware, recruitment to posts under the Government of India is made through the agency of the Employment Exchange except where appointments are required to be made in consultation with the Union Public Service Commission or by transfer or deputation, or by departmental examinations or selections recognised for the purpose. In cases in which it is considered expedient to waive the procedure of recruitment through the Employment Exchanges, proposals to this effect are made to the Ministry of Home Affairs. Recently, this Ministry have delegated to the Ministries the power to dispense with the procedure of inviting nominations from the Employment Exchanges in types of cases specified in this Ministry's Office Memorandum No. 71/88/58-CS (C), dated the 24th October, 1950. The matter has been considered further and it has been decided that the power to waive the Employment Exchange procedure may in all cases be exercised by the Ministries themselves in consultation with the Directorate General, Resettlement and Employment. No proposal for such waiver should however be made to the Directorate General, Resettlement and Employment without the express approval of an officer not below the rank of Joint Secretary in the Ministry. In cases in which the Directorate General, Resettlement and Employment disagrees, a reference will be made to the Ministry of Home Affairs.

Casual Labour—Recommendations of the Pay Commission.

DGP&T No. 14-7/61-P&A dt. 9.2.61.

In Section III of Chapter XLVI of their report the Pay Commission have made the following recommendations in regard to the employment of casual labour and regulation of the terms and conditions of their employment :—

1.1 Casual employment should be restricted to work of truly casual nature and in order to ensure that this is done there should be a general review of the existing position.

1.2 Same rates of wages should be fixed for casual labour.

Pl. Post OA 282/82

with OA 1226/82 to the

bench under the head

"For being mentioned"

in tomorrow's list.



24/8/82

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CA 792 P2 with MA 1226 P2

Date	Office Note	Orders
10.8.93		<p>By order Mr. C. Suryanarayana is Counsel for the applicant and Mr. N.R. Dhanabalan, Sr. Counsel for the respondent.</p> <p>O.A. ^{and MA} reserved for Judgment.</p> <p>HPTT MB1 HVRMS VC</p> <p>Post on 31-9-93</p> <p>HABH M(A) HVRMS VC</p> <p>By order</p> <p>By order 27/9/93</p>
21-8-93		<p>Post on 31-9-93</p> <p>HABH M(A) HVRMS VC</p> <p>By order</p> <p>By order 27/9/93</p>
8/9/93		<p>Post on 9/9/93</p> <p>HPTT MB1 HVRMS VC</p> <p>By order</p> <p>By order 9/9/93</p>
9-9-93	MA 1226/92 Direction Petition.	<p>This MA is not pressed as the arguments in the OA are over and as the matter is reserved for Judgment. The MA is accordingly dismissed. OA is reserved for Judgment. CAY</p> <p>HPTT M(A) HVRMS VC</p>

CA 9/9/93

0A-792/92

Date	Office Note	Orders
5-5-93		<p>Post on 22-6-93.</p> <p>HPTT 91(A) HVNRJ VC</p> <p>By order.</p> <p><i>[Signature]</i> Registrar</p> <p>pon on 28/6/93.</p> <p><u>HPTT</u> <u>HVNRJ</u> mcs vc</p>
23/6/93		<p>By order.</p> <p><i>[Signature]</i> DR(J)</p> <p>Post on 12-7-93.</p> <p>HPTT 71(A) HVNRJ VC</p> <p>By order.</p> <p><i>[Signature]</i></p>
28-6-93		<p>Post on 15-7-93.</p> <p>HPTT MCA HVNRJ VC</p> <p>By order.</p> <p><i>[Signature]</i></p>
13-7-93		<p>Post on 16-7-93 Forenoon.</p> <p>HPTT 77(A) HVNRJ VC</p> <p>By order.</p> <p><i>[Signature]</i></p>
15-7-93		<p>By order.</p> <p><i>[Signature]</i></p>

[Signature] 15/7/93

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Date

Office Note

Orders

22/7/83

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29/7/83

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By order.

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2-8-93

Post on 9-8-93.

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By order

~~9/8/93~~

OA 792/92

Date	Office Note	Orders
8-2-93		on the request of applicant Council post on 9-2-93 HVNRS VC HRBS M(A) 2 9.2.1993 ADMIT. Notice. Post the M.A.No. 1226/92 along with the OA on 2.3.1993. HVNRS J V.C. HRBS M(A)
16-2-93	Service RLs: H06 Served Before the Registrar for counter -	No counter is filed for RLs. H06. Put on 15-4-93 for filing counter. Registrar
2-3-93		Post the case on 30-3-93 for orders. HVNRS VC HRBS M(A) By order [Signature]

R. Cant
7/10/2

Central Administrative Tribunal

HYDERABAD BENCH

(4)

O.A. No./T.A. No.

19

Versus

O.A. 792/92

Applicant (s)

Respondent (s)

Date	Office Note	Orders
2-4-93		<p>Post on 6-4-93</p> <p>HUNRT VC</p> <p>HRBS M(A)</p> <p>By order</p> <p><i>[Signature]</i></p>
8-4-93		<p>Post on 28-4-93 for final hearing.</p> <p>HUNRT VC</p> <p>HRBS M(A)</p> <p>By order</p> <p><i>[Signature]</i></p>
<u>28/4/93</u>		<p>Post on 3/5/93.</p> <p><u>HUNRT</u> M(A)</p> <p><u>HUNRT</u> VC</p> <p>By order</p> <p><i>[Signature]</i></p>
<u>4/5/93</u>		<p>By order</p> <p>Registrar</p> <p>Post on 5/5/93.</p> <p><u>HUNRT</u> M(A)</p> <p><u>HUNRT</u> VC</p> <p>By order</p> <p><i>[Signature]</i></p> <p>Reg. order</p>

Central Administrative Tribunal

HYDERABAD BENCH

O.A. No./ ~~FA~~ No.

792/1992

M. Murali

Applicant (s)

Versus

S.D.O. Teluon, Bhoomavaram & Others

Respondent (s)

Date	Office Note	Orders
15-9-92		<p>Issue notice before admission to the Respondents for filing counter within 6 weeks with an advance copy to the counsel for the applicant. It is made clear that no further extention of time for filing counter will be granted as the matter is stated to be amply covered by xxx several decision of this Tribunal as also of the Apex Court. List the case on 27-10-92.</p> <p>(HRBS) M(A) (HCJR) M(J)</p> <p>At the request of applicants counsel perhan 18.11.92</p> <p>On a request by Mr. C. Sengnarayana. for the applicant, list- the case on 25-11-92 for orders.</p> <p>(HRBS) M(A) (HCJR) M(J)</p>
27-10-92		
18-11-92		

17/12/92

(P.T.O.)

CA 792/92

5

Date	Office Note	Orders
25.11.92		<p>At the request of applicant counsel per day 30.11.92</p> <p><i>[Signature]</i> <i>[Signature]</i></p> <p><i>[Signature]</i> 2</p>
30.11.92		<p>None for the applicant present.</p> <p>List the case on 18.12.92</p> <p><i>[Signature]</i> HARB M(A)</p> <p><i>[Signature]</i> HCTR M(J)</p>
18.12.92		<p>when the case is called none for the applicant present</p> <p>List the case on 21.1.93</p> <p><i>[Signature]</i> <i>[Signature]</i></p> <p><i>[Signature]</i> 2</p>
21-1-93		<p>Further 2 weeks time is given to the respondents to enable them to file the counter.</p> <p>List the case on 8-2-93</p> <p>on that day the admission matter will be decided even if the counter is not available.</p> <p><i>[Signature]</i> HARB H(A)</p> <p><i>[Signature]</i> HCTR HCTJ</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

ORIGINAL APPLICATION NO. 792 OF 1992

Shri M. Murali Applicant(s)

Versus

The SDO, Telicoma, Dharmavaram

25/9/92

Respondents(s).

This Application has been submitted to the Tribunal

by Mr. C. Surya Narayana Advocate

under section 19 of the Administrative Tribunal Act, 1985
and same has been scrutinised with reference to the points
mentioned in check list in the light of the provisions
contained in the Administrative Tribunal (procedure)
Rules, 1987.

The Application has been in order and may be listed
for admission on 25/9/92

C. Surya Narayana
Scrutiny officer.

514/9/92
Deputy Registrar (J)

Particulars to be examined	Endorsement as to result of examination
8. Has the index of documents been filed and has the paging been done properly?	y
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application?	y
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal?	y
11. Are the application/duplicate copy/spare copies signed?	y
12. Are extra copies of the application with annexures filed.	
(a) Identical with the original	y
(b) Defective	
(c) Wanting in Annexures	2
No...../Page Nos.....?	
(d) Distinctly Typed?	
13. Have full size envelopes bearing full address of the Respondents been filed?	y
14. Are the given addresses, the registered addresses?	y
15. Do the names of the parties started in the copies, tally with those indicated in the application?	y
16. Are the translations certified to be true or supported by an affidavit affirming that they are true?	y
17. Are the facts for the case mentioned under item No. 6 of the application.	
(a) Concise?	y
(b) Under Distinct heads?	2
(c) Numbered consecutively?	
(d) Typed in double space on one side of the paper?	y
18. Have the particulars for interim order prayed for, stated with reasons?	y

may be taken
only

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

APPLICANT (S) M. Marah

RESPONDENT (S) The SDO, Telangana - Pharamagand 564

Particulars to be examined

Endorsement as to result
of examination

1. Is the application Competent ? 4
2. (a) Is the application in the prescribed form ? 4
 (b) Is the application in paper book form ? 4
 (c) Have prescribed number complete sets of the application been filed ? }
- Is the application in time ? 4
 If not by how many days is it beyond time ? 2
 His sufficient cause for not making the application in time, stated ? 2
4. Has the document of authorisation / Vakalat name been filed ? 4
5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D./I.P.O. to be recorded. 4
6. Has the copy/copies of the order (s) against which the application is made, been filed ? -12
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ? 4
 (b) Have the documents referred to in (a) above duly attested and numbered accordingly ? 4
 (c) Are the documents referred to in (a) above neatly typed in double space ? }

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

INDEX SHEET.

O.A. NO 792 of 1992

CAUSE TITLE M. Muzali

VERSUS

S.D.O. Telwar, Bhosmaragam & 5 others

Sl. No	Description of Documents.	Page No
1.	Original Application	1 to 5
2.	Metirial papers.	6 to 13
3.	Vakalat	1
4.	Objection sheet	
5.	Speære Copies 6 (Six)	
6.	Covers. 6	

By a direction to the Respondents to regularise the service of the Applicant as a regularised employee according to his turn in the Seniority list.

Bridgely

U/S 19 of the A.T. Act, 1985
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH :: HYDERABAD

O.A. No. 792 of 1992

BETWEEN

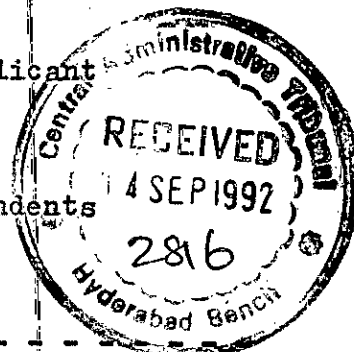
M. Murali

Applicant

and

The Sub-Divisional Officer,
Telecom, Bharmavaram & ors

Respondents



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Hyderabad,
14-09-'92.

C. S. ...
COUNSEL FOR APPLICANT

Received
By
14.9.92
P. N. R. Dewing
Sr. asst

(7)

U/S 19 of the Administrative Tribunals Act, 1985
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH, HYD'BAD

O.A. No. 792 of 1992

BETWEEN

M. Murali, S/o M. Narappa, aged about 23 years, Casual Mazdoor of Anantapur Telecom District, his address for service of notices being that of his counsel M/S C. Suryanarayana and P. Bhaskar, Advocates, # 1-2-593/50, SRINILAYAM, Sri Sri Marg, Gaganmahal, Hyderabad-500 029

Applicant

a n d

1. The Sub-Divisional Officer, Telecom, Dharmavaram - 515 672,
2. The Sub-Divisional Officer, Telecom, Hindupur - 515 201,
3. The Telecom District Manager, Anantapur - 515 050,
4. The General Manager, Telecom, Hyd'bad Area, CTO Compound, Secunderabad-500 003,
5. The Chief General Manager, Telecom, Andhra Pradesh, Hyderabad-500 001,
6. The Chairman, Telecom Commission, (representing Union of India), Sanchar Bhawan, New Delhi-110 001 ...

Respondents

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made:

The application is to seek directions to the respondents herein to absorb the applicant in service on regular basis according to his turn in the seniority list among Casual Mazdoors of Anantapur Telecom District and, pending the same, to grant him temporary status besides paying him wages as directed by the Supreme Court, i.e. at 1/30th of the monthly wages of a Group 'D' employee, for the period of his employment past and present and for the weekly off days after adjusting therefrom the wages already paid to him.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order he is seeking is covered by Sec. 14 (1) of the A.T. Act, 1985. The application is, therefore, within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The applicant further declares that inspite of the Hon'ble Supreme Court's directions in AIR 1987 SC 2342 declaring that a Casual Mazdoor in service continuously for one year is entitled to absorption into regular establishment of the Department and the applicant's representation for payment of the arrears of wages, no action has been taken by the respondents till now. Hence this application is within the limitation prescribed in Sec. 21 ibid.

4. Facts of the case:

The applicant passed SSC in April, 1985 and unable to continue higher education due to poverty, registered his name in the

District Employment Exchange at Anantapur under registration No. 5142/86, dt. 24-8-1986 so that his name might be nominated for suitable employment. Even after three years, his name was not nominated for any employment. Therefore, he offered himself as Casual Mazdoor in the Telecom Department in the jurisdiction of the SDOT, Dharmavaram, i.e. the 1st respondent.

(4.2) After verifying the applicant's qualifications and date of birth as well as his employment registration number, the 1st respondent engaged the applicant as Casual Mazdoor w.e.f. 1-4-1989 as per the details in Annexure A-1, the applicant's working days particulars upto 31-12-1989. It is clear from the said Annexure A-1 that the applicant's name was included in the Muster Rolls and ^{he was} employed for a total of 244 days. But he was discharged from service w.e.f. 1-1-1990 ^{without notice/compensation}. Thereafter, the applicant was not engaged for one and half years, i.e. till the end of June, 1991. Therefore, the applicant migrated to the neighbouring Hindupur Sub-Division in the jurisdiction of the 2nd respondent.

(4.3) Though the applicant was engaged in Hindupur Sub-Division, his name was not included in any Muster Roll. He was paid his wages on ACG-17 receipts. In that Sub-Division, he was employed for a total of 116 days between 1-7-91 to 15-12-91.

(4.4) W.e.f. 16-12-91 the applicant again migrated to the 1st respondent's jurisdiction as he was not engaged in the 2nd respondent's jurisdiction. He was engaged under the 1st respondent's jurisdiction as follows:

S.No.	Period	M.R. No.	W.O. No.	No. of Days
(a)	16-12-91 to 31-12-91	1/1736	69/17	16
(b)	January, 1992	2/1740	95/17	26
(c)	February, 1992	42/1740	17/95	29
(d)	March, 1992	14/1740	7/18	25
(e)	April, 1992	9/1723	26/18	30
(f)	July, 1992	22/1726	64/18	30
(g)	August, 1992	(Not Available)		30
NOTE:- Not employed during 5 & 6/1992				

(4.5) During the period during which the applicant was employed in the 2nd respondent's jurisdiction, he was not paid for weekly off days (which are the 7th, 14th, 21st and 28th of each month).

(4.6) Throughout his employment in both Dharmavaram and Hindupur Sub-Divisions, the applicant was paid daily wage at the rate of Rs. 11-50 per day but not at the rate of 1/30th of the monthly wage of a Group 'D' employee as directed by the Supreme Court in DAILY RATED CASUAL LABOUR IN P&T v. UNION OF

INDIA AND OTHERS (AIR 1987 SC 2342). During the said periods, the applicant is entitled to wages as follows:

(a) 1-4-89 to 30-6-89	60 days At Rs. 32.25 per day	Rs. 1935-00
(b) 1-7-89 to 31-12-89	184 days at Rs. 33.50 per day	Rs. 6164-00
(c) 1-7-91 to 31-12-91	132 days at Rs. 40-00 per day	Rs. 5280-00
(d) 1-1-92 to 30-6-92	110 days at Rs. 42.75 per day	Rs. 4702-25
(e) 1-7-92 to 31-8-92	60 days at Rs. 45.75 per day	Rs. 2745-00
	Total	Rs. 20826-25

As against the said amount of Rs. 20,826-25, the applicant was paid only Rs. 6,279-00 at the rate of Rs. 11-50 per day for all the above days notwithstanding the increases in the wages from time to time. The applicant submits that he is entitled to the difference in the wages together with interest thereon at the bank rates as withholding of wages is illegal and opposed to the provisions of the Payment of Wages Act.

(4.7) As submitted above, ~~that~~ upto 31-12-1989, the applicant was employed for a total of 244 days in the first year of his service; he was not at all engaged in service during 1990 but discharged from service arbitrarily in violation of statutory provisions and during the one year after re-engagement from 1-7-1991, he has been engaged till now for a total of ~~XXXXXX~~ 302 days till the end of August, 1992. Thus, the applicant is entitled to absorption and regularisation in the Department as a Group 'D' employee or as a Regular Mazdoor by virtue of the fact that he was in continuous service for one year (with not less than 240 days in each year) for two years and, pending the same, for grant of temporary status ~~in~~ in accordance with the DoT's orders dt. 7-11-1989.

(4.8) The applicant submits that he was not paid the difference in his wages inspite of representation in Nov., 1991 and even though he has fulfilled the conditions prescribed for regularisation in the Department, he has not been regularised so far nor was he granted temporary status pending his absorption and regularisation. Absorption and regularisation of the service of a Casual Mazdoor as well as grant of temporary status to him pending such absorption and regularisation are duties cast on the respondents which they failed to discharge. ~~XXXXXXXX~~ The applicant's junior is being continued in service. As such, he has no other alternative or equally efficacious remedy except to approach this Hon'ble Tribunal in the exercise of its jurisdiction under Sections 19 and 22 of the A.T. Act, 1985 for the redressal of his grievances.

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5. Grounds for relief with legal provisions:

(5.1) The Hon'ble Supreme Court directed in AIR 1987 SC 2342 to pay wages to workmen on par with the minimum wages which are admissible to regularly employed workers. Following the same this Hon'ble Tribunal by its order dt. 23-11-89 in O.A. No. 688/89 between M. DAMODARUDU AND OTHERS and THE S.D.O.T., TADPATRI AND OTHERS declared that every Casual worker is entitled to 1/30th of the monthly wage of a Group 'D' employee and directed the respondents therein to pay the wages accordingly.

(5.2) By the said judgement in AIR 1987 SC 2342, the Hon'ble Supreme Court declared that a Casual Worker in continuous employment for a year or more is entitled to absorption and regularisation in service.

(5.3) Pending his absorption, the Casual Worker, who could not be absorbed and regularised in service for want of vacancies, has to be granted temporary status according to the DoT's orders dt. 7-11-89.

(5.4) The applicant may be permitted to urge other grounds at the final hearing.

6. Details of remedies exhausted:

The applicant declares that a duty is cast on the respondents to absorb and regularise the service of a Casual Mazdoor in continuous employment for a year or more and when such absorption and regularisation cannot be ordered, they are bound to grant temporary status as per the ~~mand~~ mandate of the Hon'ble Supreme Court. Moreover, the applicant's representation dt. ~~30~~ 30-11-91 for payment of arrears of his wages has been ignored so far. Hence t h i s application.

7. Matters not previously filed in or pending with any other Court:

The applicant further declares that he had not previously filed any application, W.P. or suit before any court or authority or any other Bench of this Hon'ble Tribunal for the reliefs for which this application is made.

8. Reliefs sought:

In view of the facts and submissions in paras 4 and 5 supra, the applicant prays that this Hon'ble Tribunal may be pleased to declare

- (a) that he is entitled to absorption and regularisation in the Department either as a Group 'D' employee or as a Regular Mazdoor according to his turn in the seniority list of Casual Mazdoors of Anantapur Telecom District published and/or yet to be prepared and published,
- (b) that he is entitled to grant of temporary status pending his absorption/regularisation in the Department as above,
- (c) that he is entitled to the difference in his wages as per details in para (4.6) above; and
- (d) that he is entitled to interest on the unpaid (or illegally withheld) wages at the rates at which banks charge interest on advances/loans given by them, calculating

the interest from the dates from which the wages are payable to the applicant

and accordingly to direct the respondents to absorb/regularise the applicant according to his turn in the seniority list aforesaid and, pending the same, to confer temporary status on him besides paying him the arrears of his wages as prayed above.

9. Interim order, if any, prayed for:

Pending the same, the applicant prays for directions to respondents to continue to engage him as at present, i.e. if work is available and if his junior(s) is/are engaged; otherwise the applicant will suffer irretrievable loss and injury.

10. Particulars of the IPO in r/o application fee:

IPO No. 04-451053 dt. 27-08-92 for Rs. 50/- and No. 02-516515-
dt. 12-9-92 for Rs. 5/-

11. List of Enclosures:

- (a) IPO mentioned above,
- (b) Annexures as per index; &
- (c) Vakalat.

Rs. 55/- A
I.P.O. / B.C.D.D. / Removed

VERIFICATION:

I, M. Murali, s/o M. Narappa, aged about 23 years, Casual Mazdoor under the 1st respondent, temporarily come down to Hyd'bad, do hereby verify that the contents of paragraphs 1 to 4, 6, 7, 10 and 11 are true to my personal knowledge, that the contents of the remaining paragraphs are believed to be true on legal advice and that I have not suppressed any material fact.

Hyderabad,
13-09-'92.

M. Murali
SIGNATURE OF APPLICANT

C. B. S.
ADVOCATE FOR APPLICANT

MAZDOOR, M. MURALI S/O MULLA SATHURANARASPA, MUDIGUBBA (POST &
MIDN) D.S. NO. 1/23, HINDUPUR (ROAD)

Name of the Mazdoor	Work No.	M. R. No.	From date To date	Name of the days	Name of the work	Signature of M.R. Office	Paining office
M. MURALI	003 30.1.4.89	03 11946 22	1.4.89 to 30.4.89	30	Cable work D. V. M.	P. M. V. S. S. D. O. T. and L. I. P. A. Jayaram A. T. P.	
M. Murali	006/14	13436 19	1.6.89 to 30.6.89	30	A. T. P. B. Ramakrish- Tadimari na Reddy. Brakedown S. I. O. T. T. R	-do-	-do-
M. MURALI	018/14	6/13433	1.7.89 to 30.7.89	31	Cable work D. V. M.	-do-	-do-
M. MURALI	042/14	4/13474	1.8.89 to 31.8.89	31	Line work D. V. M.	-do-	-do-
M. MURALI	055/14	13474/16	1.9.89 to 30.9.89	30	Cable work D. V. M.	-do-	-do-
M. MURALI	068/14	16233/2	1.10.89 to 31.10.89	31	Cable work D. V. M.	-do-	-do-
M. MURALI	100	10/16234	1.11.89 to 30.11.89	30	Cable work K. D. R.	S. Ghousa Modhin Gantur Kurnool	-do-
M. MURALI	18/15	16239/2	1.12.89 to 31.12.89	31	P. T. P M. T. C work and K. Y. D. N. P. C work	K. Rama- chandra - Reddy	-do-
Total :-			244				

Total Day: 244 (Two hundred and forty four days only)

SIGNATURE M. Murali
CASUAL MAZDOOR
% SDOT, DHARMAVARAM

T/c

Adhikari

Counsel for applicant

CASUAL LABOUR - TEMPORARY STATUS WITHOUT REGULARISATIONDGT Orders No.269-10/89-STN dated 7-11-89.

Subsequent to the issue of instructions regarding regularisation of casual labourer vide this office letter no.269-29/87-STN dated 18.11.83 a scheme for conferring temporary status on casual labourers who are currently employed and have rendered a continuous service of at least one year has been approved by the Telecom. Commission. Details of the Scheme are furnished in the Annexure. (Published in last issue).

2. Immediate action may kindly be taken to confer temporary status on all eligible casual labourers in accordance with the above Scheme.

3.1 In this connection your kind attention is invited to letter no.270-6/84-STN dated 30.3.85 wherein instructions were issued to stop fresh recruitment and employment of casual labourers for any type of work in Telecom. Circles/Districts. Casual labourers could be engaged after 30.3.85 in Projects and Electrification Circles only for specific works and on completion of the work the casual labourers so engaged were required to be retrenched. These instructions were reiterated in d.o.letters No.270-6/84-STN dated 22.4.87 and 22.5.87 from Member (Pers.) and Secretary of the Telecom. Department respectively. According to the instructions subsequently issued vide this office letter no.270-6/84-STN dated 22.6.83 fresh recruitment of casual labourers even for specific works for specific periods in Projects and Electrification Circles also should not be resorted to.

3.2 In view of the above instructions normally no casual labourers engaged after 30.3.85 would be available for conferring temporary status. In the unlikely event of there

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being any cases of casual labourers engaged after 30.3.85 requiring consideration for conferment of temporary status, such cases should be referred to the Telecom. Commission with relevant details and particulars regarding the action taken against the officer under whose authorisation/approval the irregular engagement/non-retrenchment was resorted to.

3.3 No casual labourer who has been recruited after 30.3.85 should be granted temporary status without specific approval from this office.

4. The scheme furnished in the Annexure has the concurrence of Member (Finance) of Telecom. Commission vide SMF/78/89 dated 27.9.89.

5. Necessary instructions for the expeditious implementation of the Scheme may kindly be issued and payment of arrears of wages relating to the period from 1.10.79 arranged before 31.12.89.

T/c
Adm/82

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO. 688 of 1989

Date of Order: 23.11.89

M.Damodarudu and 9 others

Versus

The Sub Divisional Officer,
 Telecom, Tadipatri and
 4 others

Applicant

.. Respondents

...

For Applicants: Mr.C.Suryanarayana

For Respondents: Mr.E.Madan Mohan Rao, SC for Department

..

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER (JUDICIAL)

(Judgment delivered by Shri B.N.Jayasimha, Vice Chairman)

....

1. This is an application filed by nine Casual Mazdoors (applicants 1 to 9) and All India Telecom Employees' Union, Line Staff and Class IV, Anantapur District branch, represented by its District Secretary (Applicant no.10) in a representative capacity. They have filed this application seeking a direction to the respondents to pay them daily wages equal to the per day wage of a Group 'D' employee.

2. The applicants state that they have been working as Casual Mazdoors in Telephone Department having been engaged on various dates from 1982 onwards. They say that

contd....2

they are being paid wages at the reduced rates of Rs.12/- per day on the ground of break in service, etc. The 16 applicants have given the following particulars relating to their engagement, wages, etc:

<u>Name of the Applicant</u>	<u>Period for which wages were paid at lower rates and other remarks, if any:</u>				
1. M.Damodarudu	Paid at Rs.12-00 per day for June & July, 1986 and from December, 1987 to May, 1988				
2. M.Ramalinga Reddy	<u>Month</u>	<u>Days</u>	<u>Due</u>	<u>Paid</u>	<u>Balance Due</u>
	April '89	18	580-00	207-00	Rs.373-00
	May '89	9	281-00	103-00	Rs.177-00
	June '89	30	965-00	345-00	Rs.623-00
	July '89	5	156-00	61-00	Rs. 95-00
	Sept. '89	30	968-00	360-00	Rs.608-00

				Total	Rs1876-00

3. K.Rajaiah

Being paid @ Rs.12-00 per day from August, 1986, though entitled to wage @ 1/30th of monthly wage of a Group 'D' employee.

4. K.Surya Prasad

Being paid @ Rs.12-00 per day from 1-4-1989 onwards, though entitled to wage 1/30th of monthly wage of a Group 'D' employee.

5. M.V.Raghava Reddy

Being paid only @ Rs.12-00 per day from 1-4-89 onwards --do--

6. N.Rangappa

Being paid only @ Rs.12-00 per day from 1-5-89 onwards -- do --

7. B.Rangaswamy

Paid @ Rs.12-00 per day for the period March to Sept.1988 and being paid only at Rs.12-00 per day from 1-4-1989 onwards -- do --

8. L.Jayarami Reddy

Being paid only @ Rs.12-00 per day from 1-2-89 onwards -- do --

9. M.Ranganayakulu

Being paid @ Rs.12-00 per day from 1-4-89 onwards --do--

10. Applicant no.10 is Divisional (Anantapur district) Union representing the above and a large number of other applicants, some of whom are being paid at a rate lower than the full rate @ 1/30th of the wage of a Group 'D' employee. Hence, a declaration is necessary that any Mazdoor is entitled full wage @ 1/30th of the wage of a Group 'D' employee for the days for which he was engaged &

They, therefore, contend that non-payment of wages equal to the per day wage of a Group 'D' employee is in violation of the directions of the Supreme Court

contd...3

in Daily Rated Casual Labour employed under P&T Department
Vs. Union of India (AIR 1987 SC 2342).

3. We have heard the learned counsel for the
applicant Shri Suryanarayana and Shri Madan Mohan,
Learned standing counsel for the department.

4. The Supreme Court in Daily Rated Casual Labour
Vs. Union of India (AIR 1987 SC 2342) directed as
follows:

"...to pay wages to the workmen who are employed
as casual labourers belonging to the several
categories of employees in the Postal and Tele-
graphs Department at the rates equivalent to the
minimum pay in the pay scales of the regularly
employed workers in the corresponding cadres
but without any increments."

It follows, therefore, that every Casual Labour is
entitled to 1/30th of monthly wage of a Group 'D'
employee. We accordingly allow the application and
direct the respondents to pay ^{the} wages as directed by
the Supreme Court in the above referred case. The
arrears due to them from the date reduced wages were
paid will also be calculated and disbursed within
six weeks from the date of receipt of this order.

5. In the result, the application is allowed with
the above direction. No costs.

Sd/- X X X X
(P. V. JAYASINHA)
Vice Chairman.

Sd/- X X X X
(J. KARASINHA MURTHY)
Member: (J)

CERTIFIED TO BE TRUE COPY

Date: 21/11/87
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

// True copy //

T/c
21/11/87

Annexure A-4

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18

SUPREME COURT DIRECT DEPARTMENT OF TELECOM TO TAKE BACK
ALL CASUAL MAZDOORS WHO HAVE BEEN DISCHARGED AFTER 30.3.1985

In the Supreme Court of India Civil Original Jurisdiction

Writ Petition(C) No.1280 of 1989

Ram Gopal & Others

Versus

... Petitioners

Union of India & Others

... Respondents

With

Writ Petition Nos.1246, 1248 of 1988, 176, 177 and 1248 of 1988

Sant Sing & Others etc. etc.

... Petitioners

Versus

Union of India & Others

... Respondents

Order

We have heard counsel for the petitioners. Though a counter-affidavit has been filed, no one turns up for the Union of India even when we have waited for more than 10 minutes for appearance of counsel for the Union of India.

The Principal allegation on these petitions under Article 32 of the Constitution on behalf of the petitioner is that they are working under the Telecom Department of the Union of India as casual labourers and one of them was in employment for more than four years while the others have served for two or three years. Instead of regularising them in employment their services have been terminated on 30th September, 1988. It is contended that the principle of the decision of this Court in DAILY RATED CASUAL LABOUR vs. UNION OF INDIA & ORS. [1988(1) SCC 122] squarely applies to the petitioners though that was rendered in the case of casual employees of Posts and Telegraphs Department. It is also contended by counsel that the decision rendered in that case also related to the Telecom Department as earlier Posts & Telegraph Department was covering both sections and now Telecom has become a separate department. We find from paragraph 4 of the reported decision that communications issued to General Managers of Telecom have been referred to which supports the stand of the petitioners.

By the said Judgement this Court said:

"We direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the posts and Telegraphs Department."

We find that though in paragraph 3 of the writ petition, it has been asserted by the petitioners that they have been working for more than one year, the counter-affidavit does not dispute that position. No distinction can be drawn between the petitioners as a class of employees and those who were before this court in the reported decision. On principle, therefore, the benefits of the decision must be taken to apply to the petitioners. We accordingly direct that the respondents shall prepare a scheme on a rational basis for absorbing as far as practicable the casual labourers including the petitioners who have continuously worked for more than one year in the Telecom Department and this should be done within six months from now. After the scheme is formulated on a rational basis, the claim of the petitioners in terms of the scheme should be worked out. The writ petitions are disposed of accordingly. There will be no orders as to costs on account of the fact that the respondents counsel has not chosen to appear and contact at the time of hearing though they have filed a counter-affidavit.

Sd/-

(RANGA NATH MISRA) J

New Delhi

April 17, 1990

Sd/-

(KULDEEP SINGH) J

//True copy//

Adh 2

Annexure A-4

12

18

SUPREME COURT DIRECT DEPARTMENT OF TELECOM TO TAKE BACK
ALL CASUAL MAZDOORS WHO HAVE BEEN DISCHARGED AFTER 30.3.1985

In the Supreme Court of India Civil Original Jurisdiction

Writ Petition(C) No.1280 of 1989

Ram Gopal & Others

Versus

... Petitioners

Union of India & Others

With

... Respondents

Writ Petition Nos.1246, 1248 of 1988, 176, 177 and 1248 of 1988

Sant Sing & Others etc. etc.

Versus

... Petitioners

Union of India & Others

... Respondents

Order

We have heard counsel for the petitioners. Though a counter-affidavit has been filed, no one turns up for the Union of India even when we have waited for more than 10 minutes for appearance of counsel for the Union of India.

The Principal allegation on these petitions under Article 32 of the Constitution on behalf of the petitioner is that they are working under the Telecom Department of the Union of India as casual labourers and one of them was in employment for more than four years while the others have served for two or three years. Instead of being September, 1988. employment their service principle of the decision of this Court in DAILY RATED CASUAL LABOUR vs. UNION OF INDIA & ORS. [1988(1) SCC 122] squarely applies to the petitioners though that was rendered in the case of casual employees of Posts and Telegraphs Department. It is also contended by counsel that the decision rendered in that case also related to the Telecom Department as earlier Posts & Telegraph Department was covering both sections and now Telecom has become a separate department. We find from paragraph 4 of the reported decision that communications issued to General Managers of Telecom have been referred to of the petitioners.

By the said Judgement this Court said:

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(RANGA NATH MISRA) J
New Delhi
April 17, 1990

Sd/-
(KULDEEP SINGH) J

//True copy//

N. K. Singh

From:

M. Murali,
S/c M. Narasappa,
Mudigubba - 515 511,
Anantapur District.

To

The Sub-Divisional Officer,
Telecom,
Dharmavaram - 515 572.

Sir,

Sub:- Payment of arrears of wages - Request -
Regarding,

.....

I humbly submit that during the 9 months period from 1.4.1989 to 31.12.1989, I was employed as Casual Mazdoor in your Sub-Division for a total of 244 days, except in the month of May, 1989. I was employed in the working parties of Sri P.M. Veeranna, LI (F), ATP (April, 1989), of Shri B. Ramakrishna Reddy, SI (o), DMV (June to Oct., 1989), of Shri Ghous Mohiuddin, Cable splicer at Dharmavaram (Nov., 1989) and of Shri K. Ramachandra Reddy LI (P), DMV (Dec., 1989). During that period, I was paid daily wage of only Rs.11.50 per day. I learn that the daily wage payable is equal to 1/30th of the monthly wage of a group 'D' employee and that it is equal to around Rs.35/- per day during the said period.

2. I am enclosing my working days particulars for ready reference.

3. I request you to be kind enough to arrange to calculate the difference in my wages and to pay the same to me at a very early date. I shall ever remain grateful to you for the same.

Thanking you,

Mudigubba,

Yours faithfully,

30-11-1991.

(M. MURALI)

Casual Mazdoor.

Copies submitted to:-

1. The Telecom Distt. Manager, Anantapur,
2. The General Manager, Telecom,
Hyderabad Area, CTO, Sec'bad,
3. The Chief General Manager, Telecom, AP,
Hyderabad,
4. The Chairman, Telecom Board, New Delhi

for favour of
information and
early necessary
action please.

T/c
Shubh


and he signed on some Muster Rolls his name as M.Murali.

4. It is submitted that the applicant was paid the wages for the days he worked as per the prevailing rates of the Department. The applicant was engaged for 8 months during 1.4.1989 to 30.4.89 and 1.6.89 to 31.12.89 in Dharmavaram subdivision.

5. In reply to Para 4, it is submitted that the applicant's averments that he was not sponsored for suitable employment by the District Employment even after 3 years of Registration his name in the Employment Exge, Ananthapur, that the Deptt. of Telecom is no way concern with it. It is submitted that the applicant offered his services to the Deptt. as such, he was engaged as casual mazdoor in Dharmavaram sub division for 240 days to complete the targetted works. The applicant was engaged purely on temporary basis due to shortage of mazdoors with the condition that he would be deemed to have been terminated after completion of works. The applicant was discharged from the Muster ^Roll after issuing due notice vide 1st respondent's memo no: E.2-9/III/88-89/86 dtd 5.11.89. The applicant was disengaged from Muster Roll, as the works for which he was engaged were completed. Not only the applicant but several similarly placed casual mazdoors were disengaged vide the above memo dtd 5.11.89 as there is no work for them.

6. The allegation of the applicant that he was employed for 116 days during 1.7.1991 to 15.12.91 in Hindupur subdivision is denied. In this connection, the A.E.(Admn), o/o T.D.M. Ananthapur vide Lr no E16-16/III/32 dtd 9.2.93, has reported that Sri M.Murali was never engaged by the SDOT, Hindupur and no expenditure had been incurred on this mazdoor as per ACE-2 Accounts. He was

2nd page
corrs


Attestor

विधि अधिकारी
Law Officer

मु. मं. प्र. दूरसंचार अं. प्र., क कार्यालय
O/o Chief General Manager, Telecom R.P.,
हैदराबाद Hyderabad-500 001


Deponent

सहायक महाप्रबन्धक (प्रशासन)
Asst. General Manager (Admn)
मुख्य महा प्रबन्धक दूरसंचार विभाग
O/o the Chief General Manager Telecom
आंध्र प्रदेश, हैदराबाद-500 001,
Andhra Pradesh, Hyderabad-500 001

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A.No. 792/92

Between

M.Murali

Applicant

and

Sub-Divisional Officer, Telecom
Dharmavaram and 5 others

Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF ALL THE RESPONDENTS

I, K. Gopala Krishna, s/o K.R.J. Rao aged 53 years
occupation Government Service, r/o Hyderabad do hereby solemnly
and sincerely state as follows.

1. I am working in the 5th Respondents' Office, as such
I am well acquainted with the facts of the case. I am filing
this reply affidavit on behalf of all the respondents, as I
have been authorised to do so. I have read the O.A. and
deny all such material averments made therein except those
that are specifically admitted hereunder. The applicant is
put to strict proof of such of those averments which are not
specifically admitted.

2. It is submitted that the applicant, Sri M. Murali was
engaged as Casual Mazdoor in Dharmavaram sub division w.e.f.
1.8.89. The applicant, vide 1st respondent's Lr no: E.2-9/III/
88-89 dtd 2.5.89, was informed that his engagement is of
temporary nature and it is likely to continue for 2 or 3
months and his services will be terminated at any time without
notice after completion of works. He was further informed that
the days worked by him during the above period will not be consi-
dered for his regular absorption in the Department.

3. It is submitted that the applicant accepted to the
above conditions and worked as casual mazdoor in the Deptt.
The applicant while enumerating his name in the Muster Roll
he gave his name as M. Muralidhar Naidu and signed as such

1st page
Corrs


Attestor


Deponent

बिधि अधिकारी
Law Officer
मु. म. प्र. दूरसंचार अं. प्र., क कार्यालय
O/o Chief General Manager, Telecom A.P.
हैदराबाद Hyderabad-500 001

सहायक महाप्रबन्धक (प्रशासन)
Asst. General Manager (Admin)
मुख्य महा प्रबन्धक दूरसंचार का कार्यालय
O/o the Chief General Manager Telecom
आंध्र प्रदेश, हैदराबाद-500 001.
Andhra Pradesh, Hyderabad-500 001

(21)

neither engaged on Muster Rolls/ ACG-17 by the 2nd respondent.

7. It is submitted that due ^{to} modernisation, induction of high technology and progressive removal of overhead lines by replacing them with under ground cable there has been a reduction in the workload carried by the casual mazdoors. The applicant herein was disengaged in 1989 and there is no work in the Deptt.

In view of the above submissions there are no merits in O.A. and it is liable to be dismissed. Hence the Hon'ble Tribunal may be pleased to dismiss the O.A. with costs.

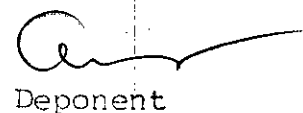
VERIFICATION

I, K.Gopala Krishna do hereby state that what all stated in the above Counter Affidavit are true to the best of my knowledge and information. Hence verified on 10th day of Aug 1993.

Deponent

3rd & last page
corrs


Attestor


Deponent

विधि अधिकारी
Law Officer

मु. म. प्र. दूरसंचार आ. प्र., क कार्यालय
O/o Chief General Manager, Telecom A.P.
हैदराबाद Hyderabad 500 001

सहायक महाप्रबन्धक (प्रशासन)
Asst. General Manager (Admin)

मुख्य महा प्रबन्धक दूरसंचार का कार्यालय
O/o the Chief General Manager Telecom
आंध्र प्रदेश, हैदराबाद-500 001,
Andhra Pradesh, Hyderabad-500 001

TELECOMMUNICATIONS : : ANDHRA PRADESH
 Chief General Manager, Telecom., A.P. Circle, Hyderabad-1
 No: TA/LC/1-1/III, dated at HD-1, the 19th February, 1993

To

All the General Managers, Telecom., A.P. Circle
 All the Telecom. District Managers, A.P. Circle
 The Director (IT), Hyderabad
 All the Telecom. District Engineers, A.P. Circle
 All the Divisional Engineers, Telecom., A.P. Circle
 All the Sub-divisional Officers, Telecom., A.P. Circle
 All the Asstt. Engineers (Groups), A.P. Circle
 The Chief Superintendent, CTO, Hyderabad
 All the Sr. Superintendents/Superintendents, Telegraph
 Traffic, A.P. Circle
 The Principal, RTTC, Secunderabad
 The A.E (Stores), CTSD, Secunderabad

Sub:- Applicability of I.D. Act, 1947 to Casual
 Labourers of Dept. of Telecom. - Court
 Cases filed by Casual Mazdoors - Reg

Of late, it is noticed that the Casual Mazdoors are being retrenched without following the prescribed procedure. The Casual mazdoors are mainly disengaged for want of work. Due to non-observance of the procedure as laid down in I.D. Act, 1947, the casual mazdoors are filing the court cases against the department. These cases are increased day by day resulting in avoidable litigation to the Department. The department is losing all such cases for not following the prescribed procedure before terminating the services of casual mazdoor.

2. In this connection, a reference is invited to the DOT New Delhi. Lr. No. 271-29/92-ST, dt. 23-10-92 endorsed vide this office letter No. TA/RE/20-1/Rlgs, dt. 18-11-92.

3. In view of the above, I am directed to instruct that the procedure as laid down in I.D. Act, various rulings and instructions issued on the subject from time to time may be strictly adhered to while disengaging the casual mazdoors.

4. While giving notice of termination under I.D. Act it has to be made sure that the casual mazdoor proposed to be terminated is junior most in the seniority list and that fact should necessarily be mentioned in the notice.

5. The following legal procedure shall be complied-with, while retrenching casual mazdoor who has been in continuous service for not less than one year.

- 1) The seniority list of all workmen from which the retrenchment is contemplated shall be pasted on a notice board in a conspicuous place in the premises of the industrial establishment.

Contd....2.

- ii) The workman proposed to be retrenched shall be juniormost person, i.e. last come first go - first come last go.
- iii) a) The workman has been given one month's notice in writing or he is paid in lieu of such notice wages for the period of notice.
b) The workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.
- iv) The notice shall contain the reasons for retrenchment such as the work for which he was engaged has been completed etc.
- v) This proposed retrenchment shall be informed to the Secretary to the Government of India, Ministry of Labour, New Delhi in Form-P (Annexure enclosed).
- vi) If the workman prefers any representation in writing against his proposed retrenchment, the same shall be considered along with the connected records and decided by the next higher authority within a reasonable time.
- vii) The retrenchment order shall be served within three days from the date of expiry of one month's notice/disposal of representation of the worker, if any made.
- viii) The workman shall be paid compensation along with the retrenchment order. The compensation means payment of fifteen days wages for each completed year of service or any part thereof in excess of six months.
- ix) The full postal address of the workman proposed to be retrenched shall be obtained from him in writing and kept on record to re-engage him in fresh works, if any, as per his turn.

6. Any lapse resulting in Court case for not following the due procedure before terminating services of the casual mazdoor, serious view will be taken against the officer concerned.

The contents of this circular may be brought to all concerned. Receipt of this letter may kindly be acknowledged.

Encl : As above

(D. VENKATARAMAN)
Asstt. General Manager (Admn)
for CGM Telecom/A.P. Circle
Hyderabad-500 001

Copy to:-

The General Manager, Telecom., Hyderabad Telecom. District,
Hyderabad for favour of information & necessary action.

(ZLP)

Facts and legal position, etc. M. Murali .. Applicant
in v.

O.A. No. 792 of 1992

The SDO, Telecom,
Dharmavaram & ors. ..Respdts.

1. (a) Applicant passed SSC
- (b) He is about 23 years old
- (c) He registered his name in the Employment Exchange at Anantapur, vide Regn. No.5142/86 dt.24.8.86
- (d) The 1st Respondent verified the above facts to be true and engaged the applicant as Casual Mazdoor w.e.f. 1.4.89 but formalised the "recruitment" by his Lr. No.E.2-9/III/88-89 dt. 2.5.89 addressed to "M. Muralidhara Naidu", vide Enclosure-I hereto. The 1st respondent stated that "the work is temporary nature. It is likely to continue 2 or 3 months only. Your service will be terminated at any time without any notice. Your working days will not be taken to account for future employment in the Deptt. and the days will not serve any purpose for regularisation in the Deptt."
- (e) The 1st respondent gave notice Enclosure-II (Memo No.E.2-9/III/88-89/86 dt. 5.11.89 to 61 Casual Mazdoors mentioned therein, including "8. M. Muralidhara Naidu, S/o M. Narappa" and "36. M. Murali, S/o M. Narayanappa" stating that they were "engaged on temporary works on M/Rs with the condition that their services will be terminated w.e.f. 1.12.89 on completion of works"; but it was not implemented probably in respect of all the Mazdoors and, in any case, in so far as the applicant is concerned who was retrenched only w.e.f. 1.1.1990 (vide Annexure A-1 filed with the O.A.)

By 31.12.89, the applicant was employed for 244 days. Yet he was not given notice nor paid

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one month wages in lieu of notice as per the mandatory provisions of Sec. 25-F of the ID Act, 1947. Needless to say the other mandatory statutory provisions have also not been complied with. Even the DG's order dt. 1.10.84 (Enclosure-III) which directs that either one month notice be given or one month's wages be paid in lieu thereof has also not been implemented by the 1st respondent.

Termination of the applicant's service w.e.f. 1.1.90 is, therefore, vitiated ab initio, illegal, null and void. As such, he should be deemed to be in service even after 31.12.89 and entitled to backwages, vide the judgement of a 3-Judge Bench of the Supreme Court in SURENDRA KUMAR VERMA AND OTHERS v. CENTRAL GOVT. INDIA TRIBUNAL-cum-LABOUR COURT, NEW DELHI AND ANOTHER, 1981 SCC (L&S) 16 and the Supreme Court's judgement of 2-Judge Bench in MOHANLAL v. MANAGEMENT OF BEL, 1981 SCC (L&S) 478.

According to a Division Bench of the Punjab & Haryana High Court in THE KAPURTHALA CENTRAL CO-OPERATIVE BANK LTD., KAPURTHALA v. THE PRESIDING OFFICER, LABOUR COURT, JULLUNDHAR, 1984 Lab IC, 974,

"The inbuilt policy in the Act for drawing the dividing line at 240 days of service is that if a workman had satisfactorily continued for a period of 240 days, as envisaged in these provisions, he is as good as having been accepted permanently (though this term does not figure in the Act) in employment. Now, the employer thwarting that process, on no fault of the employee, would be an unfair labour practice..... especially when the management has nothing against him with regard to his work or conduct when the work of the workmen was satisfactory

and others had been recruited in their place once the workmen were held entitled to reinstatement, then the logical consequence was that they should have got their full backwages "

2. The 1st respondent sent his parawise comments on the OA to 3rd respondent (TDM, Ananthapur) under his Lr. No.E.2-9/5/91-92/118 dt.16.10.92 (Enclosure -IV). The 1st respondent admitted in his comments on para 1 that the applicant was employed from 1.4.89 onwards, **"due to shortage of mazdoors"**. (From a perusal of Enclosure-II it is clear that the alleged shortage was of the order of 60 mazdoors.) He alleged that while enumerating his name in the M/Rs the applicant gave his name as M. Muralidhara Naidu and signed accordingly though he signed only as M. Murali in other M/Rs. In his comments on para 3 the 1st respondent admitted that the applicant was employed for 8 months, i.e. in April, 1989 and from 1.6.89 to 31.12.89 and worked for 244 days. The 1st respondent stated in his comments on para (4.2) that question of compensation does not arise as he was given one month's notice about his termination. Notwithstanding the Supreme Court's declaration dt. 17.4.90 in RAMGOPAL AND OTHERS v. UNION OF INDIA AND OTHERS in WP(C) No.1280/89 and batch of cases (about which the 1st respondent was fully aware as he was a party to the decision dt. 27.3.91 in OA No.367/88 and batch of cases decided by this Bench of the Hon'ble Tribunal) the 1st respondent stated that "there are no statutory provisions to regularise the services of the mazdoors who have not been sponsored for employment as mazdoors". Thus he wants to ignore and skip over the Supreme Court's dicta and the dicta of the High Courts and of this Hon'ble Tribunal.

3. The 1st respondent clarified in his Lr. No.E.2-9/V/91-92/133, dt. 17.12.92 (Enclosure-V) that "M. Muralidhara Naidu, S/o Narappa" and " M. Murali, S/o M. Narayanappa" mentioned at S. No.8 and 36 in his Memo. Enclosure-II dt. 5.11.89 **" are one and the same"**.

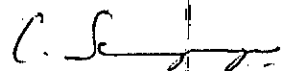
4. Vide para (4.3) of the OA, the applicant was employed for 116 days on bill works in Hindupur Sub-Division from 1.7.91 to 15.12.91. His name was not

22

included in M/Rs. The days of his employment are certified by the SIs incharge of the working party, Vide Enclosure VI (3 pages). Vide para (4.4) he was employed from 16.12.91 to 30.9.92 except in May and June, 1992. At the time the O.A. was filed the M/R and work order particulars of August 1992 were not furnished to the applicant. He was in service ~~for~~ for full 30 days during September, 1992. He was employed by the JTO, Kalyandurg under the 1st respondent. Thus from 1.7.91 he was in continuous employment for 332 days. Thus during the year preceding 30.9.92, the applicant was in service for 274 days, i.e. for more than 240 days.

5. The JTO, Kalyandurg under the jurisdiction of the 1st respondent employed the applicant on 21.9.92 but the applicant fell down from a 20 ft. high pole at the 3rd KM from Atmakur towards Anantapur and the JTO took him for treatment to the Govt. Hospital at Kalyandurg where he was treated and discharged on the same day but advised complete rest from 27.9.92 to 1.10.92, vide Enclosure-VII (a) and VII (b) respectively. The period during which he was advised rest was treated as duty.

6. In the circumstances it is just and necessary that this Hon'ble Tribunal may be pleased to allow the OA as prayed for and also grant him such other relief as this Hon'ble Tribunal deems just and proper in the circumstances of the case.



COUNSEL FOR THE APPLICANT.

Please also see
Rajendra Kumar ~~Kumar~~ ^{Kindra}
U
Jelli Administrator
1985 SCC (L&S) 131

DEPARTMENT OF TELECOMMUNICATIONS.

From
Sub-Divisional Officer,
Telecom, Dharmavaram.

To
Sri M. Muralidhara Naidu
S/o. M. Narayana

E2-9/III/88-89/ dated at Dharmavaram the

2-5-89

Subj- Engagement of mazdoor on temporary basis - reg.

Sri M. Muralidhara Naidu, SIT/LIT

has engaged you in M. No. 50/19/86 work on No. 50/19/86
for Dharmavaram. The work is temporary nature. It is likely to continue 2 or 3 months only.
Your service will be terminated any time without any notice.
Your working days will not be taken to account for future employment
in the department and the days will not serve any purpose for
regularisation in the department.

Please acknowledge the receipt of this letter in the
application copy.

S. T. Narayana
Sub-Divisional Officer,
Telecom., Dharmavaram.

M. Muralidhara Naidu

DEPARTMENT OF TELECOMMUNICATIONS

Office of the Sub-Divisional Officer, Telecom., Dharmavaram-515 672)
 Memo No. E2-9/114/88-89/86 dated at Dharmavaram the 5th November 1989.

The following casual mazdoors who have been engaged temporarily on works on M/Rs with the condition that their services will be terminated on completion of works in this Sub-Division are hereby terminated w-e-f- 1-12-1989 on completion of works.

Sl.No.	Name of casual mazdoor	Father's name.
1	S/S	3
1.	K. Mastan Vali	K. Hussain Sahab
2.	D. Ramachandra	D. Ganguleppa
3.	P. Chandrasekhar	P. Nayayana
4.	N.S. Mahaboob Basha	N.S. Sadiq Dasha
5.	P. Ganganna	P. Ramanna
6.	M. Chennakesavulu	M. Ramanna
7.	D. Krishna Reddy	D. Narayana Reddy
8.	M. Muralidara Naidu	M. Narappa
9.	D. Mabusab	D. Budan Sahab
10.	K. Halappa	K. Kangaiah
11.	Y. Munappa	Y. Chinna Ganganna
12.	G. Raghunatha Reddy	G. Rami Reddy
13.	B. Nagaraju	B. Ramaiah
14.	B. Pavindra	B. Narasimhulu
15.	K.C. Chandrasekhar	K.C. Narasimhulu
16.	V. Lakke Naik	V. Thavere Naik
17.	S. Venkata Naik	S. Swamy Naik
18.	T. Mallikharjuna Reddy	T. Narayana Reddy
19.	K.J. Michel Sunder Raj	K. Joseph
20.	G. Suresh Babu	G. Narayana
21.	D. Narasimhulu	D. Venkataramanappa
22.	V. Sreenatha	V. Yarappa
23.	N.S. Krishna Naik	N.S. Sukra Naik
24.	S. Ibraheem Khaleel Sahab	S. Hussan Peera
25.	P. Inthiyaz Ali	P. Sayab Khan
26.	S. Eswarajah	S.C. Narasimhulu
27.	M. Somala Naik	Sampla Naik
28.	P. Pakkireppa	P. Yellappa
29.	P.V. Veeranarayana	P. Reddappa
30.	S. Narasimhulu II	S. Chadrayudu
31.	Y. Munappa	Y. Chnangaman

contd....

1	2	3
32. Y. Narayana ppa		Y. Pedda Ganganna
33. M. Ramakrishna		M. Channappa
34. S. Lakshminarayana		S. Peddanna
35. S. Gangadiri		S. Narasimhulu
36. M. Murali		M. Narayanappa
37. S. Sumanareddy		S. Nagireddy
38. M. Lakshmana		M. Ganguella
39. B. B. Neelakanta		B. Vongamuni
40. K. Ravichandra Reddy		K. Bayapa Reddy
41. H. Ramarajaneulu		H. Mutyalappa
42. P. Mohan		P. Veeraiiah
43. V. Narayanaswamy		V. Lingappa
44. M. Narasimhulu		M. Chinnaramudu
45. J. Sreedhar		J. Appanna
46. R. Ismail Jabul		R. Imam Sahab
47. S. Hyder Basha		S. Rasool Sahab
48. M. Prasad		M. Sreenivasulu
49. B. R. Keshava Raju		B. R. Venkatarama Raju
50. H. Prasad		H. Narayanappa
51. P. Jayaramulu		P. Venkataramana
52. K. N. Naravali		K. Babanna
53. K. Ramachandra		K. R. Peddanna
54. I. Devanandam		I. Venkataiah
55. M. Chinnareddappa		M. Peddanna
56. A. Sudhakar		A. Ramakrishna
57. T. Katanaiah		T. Venkatesu
58. G. Gangadhara		G. Ganganna
59. M. Narayanaswamy		M. Yellappa
60. M. Naganna		M. Obulesu
61. M. Sreenivasulu		M. Ch. Venkataiah

Sub-Divisional Officer,
Telecom., Dharmavaram.

- Copy to:-
1. The xxxxx casual mazdoors
 2. The T.D. Engineer, Anantapur for information.
 3. All mastering officials for information.
 4. All Junior Telecom Officers in the Dharmavaram Sub-Dn for information.
 5. S. J. in the Anantapur Telecom Dn.
 6. Accounts Officer o/o T.D. Engineer, Anantapur for information.

NOTICE OF TERMINATION IN RESPECT OF CASUAL
DAILY RATED MAZDOORS IN THE P&T DEPARTMENT

DG P&T, New Delhi Lr. No. 269/130/78-STN,
dt. 1-10-1981.

...

In order to implement certain judgements in respect of Casual Mazdoors, the question of issuing notice of one month or payment of wages in lieu thereof to Casual Mazdoors whose services are terminated by the Department has been engaging the attention of this Directorate for sometime past. It has now been decided that such of the Casual Mazdoors who serve the Department for at least a total period of 240 days in a year and whose services are proposed to be terminated by the Department shall be served a notice of one month before termination of their service or one month wages in lieu thereof be paid to them.

2. The above orders take effect from the date of issue.

// True Copy //

COUNSEL FOR APPLICANT

9 (2) Enclosure Regd 4/1

DEPARTMENT OF TELECOMMUNICATIONS.

From उपसंचालक अधिकारी दूरसंचार
धर्मपुरी - 515 872
S. D. O. Telecom
Dharmavaram-515 872

To
The Telecom District Manager,
Anantapur - 515 001.

No. E-2-9/V/91-22/118 dated at Dharmavaram the 16th Oct. 1992.

Subj:- Parawise comments on the representation of the
Counsel of Sri M. Murali S/o Sri M. Narappa in
the Central Administrative Tribunal, Hyderabad.

Refs:- C A T HD OA No. 792 of 1992 dated 15-9-1992
received on 12-10-92 with copies to TDM ATP and etc.

The parawise comments on the above case are herewith
furnished as below.

Para 1 :- In fact, the applicant Sri M. Murali referred to was not
sponsored by the office of the undersigned for employment
as mazdoor. The applicant referred to has actually joined
as mazdoor only w.e.f. 1-4-1989 in this Sub Division on
temporary basis on exigencies to complete the targetted
works in this Sub Division, due to shortage of mazdoors,
with the condition that the engagement as mazdoor would
be deemed to have been terminated after completion of the
works vide this office letter No. E2-9/III/88-89/ dated
2-5-1989 (Xerox copy of the same is enclosed). While
enumerating in the Muster Roll he has given his name as
M. Muralidhara Naidu and signed by him as such in some
Muster Rolls and he has given his name as M. Murali in
some Muster Rolls and he has signed as such. Taking it
as granted that all the Muster Rolls for which he has
worked pertaining to the above petitioner referred to, the
case is dealt here under not withstanding to the
differe differentiation between the names. The differentiation
in the names is to be decided by the Hon'ble Tribunal. The
termination orders to Sri M. Murali were served vide this
office letter No. E2-9/III/88-89/86 dated 5-11-1989 (Xerox
copy is enclosed). The payment of wages at 1/30th of
monthly wages of ~~Group~~ a ~~Group~~ Group 'D' employee, for the
period of his engagement for the past and for the weekly
off days is to be decided by the TDM Anantapur.

Para 2 :- No comments.

Para 3 :- As contended in this para, Sri M. Murali/M. Muralidhara Naidu,
has worked only for eight months from 1-4-1989 to 30-4-1989
and 1-6-1989 to 31-12-1989 in this Sub Division and not for
one year. However, he has worked for 244 days but the
decision of payment of higher wages is within the limits
of the TDM Anantapur.

P T O.....

Corr-22

दूर संचार विभाग

Enclosure V

Department of Telecommunications

प्रेषक

From उपमंडल अधिकारी, मुरगंजा
S
Dharm... 015672

सेवा में

To. Sri C.Suryanarayana, Advocate
1-2-593/50, Srinilayam,
Sri Sri Marg, Gaganmahal,
Hyderabad-500 029.

फाइल नं. No. E2-9/V/91-92/133 दिनांक Dated at DMV the 17-12-92

Sir,

Xix

Sub:- Parawise comments in O.A 792/92 filed by
Sri M.Murali - Reg.

Ref:- Your letter no. nil dated 7-11-92

• • •

With reference to your letter under reference, it is to intimate that parawise comments on O.A No.792/92 have ~~xx~~ been sent to Telecom. District Manager, Anantapur vide this office letter no. E2-9/V/91-92/118 dated 16-10-92. Further it is to intimate that Sri "M.Muralidhara Naidu S/O M.Narappa" and Sri "M.Murali S/O M.Narayanappa" mentioned at sl.no. 8 and 36 in this office memo.no. E2-9/III/88-89/86 dated 5-11-89 ~~also~~ one and the same ~~person~~.

Thanking You,

Yours faithfully,

A-17-5-11
उपपरिवहन अधिकारी बुरसवा
मार्गशिरा-६१२ ६७२
S. 11-11-11
Dharmaraj - 515 672

35

Encl. VI

SIGNATURE
paying officer.

SIGNATURE
M R OFFICER

Estimated
No.

TIME
of day

NARRATIVE

No. of
the
S. No.

Name of
the
1791

1-7-91 to 2-7-91 PWD Rly Male line jungle cutting work 2
3-7-91 to 6-7-91 Kogera MTC work 4
9-7-91 to 11-7-91 Somnath PWD work 11
12-7-91 PWD work 11
13-7-91 PWD work 11
15-7-91 to 16-7-91 Somnath PWD work 11
18-7-91 to 20-7-91 Rly MTC work 2
22-7-91 to 24-7-91 Somnath PWD work 2
26-7-91 to 28-7-91 PWD work 2
30-7-91 to 31-7-91 PWD work 2
1-8-91 to 3-8-91 PWD work 2
4-8-91 to 6-8-91 PWD work 2
7-8-91 to 9-8-91 PWD work 2
10-8-91 to 12-8-91 PWD work 2
13-8-91 to 15-8-91 PWD work 2
16-8-91 to 18-8-91 PWD work 2
19-8-91 to 21-8-91 PWD work 2
22-8-91 to 24-8-91 PWD work 2
25-8-91 to 27-8-91 PWD work 2
28-8-91 to 30-8-91 PWD work 2
31-8-91 PWD work 2

16W
41-72

51W
41-72

various
TWO
V-104

Signature

Signature

2

2

NAME of the person			Estimated	SIGNATURE M.R. OFFICER
	1-9-91 to 6-9-91	No. 6000 must be made to O. S. R. work BY MTC work	N/O	
	8-9-91 to 13-9-91	Outlet A.C.S.R. work	V. Jayaram TO	
	15-9-91 to 16-9-91	Outlet to MTC work Sangal cutting	V-TO 4	
	17-9-91 to 20-9-91	Outlet to MTC work M.P.C. work and MTC work		
	1-10-91 to 1-10-91	BY main line Sangal cutting near Calaburgh	V. V. 91	
	3-10-91 to 6-10-91	BY main line MTC work	I 3 W. 33	
	8-10-91 to 10-10-91	Penetration to Chavara (P.L.L.) BY main line MTC work	P/E 30.11.91	
	10-10-91 to 10-10-91	Penetration to Chavara (P.L.L.) BY main line MTC work		
	11-10-91 to 13-10-91	Penetration to Chavara (P.L.L.) BY main line MTC work		
	15-10-91 to 20-10-91	Penetration to Chavara (P.L.L.) BY main line MTC work		
	22-10-91 to 23-10-91	Penetration to Chavara (P.L.L.) BY main line MTC work		

Normal
to
work

From date
to date

Name of the
work

Days

Estimate
NO

Signature
of Officer

1-11-91 to 11-91
2-11-91 to 2-11-91
3-11-91 to 3-11-91
4-11-91 to 6-11-91
7-11-91 to 7-11-91
8-11-91 to 13-11-91
15-11-91 to 20-11-91

1. Sakshi Bore down work
Nala Kanta Bore line down work
Bore down work
Mudakase to Nala Kanta Bore
line Bore down work
Nala Kanta Bore line near Padi
Bore down work
Madakase M.T.C work
Madakase to Amro Patar M.T.C
work

1
1
1
3
1
6
5

Ramesh
S. J. P.
H

Est
3034 D(a)
91.92
11/11/69
M.R.N.O.
1/1736

9-2-11-91
S. J. P.
H

16-12-91
72
31-12-91

✓
M. Murali

14

End VI (Contd)
(37)

Under DOT, H

26
26
46
34

132 days
249
276

FACTS AND LEGAL POSITION
IN

O.A. No. 792 of 1992

M. MURALI APPLICANT

v

THE SDOT, DHARMAVARAM
AND OTHERS RESPONDENTS

*Received
N.R. Devaraj
19/7/93*

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Filed by:
M/s C. Suryanarayana & P. Bhaskar,
COUNSEL FOR THE APPLICANT

This is to certify that Sri M. Murali NMR (Working under MR of S.S. Kaddamohideen LIT/DMV) fell down from the A4BC post while attending termination of line which is faulty due to (theft) missing of ACSR wire at 3rd km from Alankur towards Andativur Telecom Post no. 23/2. I observed at Kalyandurg swelling on his right leg (thigh part). Immediately I sent him for medical treatment at Govt. Hospital, Kalyandurg.

3/10/92
LIT/DMV

21.9.92
Sr. Telecom Officer
Telecommunications,
KALYANDURG-515706.

Enclosure VII(b)

Kalyandurg.
2/10/92

This is to certify that I have examined Sri M. Murali N.M.R. Telecommunications Kalyandurg who was suffering from swelling of (R) thigh was given treatment and advised rest from 22.9.92 to 1.10.92. And he is fit for duty on 2.10.92.

E.M. Anupam

Women Asst. Surgeon
GOVT. HOSPITAL,
KALYANDURG - 515706

(39)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH, HYDERABAD
PRINCIPAL BENCH, NEW DELHI
O.A. No.529/1988 dt.4.5.1988

Shri Sunder Lal & Others

... Applicants

Vs.

Union of India & Others

... Respondents

CORUM : Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member.

For the applicants ... Shri E.X. Joseph, Counsel.
For the respondents ... Shri P.H. Ramchandani, Sr. Counsel.

(Judgement of Bench delivered by Hon'ble Mr. Justice
K. Madhava Reddy, Chairman.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, calling in question the order No.TCD-II/EE/DR/128 dated 23.3.1988 (Annexure A-5) by which the services of the applicants stand terminated with effect from the afternoon of 23.3.1988.

From the order dated 28.7.1987 (Annexure A-3), it would appear that the respondents have taken a decision to retrench the Daily Rated Mazdoors in each Division who were appointed after 1.4.85. But the same order also discloses that consequent upon the retrenchment, the respondents are in dire need of filling up of those vacancies and they have asked all the General Managers to depute available officials for appointment against these posts.

In other words, the administrative decision to retrench all those Daily Rated Mazdoors who joined after 1.4.1985 has resulted in these vacancies.

The Supreme Court by its Judgement dated 27.10.1987 in Writ Petition No.373 of 1986 filed by the Daily Rated Casual Labour employed under P&T Department Vs. Union of India & Others directed:

"The respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department."

The Supreme Court further directed:

"The arrears of wages payable to the casual labourers in accordance with this order shall be paid within four months from today. The respondents shall prepare a scheme for absorbing the casual labourers, as directed above, within eight months from today."

The impugned order of retrenchment in this application is made thereafter on 23.3.1988. The applicants have admittedly put in nearly 3 years of service. Therefore, as per the directions of the Supreme Court, they were entitled to be absorbed and also entitled to receive wages, if any due. The administrative decision to retrench all those that were employed after 1.4.1985, therefore, no longer hold good. In fact, all those that are employed after 1.4.1985, even if they had continued for one year, are entitled for absorption in view of the orders of the Supreme Court. These applicants being entitled to be absorbed, their services could not be terminated. No sooner than the orders of termination were served, the applicants rushed to this Tribunal and filed this application on 29.3.1988 and prayed for interim relief. This application was admitted on 5.4.1988. In the circumstances, we direct that these applicants shall be reinstated in service forthwith. The impugned order of termination is accordingly quashed and the respondents are directed to reinstate the applicants with immediate effect and in any case, not later than 9th May, 1988. They shall, thereafter, be continued in service and shall be absorbed in accordance with the scheme that is said to be under preparation. It is also hereby declared that even if no formal orders reinstating them in service on or before 9th May, 1988 are issued, they will be entitled to the wages due to them from 9th May, 1988 onwards. This application is accordingly allowed. There will be no order as to costs.

Order Dasti be issued to both the parties.

// TRUE COPY //

(u)

SUPREME COURT DIRECT DEPARTMENT OF TELECOM TO TAKE BACK
ALL CASUAL MAZDOORS WHO HAVE BEEN DISCHARGED AFTER 30.3.1985

In the Supreme Court of India Civil Original Jurisdiction

Writ Petition(C) No.1280 of 1989

Ram Gopal & Others

Versus

... Petitioners

Union of India & Others

... Respondents

With

Writ Petition Nos.1246, 1248 of 1988, 176, 177 and 1248 of 1988

Sant Sing & Others etc. etc.

... Petitioners

Versus

Union of India & Others

... Respondents

Order

We have heard counsel for the petitioners. Though a counter-affidavit has been filed, no one turns up for the Union of India even when we have waited for more than 10 minutes for appearance of counsel for the Union of India.

The Principal allegation on these petitions under Article 32 of the Constitution on behalf of the petitioner is that they are working under the Telecom Department of the Union of India as casual labourers and one of them was in employment for more than four years while the others have served for two or three years. Instead of regularising them in employment their services have been terminated on 30th September, 1988. It is contended that the principle of the decision of this Court in DAILY RATED CASUAL LABOUR vs. UNION OF INDIA & ORS. [1988(1) SCC 122] squarely applies to the petitioners though that was rendered in the case of casual employees of Posts and Telegraphs Department. It is also contended by counsel that the decision rendered in that case also related to the Telecom Department as earlier Posts & Telegraph Department was covering both sections and now Telecom has become a separate department. We find from paragraph 4 of the reported decision that communications issued to General Managers of Telecom have been referred to which supports the stand of the petitioners.

By the said Judgement this Court said:

"We direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the posts and Telegraphs Department."

We find that though in paragraph 3 of the writ petition, it has been asserted by the petitioners that they have been working for more than one year, the counter-affidavit does not dispute that position. **No distinction can be drawn between the petitioners as a class of employees and those who were before this court in the reported decision. On principle, therefore, the benefits of the decision must be taken to apply to the petitioners.** We accordingly direct that the respondents shall prepare a scheme on a rational basis for absorbing as far as practicable the casual labourers including the petitioners who have continuously worked for more than one year in the Telecom Department and this should be done within six months from now. After the scheme is formulated on a rational basis, the claim of the petitioners in terms of the scheme should be worked out. The writ petitions are disposed of accordingly. There will be no orders as to costs on account of the fact that the respondents counsel has not chosen to appear and contact at the time of hearing though they have filed a counter-affidavit.

Sd/-

(RANGA NATH MISRA) J

April 17, 1990

Sd/-

(KULDEEP SINGH) J

//True copy//

Govt. of India

Min. of Com.

TELECOMMUNICATIONS : ANDHRA PRADESH

Office of the Chief General Manager, Telecom., A. P., Hyderabad-1.

No. TA/RE/20-1/Rlgs

Dated at Hyderabad-1, the 16-11-'92.

To

The General Manager, Telecom District, Hyderabad-33.

The General Manager, Telecom. Warangal/Visakhapatnam/Secunderabad/Vijayawada.

All Telecom District Managers/Telecom Dist. Engineers in A.P.

The Director (TT), Vasant Vihar, Abids, Hyderabad.

The S.E. (Civil)/S.E. (Electrical) Hyderabad.

The Principal, RTTC, Secunderabad.

The Asst. Engineer, CTSD, Secunderabad.

The D.E. Switching-I & Switching-II, Hyderabad.

The D.E. Carrier & VFT Instn. Hyderabad.

The D.E. L.D. Secunderabad.

All Senior Supdts/Supdts. Tele Traffic in A.P. Circle.


The D.E. N.R.C. Secunderabad.

Sub:- Guidelines pertaining to proper defence of Court cases arising due to retrenchment of Casual Labourer/Temporary Status Mazdoor in the Dept. of Telecom.

....

A copy of Dept. of Telecom. New Delhi letter No. 271-29/92-STN dated 23-10-92 on the subject cited above, is reproduced below for information and guidance. The contents of the same may please be brought to the notice of all concerned.

Please acknowledge the receipt.


Assistant Director (Recd)

for C.G.M. Telecom., A.P., Hyd-1.

Copy to:

1. The Director (F&A)/Accounts Officer (F)/Asst. Director (Staff)/
Asst. General Manager (TT)/Office Supdt. Circle Office, Hyderabad.
2. TA/RE/20-2/Rlgs/Corr.

Copy of letter referred to above.

Sub:- Guidelines pertaining to proper defence of court cases arising due to retrenchment of casual labourer/Temporary status Mazdoor in the Department of Telecom.

....

Sir,

I am directed to state that there has been a steady growth of court cases over the years due to improper procedure followed at the time of retrenchment of Casual Labourers/Temp. Status Mazdoors by the authorities concerned and as a result the Department has been losing almost all such cases. Despite clear-cut instructions that relevant provisions of the Industrial Disputes Act, 1947 are to be observed while retrenching the services of the casual labourers/temporary status mazdoors,

contd.... 2

most of the field units violate the instructions and consequently the retrenched casual labourers/Temporary Status mazdoors managed to get interim/final orders from the Courts for retention/reinstatement of their services. This situation has been viewed very seriously as it is causing irreparable loss to the Dept. by way of money, manpower and time.

2. Keeping in view of the above situation, following guidelines are issued in order to defend such court cases properly on behalf of the Union of India.

- i) The seniority-lists of the casual labourers/Temporary Status Mazdoors are maintained on Division basis based on the number of days of their service for the purpose of absorption of the senior-most casual labourers against the vacancies in Group 'D' posts in the Division or the services of the junior-most casual labourers are terminated in the exigencies like non-availability of work.
- ii) The work for which the casual labourers/Temporary Status Mazdoors were engaged has since been completed on _____ (date to be mentioned) and no work is available for further engagement of the applicant(s) who are the junior most in the seniority list.
- iii) The applicants were initially engaged on _____ (date to be mentioned) and had rendered _____ days of service (period of service to be mentioned) as on the date of completion of work and their services were terminated/proposed to be terminated with effect from (date to be mentioned) in accordance with Section 25-F of the Industrial Disputes Act, 1947, as no work was available for continuance of their name(s) in the Muster Rolls.
- iv) As per the policy-decision of the department of Telecom. no casual labour/Temporary Status Mazdoor is continued to be engaged, if work is not available in a division where he was initially employed. Since the applicant(s) is/are the junior-most in the seniority list his/their services are/were retrenched in accordance with para-8 of the Casual Labourer (conferment of Temporary Status and Regularisation) Scheme.
- v) When work is not available for his/their further engagement as Casual Labourer/Temporary status Mazdoor, the question of regularisation of his/their services in Group 'D' post as per the scheme and/or consideration for any other benefit for regularisation does not arise.

contd.....3

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- 3 -

vi) Termination of the services of the applicant(s) has become inevitable in the exigencies already stated and has been done in accordance with the existing rules, laws and policy-decision of the Department of Telecom. No provision of the Constitution of India has been violated while terminating the services of the applicant(s).

vii) However, in case work is available in future, they will be considered for engagement as Casual Labourer in preference to outsiders.

3. The written-statements may be prepared based on the facts of the case and nothing contrary to the above guidelines is to be mentioned in the counter reply. In the cases of retrenchment, apart from mentioning compliance of Section 25-F of the Industrial Disputes Act, 1947, the point of emphasis should invariably be on the 'Junior-most' in the seniority list in the Division concerned and non-availability of work, justifying termination of services of the applicant(s) as per the decision of the Government of India, without stating the facts like date of imposition of ban as it is no more a material fact for proper defence.

4) All court cases of retrenchment of Casual labourer/Temporary Status Mazdoor are to be defended on the above guidelines. If the secretary or any other office in the Directorate office has been impleaded as respondent(s) in any court case in the related matters, necessary petition praying to delete him/them as respondent(s) on behalf of the Union of India, may be filed immediately.

5) This may be brought to personal knowledge of all authorities concerned under your jurisdiction.

Yours faithfully,

Sd/-
(S.K. DHAWAN)
Asst. Director General (STN)

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ADMINISTRATIVE TRIBUNAL JUDGMENTS 1993 (2) A.T.J.

CENTRAL ADMINISTRATIVE TRIBUNAL
(ERNAKULAM BENCH)

O.A.Nos. 1027/91, 1200/91, 1458/91, 1485/91, 1622/91, 1652/92, 1691/91, 1814/91, 1858/91, 125/92, 268/92, 311/92, 1866/91, 1155/90, 1244/91, 388/91, 712/91, 731/91, 844/91, 896/91, 1085/91, 1149/91, 1209/91, 1266/91, 1527/91, 898/91, 770/91, 211/92, 1507/91, 1529/91, 68/92, 1186/92, 1531/91, 665/92, 1533/91, 145/92, 1764/91, 244/92, 1681/91, 663/92, 302/92, 1926/91, 155/92, 782/91, 1066/91, 1187/91, 1331/91, 822/91, 1159/91, 1594/91, 1227/91, 1497/91, 1928/91, 327/92, 1557/91, 1562/91, 1377/91, 1808/91, 729/92, 731/92, 773/92, 1616/91, 263/92, 264/92, 265/92, 241/92, 908/91, 1686/91, 1813/91, 234/92, 240/92, 444/92, 519/92, 144/92, 10/92, 60/92, 95/92, 139/92, 157/92, 1142/91, 1315/91, 239/92, 350/92, 248/92, 122/92, 964/90, 1376/91, 871/92, 147/92, 118/92, 99/92, 200/92, 345/92.

Decided on 8-4-1993

A. Mohanan and Ors.

Applicant

Versus

**Union of India through, Department of Telecommunication,
Kerala Circle and Ors.**

Respondents

For the Applicant:- Mr. M. R. Rajendran Nair, Mr. O.V. Rad Krishnan, G. Saridharan Chempazhanthill and Mr. K.R.B. Kaimal, Advocates.

For the Respondents:- Mr. George Joseph, V. Krishna Kumar, Mr. V.V. Sidharathan, Mr. T.P.M. Ibrahim Khan, Mr. George C.P. Tharakan, Mr. K.A. Cherian, Mr. V. Ajit Narayanan, Mr. Mathew J. Nedumpara, Mr. C. Koehunni Nair, Mr. S.V. Balakrishnan Iyer, Mr. P. Sankaran Kutty Nair, Mrs. K.B. Subhagamani, Mr. K. Prabha Karan, Mr. A.A. Abdul Hasan, Mr. V.V. Sidharthan and Mr. T.V. Venugopalan, Additional Central Govt counsel.

PRESENT

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN

THE HON'BLE MR. A.V. HARIDASAN, JUDICIAL MEMBER

Cases referred

1. Delhi Development Horticulture Employees Union. Vs. Delhi Administration, Delhi and Others, (Judgment Today, 1992(1) SC 394)
2. Bhoop Singh vs. Union of India, 1992 SLJ 103,
3. State of Madhya Pradesh v. Syed Qamarali, (1967) 1 SLR 228
4. State of Punjab and others v. Gurdev Singh, (1991) 17 ATC 287,

(A) Evidence Act, 1872, — Section 108 — Casual Labour — If a casual employee did not approach the authorities for re-engagement or did not send any representation for re-engagement and is not able to establish any cogent reasons for his not reporting for duty either because of his illness or non availability of work for 7 years since his last employment — It can be presumed that he had abandoned his casual service voluntarily — He cannot claim the benefit of seniority for re-engagement or for regularisation by virtue of his earlier casual service even though his name figured on the list of approved casual employee

(Paras 13 & 31).

(B) Casual Labour — If an unapproved casual employee had not been heard of for 3 years — His past service hence forth will stand extinguished for all purposes.

(Paras 13 & 31).

(C) Casual Labour — A casual employee who was recruited for the first time after 7.6.1988 against the total ban on casual employment, whether through or otherwise through the employment Exchange — No benefit of his casual service shall accrue to him in the matter of seniority, re-engagement and regularisation — A public notice should be given in this regard.

(Paras 16 to 23 & 31)

(D) Casual Labour — Casual Employees who had been employed before 7.6.1988 whether through or otherwise than employment Exchange should be brought on the lists of approved or unapproved mazdoors as the case may be on production of their previous casual employment — Decision to include them in the respective lists and issuing mazdoor cards should be taken on the recommendations of a Committee of officers to be established in each division — Those in the unapproved list will be enbloc junior to those in the approved list.

(Paras 24 & 31)

(E) Casual Labour — Break in Service — Broken periods of casual service should be taken into account so long as the break in casual service does not exceed one year provided the casual employee was subsequently re-engaged — Condonation of break in service beyond one year can be allowed by the competent authority on valid grounds.

(Paras 15 & 31)

(F) Casual Labour — Limitation — Period of Limitation will apply in cases of discontinuance of casual service without following the provisions of Chapter VA of the ID Act.

(Paras 28 & 31)

(G) Casual Labour — Certificates issued by the appointing authorities as regards casual service can be considered as collateral proof of previous service and should not be rejected on technical grounds.

(H) Casual Labour — Employment in emergent situations otherwise than through Employment Exchange — Such employment be permitted only for a period of seven days or so — Such service shall not be counted for any

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benefit.

(Paras 26 & 31)

(I) Limitation – Casual Labour – Law of limitation will be fully applicable to claims of benefit of past casual service and condonation of breaks in such service – Burden of proof to establish past service will lie on the applicant.

(Paras 14 & 31)

(J) Casual Labour – Engagement of casual labour illegally or irregularly after the ban was imposed on 7-6-1988 – Others senior to him in casual service cannot claim re-engagement by such irregular casual service by the Court's order.

(K) Casual Labour – Any appointment of fresh casual Labour made otherwise than through the Employment Exchange after 7.6.1988 will not qualify for seniority, re-engagement or regularisation and in the unlikely event of such engagement having been made, those who recruited through the Employment Exchange will rank en bloc senior to those who are recruited otherwise than the Employment Exchange.

(Para 25)

Exchange by the subterfuge of labour by contravention of the Employment rates, cannot be allowed where the casual labour in approved or unapproved lists are available. – Such employment can be allowed only in the rarest of rare situations and that also under the specific orders and guidelines of the Divisional Head and on policy directives.

(Paras 30 and 31)

(M) Casual Labour – When the ban on engagement of fresh casual labour is lifted or relaxed and work is available fresh casual labour should be engaged only through Employment Exchange on the basis of seniority of registration and only if no casual labour/mazdoor in the approved or unapproved lists is readily available.

(Paras 30 & 31)

JUDGMENT

Shri.S.P.Mukerji, Vice Chairman: Since certain common and basic questions of policy, facts and law as also similar reliefs are involved in the applications mentioned above, they are being disposed of by a common judgment as follows.

2. All these application are concerning casual labour in the Departments of Posts and of Telecommunication. The applicants had been engaged as casual labour by the respondent for periods ranging from a few days to a number of years, continuously or intermittent. The original appointments on a casual basis in some cases were made some 10 to 25 years ago and in some other cases, only recently. In a number of cases, nothing was heard from the applicant for a number of years. In most of these applications, the applicants have prayed that they should be re-engaged and later inducted into regular Group D posts in their turn. For proper adjudication of these cases, it will be necessary to keep the historical perspective in view.

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3. Like the Railways, Posts & Telegraph Department (now separate Departments of Posts and Telecommunication) have to maintain a very vast network of communications system and undertake projects in the interior of the country covering long distances. In case of natural calamities like floods, cyclones, heavy rains, they have to undertake restoration and repair work on a localised or on a widespread basis. To meet their continuing and sporadic liabilities, apart from the normal maintenance staff which is regularly on the rolls, the Department has to recruit and engage at short notice large number of casual labour for limited period ranging from a few days in case of local repair and restoration work to a few years on new projects. On completion of the project or repair-cum-restoration work, the casual labour have to be disbanded unless they are redeployed in other similar works in the same or neighbouring areas. With the advent of the Welfare State, Labour Laws and our Constitution guaranteeing economic and social justice and the fundamental right of equality, adequate means of livelihood and the Directive Principles enshrined therein, the casual labour has been claiming and getting through judicial pronouncements from the apex Court, better conditions and security of service approximating though not congruent with those available to regular employees.

4. The improvement in the conditions of service of the casual labour in the matter of wages, hours of work, retrenchment compensation, paid holidays etc. was having a twofold effect. The stake of the casual labour in casual service in financial terms and in terms of prospects of ultimate absorption in regular cadre, increased on one hand and on the other hand, the financial liability of the Department went up quantitatively and over time and space. The judicial pronouncement that a casual worker after a certain period of even intermittent casual service, say 240 days in a year, will be entitled to most of the benefits available to temporary but regular Government servants and after a number of years such service, will be entitled to be considered for absorption in regular service and will also count to some extent, casual service for purposes of pension, led to increase in the number of casual labour who had given up the casual service long ago, coming back and claiming re-engagement and absorption in regular service in their turn. The Department, on the other hand, because of financial and other constraints, banned the engagement of casual labour with effect from 31.3.85 and to systematise recruitment insisted that recruitment of casual labour should be through the concerned Employment Exchange. At the lower levels, however, for meeting emergent situations, recruitment of casual labour had to be continued even after the ban, sometimes through the Employment Exchange and other times without them. In certain contingencies, in order to avoid engagement of casual labour against the ban, labour on contract/quotations was being engaged.

5. A number of casual labour had been approaching the respondents with the plea that they had been engaged as casual labour before the ban was imposed on 31.3.85 and accordingly, they are entitled to re-engagement in preference to those who were appointed later or had lesser period of casual service to their credit. Some of them had even stated that they were in the list of approved casual labour i.e those who had been appointed, through Employment Exchange. Some of them produced certificates, from their superiors regarding their previous casual service. Some were aggrieved by the respondent not issuing them casual mazdoor cards. The Department was in any case not prepared to entertain application from those who had been employed for the first time after 31.3.85 i.e, after the ban was

imposed. In order to dispose of the representations, the Divisional authorities of Trivandrum and Erankulam in 1988 invited application from those who had been engaged prior to 31.3.85 and left the job so that they could be considered for re-engagement on the basis of their previous casual service before the ban was imposed. This opened the floodgates of applications of former casual labour for re-engagement. Committees of three officers were appointed in each of the two Divisions for considering the representations and recommending re-engagement or including them in the list of approved casual labour and for issuing casual mazdoor cards. Those whose representations were rejected on grounds of lack of proof of previous service moved this Tribunal which in a number of cases directed the respondents not to reject the certificates produced by the applicant about their previous service from their own officers, but to get them verified by their own records. Still another set of persons who admittedly had been engaged as casual labour after the ban of 31.3.85 with or without being sponsored by the Employment Exchange, approached this Tribunal when they were not re-engaged by the respondents while persons with lesser casual service of fresh hands were allegedly engaged by the respondents. These applications were normally disposed of by the Tribunal with a direction that if work was available and person with lesser service or fresh hands had been or being engaged by the respondents, they should also be re-engaged on the basis of previous service or with bottom seniority in case their previous service is not accepted by the respondents. Where the Tribunal found that admittedly the applicant before it had been engaged earlier without being sponsored by the Employment Exchange and they could not be included in the list of approved casual workers but it was also found that a large number of casual mazdoor are being engaged locally without being sponsored by the Employment Exchange, it was directed that such applicants should be included in a parallel list of unapproved casual mazdoors and they should be re-engaged if any person junior to them in the list of unapproved casual mazdoors or fresh hands are being engaged.

6. While so, a Division Bench of the Hon'ble Supreme Court in their judgment dated 4.2.92 in Delhi Development Horticulture Employees Union. Vs. Delhi Administration, Delhi and Others, (Judgment Today, 1992(1) SC 394) made certain pertinent observations about some sort of racketeering going on in engaging casual labour otherwise than through the Employment Exchange and directed the various Courts to take judicial notice of the situation. The following extracts from that judgment are an eye-opener:-

"Apart from the fact that the petitioners cannot be directed to be regularised for the reason given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more

days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a view source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in Government Departments, Public Undertaking or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts".

The aforesaid observations have impelled us to take a closer look at the cases pending before us in the light of these observations.

7. Another imponderable point in these applications specially with reference to the Posts and Telegraph Department/Telecommunication Department is the ban imposed by DG,P&T by his circular dated 30.3.85 (page 83 of the paper book in O.A. 1266/91). The respondents in these cases have been taking the stand that any casual employment after the ban was imposed is irregular and no benefit of re-engagement or regularisation can be given on the basis of such casual service commenced after the ban was imposed. The scheme of grant of temporary status and regularisation promulgated by the respondents on 7.11.89 (Annexure A5, page 39 of paper book in OA 1247/91) also enjoins that the scheme will not apply to those casual labour who were employed after 30.3.85 and if there is such a case it should be referred to the Telecom Commission along with the details of the action taken against the officer under whose authorisation/approval the irregular engagement/non- retrenchment was resorted to. As against this ban, the nodal Department of Personnel has been issuing orders, from time to time, on 10.10.79, 13.10.83, 7.5.85, 7.6.88 and 8.4.91 directing that casual workers who had been recruited before certain dates without going through the Employment Exchange could also be considered for regularisation. The last order dated 8.4.91 gave this exemption to the casual workers who had been recruited when the Deptt. of Personnel issued some guidelines for engaging casual workers before 7.6.88. The Department of Telecommunications on the other hand is not prepared to allow the exemption to casual labourers who were recruited after 30.3.85 when the ban was imposed by that Department. They are, however, prepared to consider cases of those who had been employed before the ban, but had not reported back either because of illness or no work being available for them.

8. The respondents have also been taking the stand that if the applicant has been sleeping over his right of re-engagement or regularisation for years and had not been heard of his application before the Tribunal is time barred. They have referred to their own instruction in accordance with which break in service can be condoned upto six months. But if the absence is more than six months, unless it is condoned by supporting evidence of illness or non-availability of work, the

casual service prior to the break is lost for regularisation or re-engagement. They have also argued that if the applicant is unheard of for a number of years, it is tantamount to his abandoning the casual service and his re-engagement can be done only as fresh hand and he cannot claim the benefit of his previous service.

9. Some of the applicants who had put in more than 240 days of casual service in a year have claimed re-engagement on the ground that their casual services were terminated without following the provisions of Chapter VA of the ID Act and, therefore, the termination of their services was illegal and 'non-est' and hence they should be deemed to have continued in service irrespective of the period of their absence. In such cases also, the respondents have taken the plea that apart from the fact that they are deemed to have abandoned casual service when they have been absent for anything between 5 to 20 years, the present application would be hopelessly time barred as the cause of action had arisen 5 to 20 years ago.

10. Against the aforesaid factual backdrop, the following issues fall for adjudication in the applications before us:

(1) If the applicant had not approached for casual employment for a number of years, under what circumstances can he be deemed to have abandoned his service and with what consequences?

(2) Should the break in casual service be ignored upto (a) six months or (b) one year or (c) beyond one year for the purpose of giving the benefit of previous casual service.

(3) Should casual service of those who were recruited after the ban was imposed on 30.3.85 be recognised for re-engagement and/or regularisation if the recruitment has been (a) through Employment Exchange (b) not through the Employment Exchange.

(4) Should all recruitment of casual labour and service rendered without coming through Employment Exchange after 7.6.88 be ignored?

(5) Should there be a separate list of unapproved casual labour of those who were recruited without intervention of the Employment Exchange.

(6) Under what circumstances, should casual labour be allowed to be employed without the intervention of the Employment Exchange?

(7) If previous casual service rendered is admittedly for more than 240 days in a year and the applicant has been out of employment for a number of years, should his case be affected by the law of limitation or should he not get the benefit of his previous casual service as his discontinuance/discharge from casual service without following the provisions of Chapter VA of the Industrial Disputes Act be considered non-est in the eye of law.

(8) Should contract labour or quotation labour be allowed in preference to discharged casual labour?

11. During the arguments of these cases, among the learned counsel for rival parties, certain general consensus seemed to emerge on the aforesaid issues in the following terms:-

"a) There should be two deadlines for recognising casual service for the purpose of re-engagement. It was felt that any casual service prior to 1.1.1981 and after 12.6.1988 should not be recognised for the purpose of re-engagement. The Department itself has recognised 1.1.81 as the date of commen-

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cement of 10 years of service for the purpose of regularisation. The deadline of 12.6.1988 is based on the order issued by the Department banning totally engagement of fresh casual labour.

b) The condition of being sponsored by the Employment Exchange having been relaxed till 12.6.1988, that condition will not apply for recognising casual service between 1.1.1981 and 12.6.1988.

c) As a one time measure, applications will be invited from all those who have been in casual employment between 1.1.1981 to 12.6.1988 on a Sub Division wise basis for preparing Sub Divisional list of such casual mazdoor which only will be tapped exclusively for future engagement of casual employees. The aforesaid list will be prepared strictly on the basis of length of casual service put in by ignoring the breaks.

d) The burden of proof of casual service between the aforesaid two dates will be on the casual employees but the respondents shall not reject summarily any certificate of such employment merely because the certificate had been issued by an authority not competent to issue the same. The periods and details indicated in the certificate shall be verified by the respondents through their own records.e)

e) Any bald statement of casual employment should not be accepted. The applicant shall have to indicate in case there is no certificate, at least the muster roll Nos. and the details of their casual employment in time and place and names of officers if possible, under whom they worked.

f) The Department will implement the ban of casual employment scrupulously and shall not engage any person who is not in the approved list without first giving employment to those who are included in the aforesaid list, except in case of emergency. Engagement under emergent condition will be recognised as such only if it does not last beyond 7 days. Even an engagement under emergency condition shall not be made outside the aforesaid list if persons from the approved list or in the aforesaid 1981 list are immediately available.

g) It is made clear that the aforesaid suggestions have been made for the limited purpose of engagement and not for regularisation for which a separate scheme is under operation."

(In the above quotation the date 12.6.88 was suggested erroneously for 7.6.88).

12 We shall now take up the aforesaid eight issues in the light of the aforesaid factual background, arguments and orders and instructions issued, from time to time.

Issue No.1: If the applicant had not approached for casual employment for a number of years, under what circumstances can he be deemed to have abandoned his service and with what consequences?

13. On the analogy of Section 108 of the Evidence Act, if a person is not heard for more than 7 years, in the eye of law he can be presumed to be dead. On that, if a casual employee did not approach the respondents for re-engagement or did not send any representation for re-engagement and is not able to establish any cogent reason for his not reporting for duty either because of his illness or non-availability of work, for 7 years since his last employment, it can be rightly presumed that for the purpose of these applications he had abandoned his casual service voluntarily. In that regard, he can claim no benefit of seniority for re-

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engagement or for regularisation by virtue of his earlier casual service even though his name figured in the list of approved casual labour. The general consensus among the learned counsel was also that any casual service prior to 1.1.81 should be ignored. The date 1.1.81 was chosen as the date of commencement of 10 years of service for purpose of regularisation. Be that as it may, any casual service preceding 7 years of unexplained and uninterrupted silence on the part of the applicant in the list of approved casual mazdoors would be deemed to have lapsed. In case of unapproved mazdoors absence/silence for three years can be taken as voluntary relinquishment of previous casual service.

14. The question of reengagement of any category of casual labour, however, will be subject to the law of limitation. For instance, even if a spell of casual service is established and if the applicant did not either represent or represented more than eighteen months ago or his representation was rejected more than one year before the application was filed, the question of limitation can be raised by the respondents to be adjudicated in the circumstances of each case. In O.A. 713/91 which was decided by the judgment of this Tribunal dated 1.5.92 to which one of us was party, the applicant therein produced a certificate of his casual employment upto 12.12.78. He could not establish that he had approached the respondents for employment and was denied employment. He had, however, argued that a number of casual mazdoors junior to him were engaged without considering his superior claim. His case was rejected with the following observations:-

"As stated above, he has no evidence to satisfy us that he exercised his right of getting re-engagement at any time and the respondents rejected it or he was prevented from doing the work due to illness or non-availability of work. On the other hand, the respondents have stated in unequivocal terms that the applicant had not at all worked in the Sub Division either on Muster Roll or on bills. As per the Register for casual mazdoors maintained in the Division, he was not a worker of the office of the first respondent at any time. It is true that there are two certificates, Annexure-I and II, issued by the Sub Inspector and Line Inspector respectively. These certificates even if accepted, only prove his engagement prior to 1980. But the order and instructions Annexure VI and VII stand in his way. He has not given any explanation or reasons for condoning his long absence. Moreover, he did not choose to file a rejoinder either denying the statements of the respondents nor furnished more details to satisfy us that he has prior service and he was not engaged elsewhere while he was out of service. However, it is a fact that there is long absence of more than 10 years and there is no reason to condone this period of absence. Under these circumstances, we are of the view that the applicant has no case, it is only to be rejected."

It is clear from the above that the mere fact that one's juniors were being re-engaged cannot entitle one to claim re-engagement when he has been keeping silent all these years. In Bhoop Singh vs. Union of India, 1992 SLJ 103, the three Judge Bench of the Hon'ble Supreme Court observed that an old service grievance cannot be revived on the plea that similarly placed employees have been given the benefit by the Court, unless the delay is properly explained and that inordinate and unexplained delay by itself is a ground for refusing relief irrespective of the merit of the claim. The legal maxim "Vigilantibus et non dormientibus jura subveniunt" i.e. law aids the vigilant and not those who sleep over their rights, applied aptly in such cases.

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Issue No.2:- Should the break in casual service be ignored upto (a) six months or (b) one year or (c) beyond one year for the purpose of giving the benefit of previous casual service.

15. In DG,P&T's circular dated 10.10.80 (page 167 of paper book in OA 1266/91) the benefit of increased daily rates was not allowed to casual mazdoors in whose case two continuous spells of duty were separated by a period of more than six months. Such a period could be condoned only on account of illness or non-employment due to non-availability of work. By a further letter dated 26.12.80 (page 28 ibid) for eligibility for regular appointment the casual mazdoors had to be in service on a particular date and if he was absent prior to that date for more than six months, the same could not be condoned except by Divisional Heads on account of illness or non-availability of work. In the Department of Telecommunications' clarifactory letter dated 30.8.89 (page 139 ibid), it was clarified that where casual labour was engaged prior to 31.3.85 with break in service, break in service upto six months can be condoned by the Divisional Engineer concerned on the merits of individual cases. Any break in service upto one year due to Department's inability to engage them for want of work can also be condoned provided they were subsequently engaged when work became available. Non-availability of work can be proved, if no labour junior to the casual labour was engaged for work in the period requiring condonation. If a casual employee did not apply for condonation of break in his casual service exceeding six months either due to his illness or non-availability of work, the consideration of such application has become time barred. So far as this Tribunal is concerned, the break in service cannot be ignored unless there are special circumstances meriting consideration by the Tribunal. However, absence upto one year which is being allowed by the Department can be ignored for the purpose of re-engagement and regularisation provided the applicant was subsequently reengaged by the Department.

Issues No.3,4,& 5:

3.Should casual service of those who were recruited after the ban was imposed on 30.3.85 be recognised for re-engagement and/or regularisation if the recruitment has been (a) through Employment Exchange (b) not through the Employment Exchange.

4.Should all recruitment of casual labour and service rendered without coming through Employment Exchange after 7.6.88 be ignored?

5.Should there be a separate list of unapproved casual labour of those who were recruited without intervention of the Employment Exchange?

16. So far as engaging casual labour through the Employment Exchange is concerned, we have already discussed earlier how adversely the Hon'ble Supreme Court has commented upon engaging casual labour without the intervention of the Employment Exchange. A plethora of instructions have been issued by the DG,P&T and other authorities insisting upon recruitment through the Employment Exchange. The Ministry of Home Affairs' letter of 12.6.1958 (page 57 ibid) enjoined that like regular employees even casual employees should be through the National Employment Service. However, in DG,P&T's letter dated 3.7.64 (page 60 ibid) while insisting upon recruitment of casual labour through the Employment Exchange in accordance with their seniority of registration, it was directed that those who had already been recruited without Employment Exchange registration, their

experience should be given some consideration. In DG, P&T's further letter dated 16.9.95 (page 60 *ibid*) it was enjoined that casual labour should be nominees of the Employment Exchange even for construction and maintenance work. In P&T Board's circular dated 14.12.71 (page 63 *ibid*) casual labours who had put in 5 years of continuous service as on 1.10.70 were to be regularised only if inter alia they were initially recruited through the Employment Exchange and if not, they get themselves registered with Employment Exchange and take their chance in accordance with their seniority of registration. In DG, P&T's letter dated 29.9.72 (page 65 *ibid*) exemption from being nominated by the Employment Exchange was given if the Employment Exchange lies beyond 16 kilometers radius of the town where there is an Employment Exchange and every recruitment done outside Employment Exchange is intimated to that Exchange and if the casual labour had put in two years of service with at least 240 days in each year, he should be considered for regularisation. In DG, P&T's letter dated 29.11.78 (page 72 *ibid*) it was stated that casual mazdoors who have been working without registration or nomination from the Employment Exchange will have no claim for the benefits of such casual service and that it will be a serious lapse if casual mazdoors who were not nominated or registered with the Employment Exchange were recruited or retained. The DG, P&T's circular dated 5.1.80 (page 74 *ibid*) cautioned all recruiting authorities not to recruit casual labour otherwise than through the Employment Exchange. However, the Department of Personnel issued a circular dated 10.10.79 (page 75 *ibid*) stating that casual employees who were engaged otherwise than through the Employment Exchange till 20th March, 1979 will be eligible for regularisation. The Department of Personnel issued another OM dated 7.5.85 in consultation with DG, P&T indicating that casual workers recruited before 7.5.85 may be considered for regularisation in Group D posts even if they were recruited otherwise than through the Employment Exchange. It was, however, added that no further appointment of casual worker should be made in future otherwise than through the Employment Exchange and in case of deviation responsibility should be fixed and departmental action taken against the official concerned. In the guidelines for recruitment of casual labour issued by the Department of Personnel in their OM dated 7.6.88 pursuant to the judgment of the Hon'ble Supreme Court in Surinder Singh's case while extending various benefits to the casual workers, it was cautioned that casual workers should not be engaged for work of regular to circumvent the creation or filling up of Group D posts. This was reiterated by the PMG, Kerala Circle in his circular letter dated 5.9.88 indicating that if appointment of casual labour is inescapable, prior approval of the PMG should be obtained.

17. From the above, it is clear that the stand taken by the respondents regarding recruitment through the Employment Exchange has been rather ambivalent. While repeating and cautioning that recruitment of casual labour should be through the Employment Exchange, they were inclined to grant exemption to casual labour recruited outside the Employment Exchange from time to time. The last exemption was given to all casual labour who had been recruited upto 7.6.88. During the course of the argument the general consensus was that the exemption as given by the Department of Personnel which is the nodal authority in the Govt of India, should be honoured.

18. The other limb of the aforesaid issue is regarding the consequences of the ban imposed on casual employment in accordance with the D.G.P&T's circular dated 30.3.85 (page 83 *ibid*). Considering the importance of this circular, its text is quoted as follows:-