

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH :: HYDERABAD

D.A. No. 852 of 1993

Between

A. Rajamouli .....Applicant

and

The Asst. Engineer,  
MW Mtee., Hyderabad & Ors .....Respondents

REPLY AFFIDAVIT OF THE APPLICANT

I, A. Rajamouli, S/o A. Pochaiiah, aged about 28 years, retrenched Casual Mazdoor of UHF Stn., ~~Hyderabad~~ <sup>Hyderabad</sup>, ~~Hyderabad~~ <sup>Kondapur</sup>, temporarily come down to Hyderabad, do hereby solemnly and sincerely affirm and state as follows

1. I am the applicant herein and well acquainted with the facts of the case. I submit that I have had the counter affidavit filed on behalf of respondents read over and explained to me and I understand its contents. The averments in the para 1 of counter affidavit are formal and do not call for any reply.

2. (a) With regard to the averments in the first sub-para of para 2 of the counter affidavit it is submitted that though the provisions of the I.D. Act provide alternative remedy, it leads to avoidable procrastination and frustration in the workman concerned for various reasons. In the first instance, he has to raise an industrial dispute before the conciliation officer, i.e. the Asst. Labour Commissioner (Central) at Hyderabad. The conciliation officer takes his own time to give notice to fix a date for the employers to file

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their reply, if any, to the industrial dispute raised by the workman. The employer normally takes his own time to file the counter. Probably in his heavy routine schedule, he would not be able to spare time to promptly go through the workman's complaint to prepare and file his reply. Avoidable delay is also caused by such inability. Sometimes, the delay is deliberate or due to indifference. Thereafter, a date is fixed for discussions and/or conciliation proceedings and again, it is the bitter experience of many a workman that the employers do not attend the discussions or conciliation meetings on the prescribed dates. They seek adjournments for no valid or justifiable reasons. In that process further delay is caused. Even when the employer appears before the conciliation officer, normally he comes forward with the plea that he is bound by instructions of the higher authorities and is not vested with any power or authority to agree to any settlement. This is particularly so in the Telecom Department, and also in other Government services, because of the encasement of the administration in the notorious steel frame and it is also obviously because the administrative machinery is impersonal and has inherited bureaucratic methodology with the note-making, file pushing and passing on the buck ethos.

(b) Ultimately, after several long months, sometimes extending beyond a year, failure of the conciliation proceedings is recorded. It takes a few weeks for the conciliation officer to send his report

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along with prescribed covering letter to the Secretary, Ministry of Labour, where decision whether the matter should be referred for adjudication or not is often delayed for an average of one year or more and in some cases the Ministry refuses to make a reference for adjudication, thus complicating the case further. And if reference is made, it takes a minimum of one and half to two years for the Labour Court or the Industrial Tribunal to make the necessary enquiry and pass the Award which is published in the Gazette many months later.

(c) Further, where the Labour Court or Industrial Tribunal declares retrenchment as illegal and directs reinstatement of the workman with or without continuity of service and back wages etc. depending on the facts and circumstances of the case, the Management or employers try to pick holes in the Award and challenge its validity in the High Court or Supreme Court or other appropriate forums. Thus, by the time the workman comes back to service it would be not less than 5 years. Such a delay is not only frustrating but subjects the workman to utter suffering and poverty besides creating rancour, ill-feeling and disgust in him. A REMEDY THAT LEADS TO SUCH A SITUATION CANNOT BE SAID TO BE AN EFFECTIVE ALTERNATIVE REMEDY. The applicant, therefore, prays that this Hon'ble Tribunal may, in the exercise of its discretion, consider and dispose of this O.A. on merits.

3. The averment in para 3 that Telecom Department is not an industry is based on a misunderstanding and

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misconstruction of the "SUBSTITUTED" Sec. 2(j) of the I.D. Act and hence untenable. The substituted Section has not yet been given effect. It is also ridiculous to say that the Telecom Dept. is the instrument for rendering domestic service. Several Courts and this Hon'ble Tribunal have already held the Telecom Dept. to be "INDUSTRY".

4. With regard to the averments in para 4 of the said counter, it is submitted that no evidence or evidenciary documents are filed by the respondents to prove that the <sup>DET, Hyd'bad (Rurat) of the GM, Hyd'bad Telecom Distt.</sup> ~~was~~ was not able to provide Casual Mazdoors. Therefore, the averment has to be rejected. Moreover, the compensation paid is not in accordance with the mandatory provisions of Sec. 25-F of the I.D. Act.

5. (a) It is difficult to understand the averment that as a Casual Mazdoor I was engaged "TEMPORARILY" and on "ADHOC" basis. The averment does not appear to make any sense. Annexure R-1 is no seniority list at all. The list is to be prepared by the Territorial Telecom Distt. as per the instructions in DoT's letter No. 269-69/88-STN dt. 17-10-88 and

"2. Absorption of Casual Labourers against regular Group 'D' posts or retrenchment due to exigencies such as non-availability of work will be done strictly according to the combined seniority list".

(b) Obviously, the seniority list so called, viz. Annexure R-1, is no seniority list at all. Assuming

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but without admitting, that it is a valid seniority list; the respondents claim to have exhibited the said notice on the notice board at Hyderabad on 8-3-93, i.e. hardly 3 days before the retrenchment order was (allegedly) served on 11-3-93; but Rule 77 of the Industrial Disputes (Central) Rules, 1957 mandates that the seniority list be exhibited "AT LEAST" one week (i.e. clear 7 days) before the retrenchment notice or order is served. A perusal of Annexure R-1 disclosed that the said notice was allegedly exhibited on the notice board not on 8-3-93 but actually on 18-3-93, i.e. clear one week after the actual retrenchment. Moreover, exhibition on the notice board at Hyderabad does not amount to bringing it to my notice, ~~which was stated~~ ~~in the~~ ~~order~~ ~~of~~ ~~the~~ ~~tribunal~~. Evidently, the respondents, claim is false and is clearly an attempt to mislead this Hon'ble Tribunal.

(c) Further, a perusal of the endorsement on Annexure R-2 that it was sent per Regd. Post A/D at "GPO" is an after thought and unsustainable. THERE IS NO MENTION THEREIN THAT IT WAS (TO BE) SENT BY "REGD. POST A/D" OR/AND THAT THE SENIORITY LIST WAS ENCLOSED. A comparison of Annexure R-2 with Annexure A-1 (at page 9 of the O.A.) will disclose that both are one and the same and IN ANNEXURE A-1 also it was not mentioned that it was (to be) sent by Regd. Post A/D or/and that there was an enclosure thereto. The averment is, therefore, absolutely false and made to justify an illegal action.

(d) It is not true that the retrenchment order was sent per Regd. A/D from "GPO, Hyderabad" but it was

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sent from the Night PO at GPD, Hyderabad, i.e. after 6 p.m. on 11-3-93. The date stamp impressed on the SMO receipt (in Annexure R-3) will disclose the same. Under the I.D. Act, the one month wages in lieu of retrenchment notice and the compensation, etc. have to be paid "AT THE TIME OF RETRENCHMENT" of the workman but remittance of the same on the evening of retrenchment by SMO cannot be said to be payment "AT THE TIME OF RETRENCHMENT", vide Sec. 25-F (b) of the I.D. Act. In fact, the payment had to be made before the retrenchment is effected. Therefore, I submit that the mandatory provisions of <sup>the</sup> said Sec. 25-F have not been complied with. Hence the retrenchment is void ab initio.

6. With reference to the averments in para 5 of the counter affidavit, I submit that the 3rd respondent's order requires no explanation as to the context in which it was written; it speaks for itself. I submit that the ground of my retrenchment was that I am the juniormost Casual Mazdoor and that there was no work available for me. When the combined seniority list of the concerned territorial Telecom Distt. has not been furnished to me nor even exhibited on the notice board of the place of my work, there is no question of my being declared the juniormost. In any case, I am not the juniormost. Hence my retrenchment is illegal.

7. I submit that I have no comments on para 6 of the counter affidavit. With regard to the averments in para 7, I submit that it is not open to the respondents to say that my position in the seniority list of ~~Hyderabad~~ <sup>Hyderabad</sup>

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of the DEI, Hyderabad (Rural).  
Telecom Distt. / does not arise because I was not  
"SPONSORED" by the ~~DEI~~ <sup>Distt. Authority</sup>. I submit that under  
the DoT's dt. 17-10-88 aforesaid, a combined seniority  
list of Casual Mazdoors in the territorial jurisdiction  
of a recruitment unit has to be prepared and it must  
include the Casual Mazdoors working in various  
functional units such as Telecom Projects, Mtce.  
Regions, and Electrification/Quality Assurance Circles,  
etc. And the recruitment unit is a Telecom Distt. or  
Division under the administrative jurisdiction and  
control of the territorial Telecom Circle whose  
jurisdiction is generally co-terminus with the  
jurisdictions of the State. And according to the DoT's  
Orders No. 271-32/92-STN dt. 30-10-92, the seniority  
list has to be prepared for a territorial Telecom Distt.  
or Division and all Casual Mazdoors with one year  
continuous service are to be granted temporary status in  
accordance with the DoT's Order No. 269-10/89-STN dated  
7-11-89. Therefore the respondents' submission is a  
deliberate distortion and misrepresentation of the  
orders on the subject and unsustainable. The averments  
in paras 8, 9 and 10 also call for no reply.

8. In this connection, I submit that in view of the  
orders of DG P&T empowering the Project and other  
authorities, other than the authorities of the  
territorial Telecom Districts, to recruit Casual  
Mazdoors, the Mazdoors recruited and employed by the  
Project; etc. authorities should be deemed to be  
deputationists from the territorial Telecom Districts  
concerned. Therefore, their names should be included in

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the seniority list of Casual Mazdoors of the concerned Telecom Distt. I am also to submit that in THE KAPURTHALA CENTRAL CO-OP BANK LTD. v. THE PO, LABOUR COURT, JULUNDUR AND ORS., 1984 LAB. I.C. 974 (P&H-DB) it was declared that

".....the in-built policy in the (ID) 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 those provisions he is as good as having been accepted permanently..... in employment (vide para 9 of the judgment)".

9. In the same para, it was also observed that "WHEN THE MANAGEMENT HAS NOTHING AGAINST HIM WITH REGARD TO WORK OR CONDUCT" but the workman is retrenched, then he would go with RANCOUR, ILL-FEELING, FRUSTRATION and UTTER DISGUST and therefore also observed that "HUMAN MATERIAL IS NOT SO CHEAP AND EASY TO BE FORESAKEN OR ABANDONED. Every life has dignity, value.....". IN OTHER WORDS THE COURT DECLARED THAT HUMAN BEING CANNOT BE TREATED AS CHATTEL OR SPEAKING TOOLS THAT CAN BE DISPOSED OFF AT THE WHIM AND FANCY OF THE MANAGEMENT.

10. I, therefore, submit that in view of the foregoing, I am entitled to reinstatement with continuity of service, full backwages and protection of seniority, more particularly because in the orders of the DoT in their No. 269-4/93-STN.II dt. 17-12-93 furnished with the Chief General Manager, Southern Telecom Region, Madras Lr. No. CGM/E/7/13/CM/93-93 dt. 17-1-94 addressed to the 2nd respondent by name it was stated that

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"5..... the services of all Casual Mazdoors who have not rendered at least 240 days (206 days in the case of administrative offices observing 5 days a week) of service in a year ON THE DATE OF ISSUE OF THIS ORDER should be terminated after following the conditions as laid down in I.D. Act, 1947 u/Ss. 25-F, G & H".

11. I also submit that in the above mentioned KAPURTHALA CASE the Punjab and Haryana High Court has declared that "ONCE THE WORKMEN WERE HELD ENTITLED TO REINSTATEMENT, THEN THE LOGICAL CONCLUSION WAS THAT THEY SHOULD HAVE GOT THEIR FULL BACKWAGES.....". And in THE RAYMOND WOOLEN MILLS LTD. v. C.S. SONAWANE, 1993 LAB. I.C. 1494, the Bombay High Court held (in para 9) that "A BADLI WORKMAN SHALL CEASE TO BE SO REGARDED FOR THE PURPOSES OF THIS SECTION OF THE I.D. ACT IF HE HAS COMPLETED ONE YEAR'S CONTINUOUS SERVICE IN THE ESTABLISHMENT". Needless to say I am not a badli workman, I am admittedly a "CASUAL" Workman who stands at a higher plane than a badli. While a Casual Workman has to be treated as a worker who renders continuous service, a badli workman cannot be treated as such as he gets work only in the absence of a regular employee, temporary or casual. THE BADLIS DO NOT HAVE ANY GUARANTEED RIGHT OF EMPLOYMENT WHEREAS THE CASUALS DO HAVE THAT RIGHT. In view of the above mentioned judgment of the Punjab and Haryana High Court and the judgment of the Supreme Court in NAROTHAM CHOPRA v. THE PD, LABOUR COURT AND ORS., 1988 (4) SLR 388 laying down that

"It is now well settled that if the services of an employee are terminated in violation of Sec. 25-F of the I.D. Act, 1947, the order of

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termination is rendered ab initio void and the employee would be entitled to continuity of service alongwith his backwages", (see also GAMMON INDIA LTD. v. NIRANJAN DASS, 1984 SCC (L&S) 144)"

I am entitled to reinstatement with continuity of service and back wages as well as all other benefits which are consequential to the same. The Supreme Court also declared that the appellant in that case was entitled to his cost and quantified the same at Rs 2,000/-.

12. In UMESH NAIK v. KARNATAKA FOOD AND CIVIL SUPPLIES CORPN. 1983, LAB. I.C. 1135, the Karnataka High Court held that the petitioner's termination was arbitrary as the respondents terminated his services even though at the time of termination and even a little earlier they have appointed others for similar posts or posts. In my case my juniors were appointed immediately after my retrenchment. Therefore my retrenchment is not only arbitrary and violative of Arts. 14, 16 and 21 of the Constitution of India, but also mala fide.

Moreover, I submit that I am not a "Casual" Mazdoor in the real sense of the term. It has been declared by the Rajasthan High Court in BABULAL SHARMA v. UNIVERSITY ORJMER & ANR., 1990 LLR 211 that

"..... casual Labour ordinarily means that the lab appointed or engaged for an unanticip work, just like flood or any other disaster. If the work is a planned work and it is anticipated only, then the said planned work cannot be considered as casual work and the

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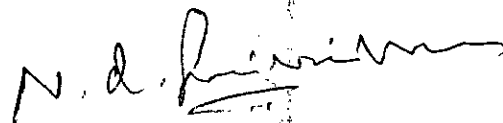
person appointed to perform such duties on such work cannot be said a Casual Labour..... In such circumstances, I am of the view that whenever there is a planned work, then any labour appointed for the performance of that work cannot be said to be a Casual Labour."

14. In the circumstances I submit that it is just and necessary that this Hon'ble Tribunal may be pleased to allow my application and direct my reinstatement with continuity of service and full back wages ~~with interest~~ and protection of my seniority and to award exemplary costs for driving me to this Hon'ble Tribunal without any justification whatever.

  
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SOLEMNLY and SINCERELY affirmed at Hyderabad this the 24th day of July, 1994, the contents of this Reply Affidavit having been read over and explained to the Deponent herein who appeared perfectly to understand the same and signed

BEFORE ME



(N.R. SRINIVASAN)  
ADVOCATE, HYDERABAD.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
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O.A. NO. 852 OF 1983

Recd copy  
WBM memo  
4-8-94

REPLY-AFFIDAVIT OF APPLICANT



M/S C. SURYANARAYANA,  
AND P. BHASKAR,

COUNSEL FOR APPLICANT

May be filed  
by  
WBM