

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA No. 583/1994

Date of Decision: 26.2.1997

BETWEEN:

J. Srinivasa Rao

.. Applicant

AND

1. The Telecom District Manager,
West Godavari District,
Eluru - 534 050

2. The Chairman, Telecom Commission,
Rep. Union of India,
New Delhi - 110 001.

.. Respondents

Counsel for the applicant: Mr. C. Suryanarayana

Counsel for the Respondents: Mr. N.V. Raghav Reddy

CORAM:

THE HON'BLE MR. B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.))

Heard Sri C. Suryanarayana learned counsel for the applicant and Sri V. Rajeswara Rao for Sri N.V. Raghava Reddy learned counsel for the respondents.

The applicant here-in is presently working as temporary status mazdoor. His date of birth is 22.3.1964. In the first instance the applicant was engaged as a casual mazdoor by SDOT, Jangareddy Gudem effective from 3rd September, 1981. He worked upto 30.4.85 under SDOT - JRI. Thereafter he worked under SDOT Nidadavolu from 1.5.186⁹ to 30.5.86. He worked with SDOT, Tade-palligudem during June, July & December 1986. The applicant absented himself from duties between 1.1.87 and 30.4.89 i.e. for a period of 2 years 4 months. The applicant re-entered into the Department on and from 1.5.1989. At the time of introduction of temporary status scheme during 1989 the applicant was informed by the SDOT, Nidadavolu that unless he produced the condonation certificate ^{for his break in service} from the competent authority he would not be allowed to work as casual mazdoor. Thus the respondents disengaged him with effect from 1.1.1990. Thereafter he filed OA before this Bench in OA No.356/90 and obtained an interim order to provide him work. Thus by virtue of the interim order in OA 356/90 he was continued to work and ^{was} conferred temporary status by taking into consideration ~~of~~ his service from 1.5.1989.

On 21.1.1994 he submitted a representation to the respondent No.1 for rectifying irregular fixation of his seniority as casual mazdoor in W. Godavari Telecom District and requested for rectification and consequential benefits. (Copy of the representation is at Annexure A-5) His representation was considered by the Divisional Engineer, Office of the Telecom District Manager, W. Godavari, Eleru and by his letter bearing

- 3 -

No.RE.113/Genl/Corr/Temp.Maz/93-94/10 Dt. 11/14.2.1994

intimated the applicant that the service rendered by him during his minority cannot be taken into account for any purpose that the break in service between 1.4.85 and 30.4.89 (3 years 1 month) has been treated as uncondoned break and that therefore the said service has not been taken into account. He was further intimated that he is continued in service by virtue of the order of the Tribunal and temporary status conferred and that none is empowered to condone break in service for a period more than one year. With the above remarks he ~~has~~ rejected the representation of the applicant. The order passed by the Divisional Engineer is at Annexure-6.

Aggrieved by this order, the applicant has filed this OA praying for a direction to the respondents to fix **his seniority** treating him as in continuous service right from September, 1981 for the purpose of regularising his service and absorbing him into service so revised and pending adjudication of the said subject, he may be granted temporary status from 1.10.89 and for other appropriate and consequential ^{reliefs} ~~benefits~~. Now that the applicant has been granted temporary status ^{O.A.} ~~the prayer~~ to that **extent** has become infructuous.

Annexure-4 contains list of casual mazdoors, who were granted temporary status. The name of the applicant ~~which~~ appears at Sl. No.2 ~~(in)~~ Annexure-4.

The respondents filed a counter stating that the applicant remained absent from date from ^{1.1.1987} ~~1.1.86~~ to 30.4.1989 ~~that~~ his actual service effective from 15.5.89 ^{was} ~~was~~ employed for 289 days upto 30.4.90 and 1096 days upto 28.2.93 and that therefore the contention of the applicant that he was employed for 289 days ^{is} not acceptable. Though the applicant had worked

- 4 -

for more than 240 days during the year 1982-83, 83-84 & 84-85 the period is not countable that his actual service is taken into consideration effective from 1.5.1989 the date on which the applicant was re-employed after the break that the TDM, Eluru who was the controlling officer of the applicant had certified actual number of days the applicant had worked that service rendered prior to uncondoned break in service was not taken into consideration while conferring the temporary status and fixing the seniority, that applicant has been considered and accorded temporary status from 1.5.90 taking into consideration of his service from the date he was re-employed while implementing the orders of this tribunal that during the period of his absence the applicant was neither retrenched nor terminated that the applicant had himself absented from duty that the applicant is not eligible for regularisation for the said period and that therefore the OA be dismissed with costs.

The following points arise for my consideration:

- (a) Whether the service rendered by the applicant during his minority be taken into consideration for regularisation?
- (b) Whether the uncondoned break in service can be considered for purposes of regularisation under the 10 years scheme?
- (c) What is the effect of the service rendered by the applicant before the break?
- (d) To what order?

REASONS

(a) The date of birth of the applicant is 22.3.1964. Even from the version of the respondents the applicant was appointed as casual mazdoor effective from 3.9.91. Admittedly, the applicant was engaged as a casual Mazdoor during his minority. Similar question came up for consideration in OA 739/90. This Tribunal, relying upon the observations made by this tribunal in the case of Sri Mallesh and others Vs. General Manager, Telecom District, Hyderabad (reported in 1993 (23) ATC at page 389).

observed as follows:

"The sole contention of the applicants is that the service rendered by them prior to their attaining the age of 18 should also be reckoned, i.e., they should be deemed to be serving the department from a date prior to April 1, 1980, to satisfy the stipulation in the order regarding regularisation. On April 1, 1980 however none of them had attained the age of 18. The respondents contend that the service rendered prior to the age of 18, should count only for purposes of payment for casual work. The order on regularisation does not indicate any distinction between the service rendered prior to or after the age of 18. To be eligible, one should have 7 years of service as on March 31, 1987 and should be between 18 years and 20 years of age as on July 1, 1987. It is the service as such that should count and nothing else. It is unfair to deny part of the service extracted on the plea that it was rendered before the age of 18. The respondents have not shown us any rule that service prior to the age of 18 is to be ignored. We, therefore, direct the respondents to take into account, for the purpose of regularisation, the total service (emphasis added) regardless of the age at which such service was taken by them. If, on this reckoning, it is seen that persons junior to the applicants have already been regularised, then the applicants should be regularised against the next 6 vacancies that arise, in the proper order. Their seniority in Group 'D' cadre will, however, have to be duly protected. No order as to costs. "

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Relying upon the above observations in OA 734/90 this Tribunal gave a direction as follows:

" In reckoning the number of days of service rendered by the applicant the service rendered by him from the date of his initial engagement will be counted notwithstanding the fact that he was at that time below 18 years of age. "

Hence I am of the opinion that the service rendered by the applicant during his minority is liable to be considered for regularisation. Accordingly point (a) is answered in favour of the applicant.

Points (b) & (c):

The applicant while working as casual mazdoor had a break in service from 1.4.87 to 30.4.89 (2 years 1 month) as stated in para 4.2. However the respondents in their counter stated that applicant ^{had} ~~was~~ ^{ed} absent himself continuously from 1.1.87 to 30.4.89 for a period of 3 years 4 months. There is little variation regarding break in service of the applicant. It is for the respondents to verify and ascertain the actual break in service of the applicant.

After break in service the respondents took him to duty from 1.5.89. It is the contention of the learned counsel for the applicant that the authorities have not given him any opportunity to prove his case as to why the said break in service should not be taken into consideration while regularising his service. The learned counsel for the applicant relied upon the observations made by the Bombay Bench of this Tribunal in the case of S.G. Chandnani Vs Union of India and others 1995(3) CAT (Bom.) 336 wherein it is observed that allowing one absenting over 5 years to join without having first removed him from service amounts to condonation of break in service. On

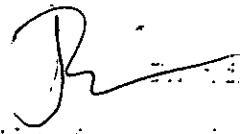


This analogy the learned counsel submits that when the applicant was taken back to duty effective from 1.5.89 they should have considered for condonation of break in service and even to this day the respondents have not taken any action in that behalf. Regarding action to be taken for termination has been explained by the Apex Court in the case of D.K. Yadav Vs. JMA Industries Ltd., 1993 SCC (L&S) 753. The respondents so far have not given any notice to the applicant regarding the break in service. Therefore they cannot now say that the said period cannot be counted for service under 10 years scheme. The learned counsel for the respondents submitted that the applicant was only a casual labourer that he himself remained absent that the decisions relied upon by the applicant do not apply to his case as he was only a casual mazdoor. However I feel that the authorities failed to consider the representation Dt.21.1.94 (Annexure-5) in proper perspective in the light of the decision of this bench. The learned counsel for the applicant relied upon the observations made by Apex Court in the case of Mohan Lal Vs Bharat Electronics, 1981 Supreme Court cases (L&S) page 487 (in para-11.). The honourable Supreme Court considered the effect of service before and after break in service. Para-11 is reproduced as follows:

" Mr. Markendeya contended that clause (1) and (2) of Section 25-B provide for two different contingencies and that none of the clauses is satisfied by the appellant. He contended that clause (1) provides for uninterrupted service and clause (2) comprehends a case where the workman is not in continuous service. The language employed in sub-sections (1) and (2) does not admit of this dichotomy. Sub-sections (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service

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for the purpose of Chapter V-A. Sub-section (1) provides a deeming fiction in that where a workman is in service for a certain period he shall be deemed to be in continuous service for that period even if service is interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. Situations such as sickness, authorised leave, an accident, a strike ~~not~~ illegal, a lock-out or a cessation of work would ipso facto interrupt a service. These interruptions have to be ignored to treat the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which would be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. In industrial employment or for that matter in any service, sickness, authorised leave, an accident, a strike which is not illegal, a lock-out, and a cessation of work not due to any fault on the part of the workman, are known hazards and there are bound to be interruptions on that account. Sub-section (1) mandates that interruptions therein indicated are to be ignored meaning thereby that on account of such cessation an interrupted service shall be deemed to be uninterrupted and such uninterrupted service shall for the purpose of chapter V-A be deemed to be continuous service. That is only one part of the fiction.

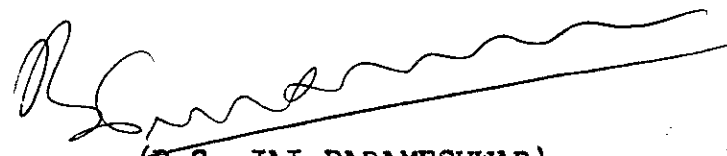
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The above is a true and correct copy of the original as per the order of the Government dated 12/11/2.1955 and signed by the

- 9 -

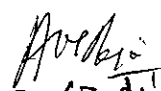
The respondents though re-engaged the applicant effective from 1.5.89 have not taken any action with regard to break in service of the applicant between 1.4.87 and 30.4.89 (as stated by the applicant) / between 1.1.87 and 30.4.89 (as urged by the respondents in their counter) the respondents have not taken into ~~of~~ consideration the representation of the applicant. The representation was for considering his past service. The respondents has^{ve} to consider afresh whether there was any justification for the applicant to remain absent from ~~any job such a long period of time and under whether any rule provides~~ for condoning the said break in service. It is submitted on behalf of respondents that no authority is competent to condone the absence beyond one year. ~~The respondents keeping in view the above rule.~~ The respondents^{may} keeping in view the above rule ~~may~~ consider the representation of the applicant for regularisation. The impugned order does not disclose any such reasoning. The impugned order is not a speaking order.

In view of the ^{above} said discussion, I set aside the impugned order dated ~~22~~¹¹/14.2.1994 and direct the respondents No.1 to consider afresh the representation dated 21.6.1994 taking into consideration the decision of this bench and in the light of the observations made in the court^{-be of} by this order. Time for compliance 4 months from the date of receipt of this order.

Thus the OA disposed of. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)

Date 26.2.1997


D.O. (Judl) 13-3-97

07/4/97
TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI/R. RANGARAJAN: M(A)
AND

THE HON'BLE SHRI B.S.JAI PARAMESWAR:
M(B)

DATED:

26/2/97

ORDER/JUDGEMENT

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

G.A.NO.

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ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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