

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

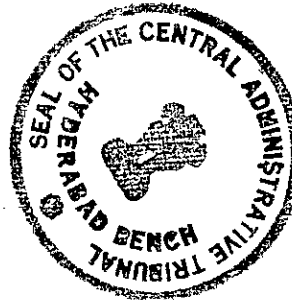
ORIGINAL-APPLICATION-NO.726-ef-1994

DATE-OF-ORDER:-26th-February,-1997

BETWEEN:

B.MADHAVA RAO

AND



APPLICANT

1. The Telecom District Manager,
Eluru 534050,
2. The General Manager, Telecom,
Warangal Area, Warangal 506012,
3. The Chief General Manager,
Telecom, AP, Hyderabad,
4. The Chairman, Telecom. Commission,
(repg. Union of India),
New Delhi 110 001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA, Addl.CGSC

CORAM:

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

ORDER

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
MEMBER (JUDL.)

Heard Shri C.Suryanarayana, learned counsel for
the applicant and Shri V.Bhimanna, learned standing counsel
for the respondents.

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~~REAS~~ i.e., during February 1990, he submitted an application for condonation of the break in service, that the request for the same was rejected by the letters of the CGM, Telecom, Hyderabad dated 15.7.88, 6.1.89 and 20.4.89 wherein it was clarified and instructed that the cases of condonation of break in service should not be entertained, that though the applicant was engaged as Casual Mazdoor since 1.2.69 (at the time he was a minor) his services from 10.6.79 have been taken into consideration, that the date of birth of the applicant is 10.6.1961, that the applicant after the accident worked till 31.5.84, that at the same time, another Casual Mazdoor by name Mr.G.Vennappa Swamy also met with accident, that the SDO replied that the condition of the applicant and Vennappa Swamy was good, that the applicant had left service and was doing cultivation, that Shri G.Vennappa Swamy continued in service, that the applicant had met with a minor accident, that the certificate issued by the Doctor and the period prayed for condonation of break in service are contradictory to each other, that the applicant had not disclosed any valid reasons for condoning the break in service, that the representation as per Annexure A-2 has not been received in the Department, that the applicant obtained medical certificate at a later date, that the applicant was informed that the condonation of break in service of any nature could ^{not} be entertained, that since the applicant was having uncondonable break for more than 60 months after the cut off date i.e, 30.3.85 his services were discontinued effective from 25.5.80, that the applicant had applied for condonation only during January 1990 by which time the Department had processed and

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respondents found that the applicant was ineligible for further continuation and that, therefore, they terminated his services with a month's notice. Then the applicant filed OA 228/90 before this Tribunal and by virtue of the interim order granted in that OA, he continued in the service. He was granted temporary status with effect from 1.10.89 (Para 10 of the counter).

direction to the respondents to fix seniority with effect from 1.7.79 by condoning the break in his service for the purpose of regularisation with effect from 1.4.87 under the 7 years' scheme, if necessary by sanctioning and creating a supernumerary post for his absorption with protection of seniority over several of the applicant's juniors, i.e. those who are recruited after he was recruited who were regularised in that scheme or, alternatively, the applicant prays that the respondents be directed to absorb him in the regular establishment with effect from 31.12.91 under the 10 years' scheme besides granting any other appropriate relief or reliefs.

6. The respondents have filed their counter. Their main contention is that the applicant met with the accident on 6.7.83. He was treated at District Government Hospital, Eluru till he was fully recovered from the injury sustained in the accident and thereafter he reported for duty and continued to work till 31.5.84. That the applicant remained absent from duties from 1.6.84 to 1.1.87, that even at the time when he was reengaged from 2.1.87 he did not disclose any reasons for his absence, that after a gap of nearly 3 years

though he reported for duties after the accident, he could not perform duties as he felt fracture in the wrist of the right hand. On the other hand, the respondents contend that immediately after the accident, the applicant was given sufficient medical treatment at the District Government Hospital, Eluru, that only after he fully recovered he was discharged from the Hospital, that he reported for duty after the discharge and worked till 31.05.84. The applicant remained absent from duties from 1.6.84 to 1.1.87.

9. In support of his contention, the learned counsel for the applicant strongly relies on the certificate issued by the Doctor which is at Annexure A-1.


10. The contention of the applicant that he sustained fracture during the accident occurred on 6.7.83 is not borne out ^{from} any record. He has not produced the records of the District Govt. Hospital, Eluru to show that the medical authorities had ever disclosed the fracture in the wrist. It cannot be imagined that a person having fracture injuries can work in the Department till 31.5.84. The accident took place on 6.7.83. The applicant remained absent from 1.6.84. At least during this interval he had not brought to the notice of the employer that he was unable to perform any of the duties because he ^{had} sustained fracture in his right wrist. Besides, after 1.6.84 he had not intimated the Department that he was undergoing treatment for the alleged fracture in his right hand wrist. It is only on 20.12.86 he reported with the medical certificate. The respondents contend that since there were

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of the employee completed the regularisation under the seven years' scheme, that the case of the applicant is not pending, that mere taking a candidate for work on his request does not confer any right to make regular or deemed to have been condoned in view of the interim order passed in OA 228/90. The applicant was continued in work and was conferred temporary status and that there are no reasons justifiable to condone the break in service of the applicant for the period from 1.6.84 to 1.1.87.

7. The learned counsel for the applicant submitted that in the accident that occurred on 6.7.83, the applicant sustained fracture and injuries to his wrist in the right hand and thus, therefore, he was under treatment with Dr. Samarla Mohandas at Eluru as per the medical certificate. Further it is submitted that when the applicant was taken back to duty on 2.1.87 his earlier break in service is deemed to have been condoned. He also relied upon the decision in the case of Smt. S.J. Chandramma v. Union of India reported in 1995(3) SLJ (CAT) 336 to contend that allowing one absentee over 5 years to join without having first removed him from service amounted to condonation of break in service. Further he also relied upon the observations made by the Hon'ble Supreme court of India in the case of Mohanlal v. Bharat Electronics Ltd reported in 1981 SCC (L&S) 478. He relied upon the observations made in Para 11 in the said judgement.

8. It is not in dispute that the applicant met with accident on 6.7.83 while performing the duties of the Department. It is the case of the applicant that even



applicant for the period from 1.6.84 to 2.1.87.

12. The applicant is not entitled to any of the reliefs claimed in this OA. Hence the OA is dismissed. No order as to costs.

सदर अति
 CORRESPONDENCE OFFICE
 [Signature]
 COURT OFFICER
 Central Administrative Tribunal
 HYDERABAD BENCH

FILE NUMBER	MA-726/94
मस्य का तारीख	26/2/97
Date of Judgement	26/2/97
प्रति तय्यार किया गया दिन	26/3/97
Case Made Ready on	26/3/97
अनुभाग अधिकारी (न्य बिक)	
Section Officer (J)	

some targetted works to be completed, he was taken to duty. Even after reporting for duty, he has not submitted any representation to the authorities that he was suffering from fracture and was compelled to remain absent from duties on account of the treatment at Eluru. Therefore, it is important to come to the conclusion that on account of the accident occurred on 6.7.83, the applicant had fracture and that therefore he was forced to remain absent from duties from 1.7.84 to 2.1.87.

11. The respondents submit that it is only on 25.1.90 that the applicant came with the representation for condoning the break in service. Further they submit that by then they had processed and completed the regularisation of the employees under the seven years' scheme. The applicant prays for regularisation right from 1.7.79. He has filed this application on 7.6.94. Nearly 15 years after the lapse if he felt that the authorities were not considered his representation, he should have moved the appropriate judicial forum. When OA 228/90 filed by him when he was terminated with one month's notice, he did not whisper about break in service. In fact in para 6 of the judgment in OA 228/90, this Tribunal observed, "Shri Suryanarayana had contended that in OA Nos.161/90, 231/90, 228/90 and 675/90 that despite there being no break in service.....". The learned counsel for the applicant in that OA submitted that there was no break in service in the case of the applicant in OA 228/90 i.e, the applicant herein. Therefore, the application is also barred by the Order II Rule 2 of the Code of Civil Procedure. Hence there are no grounds to condone the break in service of the

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