

(44)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA No. 836/1995

Date of Decision:

13.10.1997

BETWEEN:

V. Satyanarayana Raju .. Applicant

AND

1. The Sub-Divisional Officer,
Telecom, Tadepalligudem-534 101.
2. The Telecom District Manager,
West Godavari Telecom District,
Eluru - 534 050.
3. The Chief General Manager,
Telecommunications, A.P.,
Hyderabad - 500 001.
4. The Director-General, Telecom,
(representing Union of India),
New Delhi - 110 001.

.. Respondents

Counsel for the Applicant: Mr. C. Suryanarayana

Counsel for the Respondents: Mr. K. Ramuloo

CORAM:

THE HON'BLE SRI H. RAJENDRA PRASAD: MEMBER (ADMN.) ^Q/_{13/10}

ORDER

(Per Hon'ble Sri H. Rajendra Prasad: Member (Admn.).)

Heard Mr. C. Suryanarayana, Learned Counsel for the applicant and Mr. K. Ramuloo, Learned standing counsel for the Respondents.

The applicant in this OA was initially engaged as casual mazdoor on 1.9.1981. Subsequently he claims to have worked as under:-

<u>Year</u>	<u>Period Engaged</u>
1981-82	252 days
1982-83	Less than 240 days
1983-84	269 days
1984-85	20 days

From December 1985 to December 1989 he was absent due to sickness.

He was employed thereafter from 22.12.89 to 29.1.1990 continuously.

On 5.2.1981 a direction was issued by this Tribunal (in OA 116/91 filed by the applicant) that he should make a representation to the second respondent seeking reinstatement. No action was taken on his representation. In the meantime OA No.38 of 1992 was filed by the applicant when the respondents were said to be contemplating to terminate his services from 1.10.1984.

The applicant states that he is working continuously from 17.1.95. The applicant prays for a declaration that he is deemed to have been in continuous service from 1.10.91, that he is entitled to grant of temporary status on the ground that a medical certificate submitted by him in March 1990 explaining the reason for his absence from duty from 1985 to 1989 was duly accepted by the competent

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authority, that he was re-admitted to duty (i.e. reengaged) on the basis of this certificate. This act, according to the applicant, amounts to condonation of break having been accorded, and that he should therefore be declared eligible for absorption in regular establishment effective from 1.10.1989.

It is submitted by Mr. Ramuloo for the respondents that as per the scheme evolved for the purpose, the applicant is not entitled to be granted any temporary status at all inasmuch as he was absent for 365 days from 16.1.1993. It is further submitted that respondents have not so far received a copy of the medical certificate dated 4.9.90 stated to have been issued by Dr. K.S. Banerjee, Katragadda Nursing Home, Bhimadole. Hence they are not in a position to accede to the request of the applicant. Therefore it is urged by Mr. Ramuloo that there is no merit in the case and the same may be dismissed.

Mr. Suryanarayana raised certain counterpoints in answer to the pleadings and submissions of the learned standing counsel. This may be summed up as under:-

1. Original scheme evolved in connection with conferment of temporary status (followed by absorption in regular establishment) for eligible casual labourers does nowhere speak of 'break-in-service'. This expression seems to have been introduced by the respondents as a convenient routine administrative phrase or expression. Break-in-service in case of regular employees is duly incorporated in basic rules and regulations whereas this concept is alien to casual labourers. Hence any over dependence

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on break-in-service by the department to deny the legitimate rights of a worker might not be acceptable or correct.

2. The Respondents have prescribed certain restrictions as regards to powers to condone break-in-service. According to this, any absence of more than one year cannot be condoned by any one at all in the department. This does not seem to be a rational dispensation. Since there is no reason why an absence of more than a year cannot be condoned by an appropriate higher authority in eminently deserving cases, i.g., prolonged illness and subsequent recovery.
3. If the applicant had been unauthorisedly and unaccountably absent for a long time he should not have been reengaged on the strength of a medical certificate, as was evidently done in this case. The very fact that this medical certificate was accepted and the applicant was readmitted to duty would prove that the concerned authority had proper and valid reasons before it for admitting the applicant to duty. By reengaging him this would itself amount to condonation of absence.

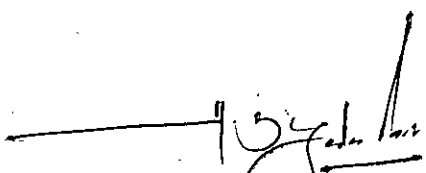
Basing on the facts of the case I consider as adequate to direct the applicant to submit a representation to Respondent-3, highlighting the facts of the case.

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12/1

The points raised on this behalf, as indicated above, can be raised in the representation. This may be done within 30 days from the date of this order. The same shall be got examined by Respondent-3 and a suitable decision taken on the basis of the points raised therein and after suitably examining the validity of these pleas in the light of administrative instructions as well as principles of natural justice. The Respondents, if they considered it necessary, are free to verify the genuineness of the medical certificate stated to have been sent by the applicant. A proper decision in the form of a detailed speaking order on all the points raised in the applicant's representation shall be communicated to the applicant within 2 months from the date of its receipt.

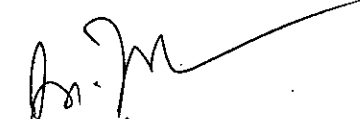
It is further directed that till the final decision is taken in this case the applicant shall continue to be engaged as long as work is available.

Thus the OA is disposed of.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)

Date: 13th October 1997

KSM


Deputy Registrar

36/95.

b Divisional Officer,
com, Tadepalligudem-101.

2. The Telecom District Manager,
W.G.Dist.Telecom Dist. Eluru-050.
3. The Chief General Manager, Telecommunications,
A P.Hyderabad-1.
4. The Director General, Telecom,
Union of India, New Delhi-1.
5. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
6. One copy to Mr.K.Ramulu, Addl.CGSC.CAT.Hyd.
7. One copy to HHRP.M.(A) CAT.Hyd.
8. One copy to D.R.(A) CAT.Hyd.
9. One spare copy.

pvm.

24/10/97

I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE CHAIRMAN

And

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

DATED:- 13/10/97

I Court.

ORDER/JUDGMENT.

CHECKED BY:

APPROVED BY:

APPROVED BY:

M.A.,/RA.,/C-A.No..
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

Q.A.No. 836/95.

T.A.No. (W.P.)

THE HON'BLE MR. JUSTICE.
VICE CHAIRMAN

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs

Central Administrative Tribunal
HYDERABAD BENCH
24 OCT 1997
HYDERABAD BENCH

Q.A.No.