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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

O.A.No.1080/1995

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER(ADMN.)

C.R.Ramamohan,  
Casual Mazdoor in the  
Telecom District Manager's office,  
Anantapur. ..Applicant

(By Advocate Mr.C.Suryanarayana)

vs.

1. The Telecom District Manager,  
Anantapur- 515050.
2. The Director General, Telecom,  
(reptg. Union of India),  
New Delhi-110'001.

(By Advocate Mr.V.Rajeswara Rao, Addl. CGSC)

The Application having been heard on 26.2.98, the Tribunal on  
30.4.1998 delivered the following

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This Original Application along with 18 other cases were listed for a joint hearing as it was felt that some common questions of law and facts were involved in all these cases. As a matter of fact some common questions as to whether the Industrial Disputes Act ('I.D.Act' for short) is applicable to the Department of Telecom, whether the scheme for grant of temporary status and regularisation evolved in the Department is an ongoing one or a one time dispensation for regularisation of casual labourers who were in existence on a particular date etc. would be germane for consideration in many of these cases. When the matter was taken up for hearing on the basis of a status paper

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produced by the Sr. Central Govt. Standing Counsel, arguments were addressed by the Sr. Central Govt. Standing Counsel in common to all these cases. The various counsel appearing for the applicants in the individual Original Applications also made submissions. However it is now noticed that various applications have varying, distinct and individual sets of facts which call for reply by the respondents and that reply statements in many of the cases have not been filed. Pleadings are complete only in this O.A. and in O.A. No. 492/97. In O.A. No. 764/97 notice before admission was given and a direction was given by order dated 20.8.97 to file detailed reply statement on issues specified in the order and despite adjournments given, the reply statement has not been filed and no order on admission has been made. In all the other 16 cases, though applications were filed, reply statements were not filed and pleadings have not been taken as complete. According to Rule 12 of the C.A.T (Procedure) Rules, the contesting respondents have to file reply statement and produce documents in the form of paper-book with the Registry within one month from the date of receipt of notice on admission. However, it is provided in sub-rule(5) of Rule 12 that the Tribunal may allow filing of reply statement after expiry of the period prescribed. In the 16 applications as aforesaid there is no order either granting the respondents further time for filing reply statement or taking the pleadings as complete. No document which would enable the Tribunal to consider and dispose of the individual applications in the absence of pleadings also have been filed in these cases. When the matter was heard, the fact that reply statements in individual cases were not filed and that the pleadings were not complete, were

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not adverted to either by the counsel in their arguments or by the Bench. It is now seen that for the proper disposal of the issues involved in the various cases, it is necessary that respondents should file reply statements or produce documents for contesting the individual applications. That in view of the matter, we find it impracticable to have a common disposal of these applications. O.A.Nos.1080/95 and 492/97 in which the pleadings are complete, will be disposed of now. The other O.As will be taken up individually and appropriate orders made.

2. In this application, the applicant who claims to have been employed under the first respondent's office with effect from 1.1.91 continuously with intermittent breaks, is aggrieved by the abrupt termination of his services with effect from 1.7.1995 verbally, without issuing a notice, and without following the mandatory provisions contained in Chapter V-A of the I.D.Act as also against the instructions contained in the order dated 1.10.1984 of the D.G, P&T, New Delhi. It is alleged in the application that in the year 1991 the applicant had been employed for 244 days, in 1992 for 291 days, in 1993 for 258 days, in 1994 for 294 days and in 1995 for 71 and 64 days. As the applicant claims to have completed 240 days of service in all these years, termination of his services without notice and without paying retrenchment compensation, being in violation of the mandatory provisions of Chapter V-A of the I.D.Act, and as the applicant has not been paid the due wages, the applicant prays that it may be declared that the termination of his services with effect from 1.7.1995 is violative of the provisions of Chapter V-A of the I.D.Act, and the respondents be directed to reinstate the applicant in service with effect

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from 1.7.95 and to consider him for absorption in regular establishment in his turn granting him temporary status and regularisation in accordance with the scheme.

3. The respondents in their reply statement contend that the applicant was engaged as a contract worker, that he has not worked for more than 170 days in any year and that as the payment was made to him commensurate with the quantum of work, he is not entitled to be treated as a casual labourer. They further contend that the Hon'ble Supreme Court has held that the Department of Telecom is not an industry, the provisions of the I.D.Act is not applicable to the facts of the case. They contend that as the applicant is only a contract worker, the application is liable to be dismissed.

4. The applicant has—noting the argument of the respondents in the reply statement that he was a contract worker, that he was not engaged on daily wages and that he had in no year worked for more than 170 days—produced the copies of A.C.G.17 bills showing the details of his engagement. The Bench by order dated 16.12.97 had directed the respondents to react to what is contained in A.C.G 17, as also to produce document if any which would show that the applicant was engaged in terms of a contract. The respondents despite several adjournments given in this regard did not file any statement nor did they produce any deed of contract. The learned counsel appearing for the respondents stated that no such contract as executed by the applicant was available. We have perused the pleadings and other material available on record as also the copies of

A.C.G.17 vouchers produced by the applicant along with M.A.No.175/98 and heard the learned counsel appearing for the parties at considerable length.

5. The questions that arise for consideration for a proper adjudication of the issues involved in this application are:

- (a) Whether the engagement of the applicant till 1.7.95 had been as a daily-rated casual labourer or as a contract worker.
- (b) Whether the applicant has completed more than 240 days of service in any year.
- (c) Whether the verbal termination of the service of the applicant with effect from 1.7.95 is illegal in view of the provisions in Chapter V-A of the I.D.Act, 1947, and in view of the orders of the D.G., P&T dated 1.10.84.
- (d) Whether the applicant is entitled to the grant of temporary status and regularisation in accordance with the scheme for grant of temporary status and regularisation brought into effect from 7.11.89. *89.8/2000*
- (e) What relief, if any, the applicant is entitled to.

6. We shall now take up for consideration the above points in seriatum:

- (a) The applicant has averred in this application that he has been working from 1991 onwards as a casual labourer on daily wages. The respondents, on the other hand, have contended that the applicant was engaged only with effect from 1.1.92, that he had in no year worked for more than 170 days and that he was not engaged as a daily rated casual

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labourer, but only on contract basis, payments being made commensurate with the work entrusted. The applicant has produced the copies of A.C.G.17 vouchers along with M.A.No.175/98. It is evident from the document that the applicant was engaged on daily wages continuously, that his first engagement was on 1.1.1991 and that upto and inclusive of the year 1994 he had been continuously engaged for more than 240 days in a year. The learned counsel for the respondents to produce evidence to show that the applicant was engaged on contract basis making payment commensurate with the work entrusted, and not as a daily-rated casual labourer, the respondents could not produce any evidence. The respondents did not file any reply statement disputing the authenticity of the copies of A.C.G. 17 vouchers produced by the applicant. Whether on muster roll or on A.C.G.17, if engagement is made on a daily rated-basis, the engagement is as a casual labourer and not as a piece-rate contract labourer. On the basis of the evidence available on record and in view of the failure on the part of the respondents to rebut the evidence produced by the applicant, we are convinced that the engagement of the applicant was not as a contract worker but was as a daily rated casual labourer during the period in question.

(b) As observed by us in the preceding paragraph, the copies of the A.C.G.17 vouchers produced by the applicant in unambiguous terms prove that in all the years from 1.1.91 till he was discharged abruptly with effect from 1.7.95, the applicant had been working far more than 240 days in a year. The case of the respondents therefore that in no year the applicant had worked for 170 days is found to be not true.

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(c) Annexure Al is a copy of the letter of D.G., P&T No. 269/130/78-STN dated 1.10.1984 which reads as follows:

" In order to implement certain judgments 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 and one month wages in lieu thereof be paid to them.

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

The respondents in their reply statement did not dispute that D.G. has issued the Annexure Al letter, but they contend that the direction in the letter is not applicable to the applicant as he was not a casual labourer, but only a contract worker. This contention has been rejected by us as observed in the preceding paragraph. Therefore the termination of the service of the applicant with effect from 1.7.95 without issuing a notice as mentioned in the letter dated 1.10.1985 of the D.G., P&T, is undoubtedly in contravention of the instructions contained in the letter.

(d) As the applicant has been serving for more than 240 days in a year, the termination of his services without notice and payment of retrenchment compensation is in violation of the provisions contained in Section 25F of the I.D.Act.

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Learned counsel of the respondents argued that it has been held by the Hon'ble Supreme Court in AIR 1997 SC 2817 that the Telecom Department is not an industry. However in a later case, General Manager, Telecom vs. S. Srinivasa Rao and others, AIR 1998 SC 656, it has been conclusively held that the Telecom Department is an industry overruling the earlier view. Therefore the applicant, having been working as a daily-rated casual labourer, and having rendered more than 240 days a year right from the year 1991, the termination of his services without notice and without payment of compensation as required under Section 25F of the I.D.Act is illegal, unjustified and therefore void.

(e) The applicant has been granted temporary status and regularisation in accordance with the scheme brought into effect from 1.10.89 by the D.G., Telecom letter No.269-10/89-STN dated 7.11.89(Annexure A3). Learned counsel of the respondents argued that as the scheme was evolved for the purpose of granting temporary status and regularisation of the casual labourers employed by the Telecom Department and currently working on 1.10.89, the applicant who was engaged for the first time even according to him on 1.1.91 is not entitled to the benefit of the scheme. Learned counsel of the applicant on the other hand argued that the scheme is a continuing one and all casual labourers who come under the employment of the Telecom Department even after the date of commencement of the scheme are entitled to the benefit of temporary status on completion of 240 days of service and for regularisation on Group D posts in their turn in accordance with the scheme. To ascertain whether the scheme is a continuous one or one evolved for the grant of the benefit of temporary status and regularisation to casual labourers who were already in employment on 1.10.89, it is necessary to carefully examine

the provisions of the scheme. Sub-paragraph A of paragraph 4 of the scheme reads as follows:

"A) Vacancies in the Group 'D' Cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant Recruitment Rules."

(emphasis supplied)  
The above excerpt from the scheme would indicate that the scheme was intended to benefit the casual labourer who were in existence on the date on which the scheme was brought into effect because the filling up of the vacancies in Group D cadre in various Departments of Telecom by any other method than regularisation of the casual labourer with an exception of compassionate appointment has been prohibited till absorption of all existing casual labourers was complete. Sub paragraph 1 of paragraph 5 reads as follows:

"i) Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of atleast one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week). Such casual labourers will be designated as Temporary Mazdoor."

(emphasis supplied)

The use of the words "currently employed" also makes it evident that the intention was to confer temporary status on casual labourers who were in employment on 1.10.89. In the light of these two

provisions of the scheme it is idle to contend that the scheme is a continuing one and not a special dispensation intended to benefit the casual labourers who were in employment on 1.10.89. Learned counsel of the applicant invited our attention to the ruling of the Supreme Court in Ram Gopal and others vs. Union of India & others, Writ Petition (c) No.1280 of 1989 wherein a direction was given to the Telecom Department to prepare a scheme on a rational basis for absorption of the --- continuously working for more than one year in the Posts and Telegraphs Department within 6 months from the date of the order. Learned counsel stated that the applicants before the Supreme Court were also similarly situated like the applicants. He also brought to our notice the letter of the Government of India, Department of Posts No.66-52/92-SPB-1 dated 1.11.1995 whereby pursuant to the judgment of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.750 of 1994, it was decided that full-time casual labourers recruited after 29.11.1989 and upto 10.9.1993 were also to be considered for the grant of the benefit of temporary status under a scheme brought into effect in the Department of Posts. As the Department of Posts and Department of Telecom were earlier one Department and the scheme for temporary status and regularisation was evolved pursuant to the ruling of the Supreme Court in Daily Rated Casual Labour employed under P&T Department vs. Union of India, AIR 1997 SC 2342, it is necessary that the Telecom Department should also extend the benefit of the scheme to the casual labourers recruited upto 10.9.1993, argued the counsel. He also stated that considering the fact that the Department of Telecom is going

on engaging casual labourer despite the repeated instructions issued by the Director General from time to time to stop the practice, it can be seen that it is difficult to do away the system of casual labourer in the nature of activities of the Department and that therefore it is necessary that, like the Railways, the Department of Telecom should frame rules for grant of temporary status and regularisation of casual labourer as a continuous and permanent measure. The argument sounds attractive and reasonable, but the scheme which is in existence undoubtedly is a special dispensation to benefit the casual labourers who were currently employed as on 1.10.89. Those who commenced casual service thereafter do not come within the ambit of the scheme. Taking into account or the fact that despite repeated instructions by the D.G., Posts and D.G., Telecom to dispense with the system of engaging casual labour in practice over a period of time, it has been found practically impossible to abandon the system, we are of the considered view that it is high time for the Govt. to consider the desirability of making some scheme or framing rules for grant of temporary status and regularisation to casual labourer who were engaged and continued for a long time or extending the benefit of the existing scheme to the casual labourers who were engaged after 1.10.1989, as was done in the case of the Postal Department. We leave it to the Government to take an appropriate decision in this matter.

f) In view of the finding that the Telecom Department is an industry and the termination of service of the applicant with effect from 1.7.95 was in violation of the provisions of Section 25 F of the I.D.Act, the applicant

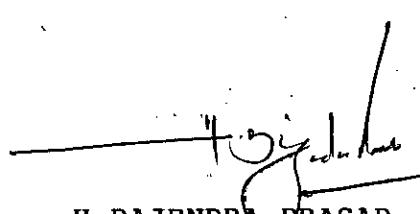
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is entitled to have the termination of service set aside as illegal and unjust. As the applicant has already been reengaged and is continuing in employment pursuant to the interim order of the Tribunal dated 12.9.95 we are of the considered view that the interest of justice will be met if the respondents are directed to continue him in casual service so long as work is available and that if retrenchment happens to be necessary it shall be done in accordance with the provisions contained in the I.D. Act. Regarding the grant of temporary status and regularisation as the applicant was not currently employed as on 1.10.89 when the existing scheme for grant of temporary status and regularisation to the casual labourers of the Telecom Department was brought into force, the applicant will not be entitled to the benefit of the scheme. Considering the fact that despite orders to the contrary issued periodically by the D.G., the lower formations in the department are going on engaging casual labourers, we are of the considered view that the Government should consider the desirability of extending the benefit of the existing scheme to casual labourers engaged beyond 1.10.1989 also, as was done in the Postal Department by letter of D.G., Posts dated 1.11.1995.

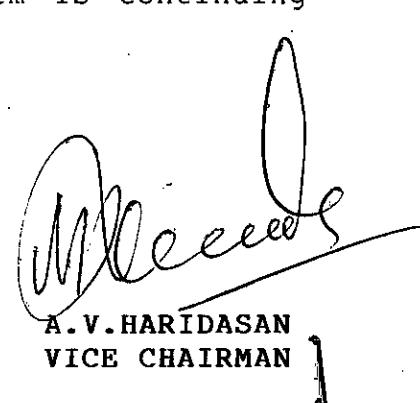
7. In the result, in the light of what is stated above, the application is allowed. The termination of the services of the applicant with effect from 1.7.95 is declared as null and void. As the applicant has already been reinstated in service, the respondents are directed to continue him as casual labourer as long as work is available and if retrenchment of the service of the applicant happens to be necessary, to do so strictly in accordance with the provisions contained in Chapter V-A

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of the I.D.Act. The claim of the applicant for temporary status and regularisation is not granted as the scheme, as it stands, does not apply to casual labourers who were not currently employed on 1.10.89. However, the respondents are directed to consider the desirability of extending the benefit of the scheme to casual labourers who were recruited after 1.10.89 also, as was done by the D.G., Posts in the Postal Department or to consider the formation of a scheme for grant of temporary status and regularisation as in the case of Railways, if the requirement of engagement of casual labourer cannot be dispensed with taking into account the nature of the activities of the Department in the light of the fact that despite instructions to stop the practice of engagement of casual labourers, the system is continuing even now. There is no order as to costs.



H. RAJENDRA PRASAD  
MEMBER (A)



A. V. HARIDASAN  
VICE CHAIRMAN

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Deputy Registrar

O.A. 1080/95

To

1. The Telecom District Manager,  
Anantapur-050.
2. The Director General, Telecom,  
Union of India, New Delhi-1.
3. One copy to Mr.C.Suryanarayana, Advocate. CAT.Hyd.
4. One copy to Mr. V.Rajeswar Rao, Addl.CGSC. CAT.Hyd.
5. One copy to HHRP.M.(A) CAT.Hyd.
6. One copy to DR(A) CAT.Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE *AV Haripada*

VICE-CHAIRMAN  
AND

*Emmanuel Banerjee*

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

DATED: 30-4-1998.

ORDER/JUDGMENT

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

in

O.A.No. 1080/95.

T.A.No. (w.p. )

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

