

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 318/95

Date of Order : 30.7.97

BETWEEN :

S.Venkateswarlu

.. Applicant.

AND

1. The Sub Divisional Officer,  
Telecom, Tirupathi.2. The Telecom Dist. Manager,  
Tirupathi.3. The Chairman, Telecom Commission,  
(rep. Union of India), New Delhi.

.. Respondents

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Counsel for the Applicant

.. Mr.C.Suryanarayana

Counsel for the Respondents

.. Mr.K.Bhaskara Rao

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER ( ADMN.)

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J U D G E M E N T

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.C.Suryanarayana, learned counsel for the applicant and Mr.Phani Kumar, for Mr.K.Bhaskara Rao, learned standing counsel for the respondents.

2. The applicant in this OA was engaged as a casual mazdoor under R-1 w.e.f. 5.7.84. He worked in that capacity upto 31.3.85. It is stated that he left the job without intimation for the next 6 years. Though the learned counsel for the applicant submits that he was mentally sick and hence he could not inform his absence during that period. He was re-engaged on day to day basis from 1.4.92. He was absent



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once again during the period from 28.3.92 to 30.6.92 for a period of 3 months again. Hence he was not reengaged later. The applicant submits that he was taking rest due to his sickness and also he was involved in a bus accident. Hence he could not attend after 31.6.92. He has submitted a representation dt:15.7.92 addressed to the A.E. (Works) office of TDM, Tirupathi (A-5). In that representation he has requested for reengagement. But his case was not considered thereafter.

3. This OA is filed praying for a declaration that a nonemployment of the applicant after his recovery from illness on return to work is not only arbitrary and violative of Articles 14, 16 and 32 of the Constitution of India but also within the meaning of Section 22 (OO) of the I.D. Act and for a consequential direction to the respondents to reinstate him with continuity of service and backwages.

4. The applicant was absent for about 6 years after his earlier short working for about 10 months. If he is mentally sick during that period for about 6 years he cannot be considered for engagement during that period and his absence over an year without proper authority cannot be condoned for getting him any benefit. However the applicant was reengaged on day to day basis w.e.f. 1.4.91 and he was absent from 28.3.92 to 30.6.92. He submitted a representation for his reengagement on 15.7.92 (A-5). It is not understood why he was not reengaged if there is reason for his absence during the period from 28.3.92 to 30.6.92. The reply also does not contain any reasons in this connection. Hence I am of the opinion that the applicant needs to get some benefit.

5. The learned counsel for the applicant submits relying on AIR 1981 SC 1253 (Mohan Lal V. Management, Bharat Electronics Limited) that the absence during sickness period should not be treated as interruption of service as it is beyond his

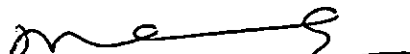
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control and the benefit provided for in the I.D. Act should be extended to him if he is absent due to sickness. In this connection he relies on para-11 of the above referred judgement. I have gone through the judgement especially para-11. The applicant had submitted a representation at Annexure-5 on 15.7.92 within about a fortnight after 30.6.92. The respondents should have considered his case on the basis of the representation and advised him suitably. But it looks that the respondents have not taken any action on that representation and held that the applicant is not fit to be reengaged. The above decision of the respondents is not in order and hence the applicant has to be reengaged in future works. That engagement should not result ~~in~~ <sup>other</sup> retrenchment of the casual labourers <sup>for re-engagement</sup> already in service. But he should be considered in preference to <sup>the</sup> juniors if any already retrenched or in preference to freshers. The respondents should also consider placing his name in the appropriate place in the seniority list in accordance with the law <sup>after re-engagement</sup>.

6. In the result, the following direction is given:-

The case of the applicant should be considered for reengagement if there is work in future and <sup>there is</sup> need for engagement of casual labourers in preference to his retrenched <sup>casual labour</sup> juniors or freshers from outside. If he is reengaged in pursuance of the above direction his placement in the seniority list should be decided by the respondents in accordance with the existing law for granting seniority to casual labourers <sup>under</sup> in the present situation.

7. With the above direction the OA is disposed of. No costs.



( R. RANGARAJAN )  
Member (Admn.)

Dated: 30th July, 1997

( Dictated in Open Court )

*Amli*  
4-8-97  
DND