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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 382 of 1997

Date of Decision: 26-12-1997

Between:

1. R. Narasimhulu
2. A. Rajamouli,
3. C.S. Samuel Moses,
4. N. Rambabu
5. P.S.N.V. Phani Prasad,
6. Sk. Ismail,
7. S. Rajender,
8. L.T.B. Srinivas,
9. T. Mohan,
10. K. Ramanaiah,
11. B. Prakash
12. S.A. Khaleel,
13. P.V. Subbaiah,
14. PMV Ramana Reddy

.. Applicants

AND

1. Divisional Engineer, Telecom,
Microwave Maintenance,
3rd Floor, Telephone Bhawan,
Saifabad, Hyderabad.
2. The Director, Maintenance, STSR,
No.6-1-85/18, 2nd Floor, Sai Nilayam,
Saifabad, Hyderabad-500 004.
3. The General Manager, Maintenance,
STR, Infantry Road, Grace Mansion,
Bangalore - 560 001;
4. The General Manager, Telecom
District, Suryalok Complex;
Hyderabad - 500 033
5. The Telecom District Manager,
Sanga Reddy - 502 050;
6. The Chief General Manager,
Telecom, AP Circle,
Hyderabad-500 001;
7. Union of India rep. by
the Director-General, Telecom,
Sanchar Bhavan,
New Delhi - 110 001

.. Respondents

Counsel for the Applicants: Mr. C. Suryanarayana

Counsel for the Respondents: Mr. N.R. Devaraj

CORAM:

THE HON'BLE SRI H. RAJENDRA PRASAD: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (AUDL.)

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ORDER

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

1. Heard Sri C. Suryanarayana, learned counsel for the applicants and Sri N.R. Devaraj, the learned standing counsel for the Respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application is filed on 31.3.1997.
3. The applicants herein were working as casual labourers in the Telecommunications Department, Hyderabad. They were retrenched from their work. Then the applicants had filed applications before this Tribunal in OA 851 to 863 and 867 of 1993. The said OAs were decided on 31.3.1995. This following Tribunal in the said OAs gave the/directions to the Respondents as under:-

"

In the result, the application is disposed of with a direction to the respondents to include the name of the applicant at an appropriate place commensurate with the length of his service in the list of casual mazdoors kept under the fourth respondent and to re-engage the applicant as and when work becomes available anywhere in the division in preference to casual mazdoors with lesser length of casual service than the applicant.

"
4. The Respondents invited tenders for house-keeping cleaning of compound, etc. cleaning of engines, battery, power plant etc. at the office of the DM, STSR, Hyderabad (Annexure-8).
5. Being aggrieved by the said invitation of tenders, the applicants have filed this OA for the following reliefs:-

"

To call for the records relating to the impugned order No.GMM/STR BG/STE-18/95-97/13, dated 17.7.76 read with the 2nd respondent's tender notice

[Signature]

(Annexures A-3 and A-8 respectively) and to quash the same with consequential directions to re-engage the applicants as directed by this Hon'ble Tribunal besides declaring that it is illegal, unwholesome and also unfair labour practice in terms of item 5(a) and (b) and also item 6 of Part I of the Fifth Schedule to the Industrial Disputes Act, 1947 to engage casual labour and to take action against the Respondent-authorities not only for violating the directions of the Hon'ble Tribunal but also for indulging in unfair labour practice and consequently to award exemplary costs to the applicants besides directing the re-engagement and continuance of their services in preference to contract labour or outsiders or their juniors with less number of days of service than any of the applicants herein.

Their main contention is that the work sought to be entrusted through the tender is violative of the prohibitory order in Annexure-I (Notification No.U-23013(7)/76-LW, dated 8/9.12.1976. It has been held to be valid vide para-29 of the judgment of the Hon'ble Apex Court in the case of "Air India Statutory Corporation Vs. United Labour Union" reported in AIR 1997 Supreme Court 645 that the action of the Respondents in inviting the tender is violative of Section 25-H of the Industrial Disputes Act and the directions given by this Tribunal (Extracted above) that inviting the tender is also violative of letter Dt.7.2.86 (Annexure-9) and that the engagement of contract labour even when workers could be employed directly according to the text laid down in Sec. 10(s) of the Contract Labour (Regulation & Abolition) Act, 1970) is an unfair labour practice as it was held in the case of "Gujarat Electricity Board Vs Mazdoor Sabha, (1995 Supreme Court Cases (L&S) 1166.

7. The Respondents have filed their counter stating that the applicants could not be re-engaged because of the existence of ban for re-engagement of Casual Labourers that the applicants were terminated after observing the usual formalities and were paid compensation in lieu of a month's notice that the Respondents are not de-barred from entering into contract on a comprehensive basis that the regular employees who were discharging the work specified in the tender were promoted as phone mechanics that then the department proposed to extract the work through tender on a comprehensive basis, that since there was ban on the recruitment of casual labourers the question of appointing the applicants as casual Mazdoors does not arise and that inviting tender on comprehensive basis cannot be regarded as violative of directions given by this Tribunal.

8. The learned counsel during the course of his arguments contended that actually ban is not at all in existence that the work specified in the tender could be extracted from the applicants by re-engaging them in accordance with the directions of this Tribunal that when the Respondents have maintained the live register of retrenched casual mazdoors and when there is work it was not justified for the respondents to invite tenders for similar works that the Respondents have not maintained the live Register on the basis of the Seniority that the tender invited is illegal that the applicants are eligible to be reinstated and continued in service.

As against this, the learned counsel for the respondents mainly contended that they were compelled to invite tender since there was ban for re-engagement of casual mazdoors and that the applicants were paid compensation at the time of their termination and at the present existing circumstances they cannot be re-employed.

10. Annexure-I, notification dated 8/9.12.1976 clearly prohibits employment of contract labour on and from 1.3.1977 for sweeping, cleaning, dusting and washing buildings owned or occupied by the establishments in respect of which appropriate Government under the said Act is the Central Government.

11. The fact that there is a ban for reengagement of casual mazdoor in the Telecommunication Department is admitted. However, the learned counsel for the applicant attempted to contend that ban is not at all in existence. If that was so he should have produced the order lifting the ban imposed as per Annexure A-1. In the absence of any such proof only conclusion is that it is in existence.

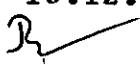
12. As regards the Department inviting the tender for certain works the learned counsel for the Respondents relied upon the decision of this Tribunal in OA No.230/96 decided on 26.6.96, In para-7 this Tribunal has observed as follows:-

"

We also cannot, although we may have desire to do so, direct any employment even till a contract is assigned because of the tenor of the circular dated 31.7.1995. Any such direction given will be violative of the clear instructions of the Department and its policy and it is not possible to direct the Department to disregard the policy framed by the competent authority. Moreover the circular in question shows that it is intended to replace the casual labours by an agency after calling for competent quotations for tenders and then awarding contract. Such policy cannot be said to be unreasonable.

"

13. Besides, the learned counsel for the respondents brought to our notice that this Tribunal in similar circumstances upheld the action of the Respondents in inviting tenders by relying upon the observations made above in OA No.599/96 decided on 10.12.1997. The said OA was decided following the decision



in OA 230/96.

14. Therefore in our humble view, we cannot interfere with the policy of the Department in inviting tender for the works specified in Annexure-8.

15. The other contention of the applicants is that the Department has not maintained the live register seniority wise. We feel that the Respondents are expected to maintain the live Register of retrenched casual mazdoors seniority wise and the same is necessary to adhere to for re-engagement, in case, the ban is lifted. Therefore we feel it proper to direct the Respondents to maintain the live register of the retrenched casual mazdoors, senioritywise and upto date.

16. The Respondents may consider the case of the applicants for reengagement when the ban is lifted. We have no doubt in our mind that the Respondents will consider the case of the applicants as per the rules in force for purposes of reengagement and their regularisation after the ban is lifted.

17. We are not persuaded to hold ~~.....~~ inviting tender is violative of the circular instructions Dt. 7.2.86.

18. In the light of above discussion, we cannot give any relief to the applicants except directing the Respondents to maintain the live register of Retrenched Casual Mazdoor seniority wise and upto date to consider the case for re-engagement of the applicants as per rules when the ban is removed, and when there is work in the Department.

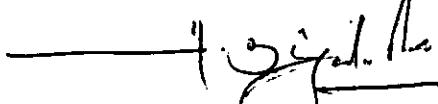
With the above directions the OA is disposed of.
No order as to costs.


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

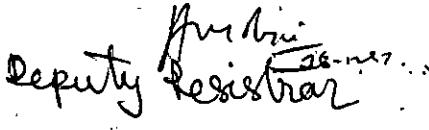
26/12/97

Date: 26th Dec 1997

KSM


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)




Deputy Registrar
for the
.....

O.A. 382/97.

To

1. The Divisional Engineer, Telecom,
Microwave Maintenance, 3rd Floor, Telephone Bhavan,
Saifabad, Hyderabad.
2. The Director, Maintenance, STSR,
No. 6-1-85/18. 2nd Floor, Sai Nilayam,
Saifabad, Hyderabad-4.
3. The General Manager, Maintenance,
STR, Infantry Road, Grace Mansion,
Bangalore-1.
4. The General Manager, Telecom Dist,
Suryalok Complex, Hyderabad-33.
5. The Telecom Dist. Manager, Sangareddy-050.
6. The Chief General Manager,
Telecom, A.P.Circle, Hyderabad-1.
7. The Director General, Telecom,
Union of India, Sanchar Bhavan, New Delhi-1.
8. One copy to Mr.C.Suryanayayrayana, Advocate, CAT.Hyd.
9. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
10. One copy to HBSJP.M.(J) CAT.Hyd.
11. One copy to D.R.(A) CAT.Hyd.
12. One spare copy.

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2/1/98
I Court

TYPED BY
COMPARED BY

CHECKED 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)

The Hon'ble Mr. B. S. Jaiparantheoar, M(C)

DATED: 26-12-1997

ORDER/JUDGMENT:

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

O.A.No.

in

382/97

T.A.No.

Q.W.P

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

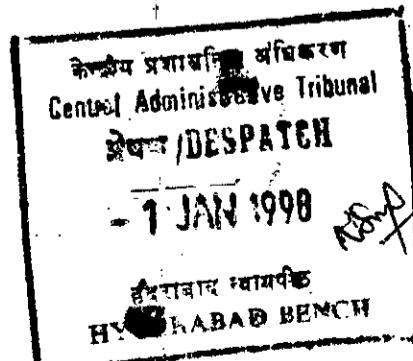
Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

M.A.No. 81/99 in
O.A. 382/95

Date of Order : 17.2.99

BETWEEN :

1. R.Narasimhulu	8. L.T.B.Srinivas
2. A.Rajamouli	9. T.Mohan
3. C.S.Samuel Moses	10. K.Ramanaiah
4. N.Rambabu	11. B.Prakash
5. P.S.N.V.Phani Prasad	12. S.A.Khaleel
6. Sk.Ismail	13. P.V.Subbaiah
7. S.Rajender	14. P.M.V.Ramana Reddy

.. Applicants.

AND

1. The Divisional Engineer, Telecom, Microwave Maintenance, 3rd Floor, Telephone Bhawan, Saifabad, Hyderabad.
2. The Director, Maintenance, STSR, No.6-1-85/18, 2nd Floor, Sai Nilayam, Saifabad, Hyderabad.
3. The General Manager, Maintenance, STIR, Infantry Road, Grace Mansion, Bangalore.
4. The General Manager, Telecom District, Suryalok Complex, Hyderabad.
5. The Telecom District Manager, Sangareddy.
6. The Chief General Manager, Telecom, AP Circle, Hyderabad.
7. Union of India, rep. by the Director-General, Telecom, Sanchar Bhavan, New Delhi.

.. Respondents.

— — —

Counsel for the Applicants

.. Mr.C.Suryanarayana

Counsel for the Respondents

.. Mr.B.N.Sharma

— — —

CORAM :

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

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

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O R D E R

X As per Hon'ble Shri B.S.Jai Parameshwar, Member (Judl.) X

- - -

The applicants in the OA have filed this MA for the following reliefs :-

To clarify after reconsideration of the order dated 26.12.97 in O.A.No. 382 of 1997, that our principal employer is the Telecom Department, in the jurisdiction of the 4th and 5th respondents, and that we are entitled to reinstatement with continuity of service and for all other benefits which are consequential and incidental to such reinstatement as laid down in Narotham Chopra v. PO, Labour Court and others, 1989 SCC (L&S) 565, and consequently to direct the respondent-authorities to implement the orders so clarified within a specified period of say, three months from the date of the orders herein besides declaring that engagement of contract labour for work of perennial nature is illegal as it is calculated to deprive the workmen like us of security of service and other benefits, privileges, leaves, etc. on the plea that we are contract labourers. Otherwise we will continue to be condemned to degraded lives and will suffer irretrievable loss and injury.

2. In the OA the following directions were given to the respondents :-



"In the light of above discussion, we cannot give any relief to the applicants except directing the respondents to maintain the live register of Retrenched Casual Mazdoor seniority wise and upto date to consider the case for re-engagement of the applicants as per rules when the ban is removed, and when there is work in the Department".

3. The above directions in the OA were given on the grounds that the applicants were engaged as casual labourers earlier to 1993 that their services were retrenched in the year 1993 that at that time the applicants had approached this Tribunal in O.A. 851 to 863 and 867/93 that in those O.A.s a direction was given to the respondents to include the name of the applicants at an appropriate place commensurate with the length of his service in the list of casual mazdoor kept under the R-4 and to re-engage the applicant as and when work became available any where in the division in preference to casual mazdoor with lesser length of casual service than the applicant.

4. Contrary to the directions given in OAs 851 to 863 and 867/93 the respondents invited tenders for entrusting certain works of certain menial nature to contractors. At that stage the applicants filed the OA challenging the action of the respondents in inviting tenders for contract disregarding the directions given in OAs. 851 to 863 and 867/93.

5. While resisting the OA the respondents specifically submitted that there was a ban for re-engagement of casual other mazdoors and that there was not any alternative but

OR

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to invite tenders to entrust the works of menial nature to contractors.

6. While deciding the OA we were informed that ban was still in force and the respondent department were not in a position to engage the casual mazdoors for any work. It is as extracted above in those background the direction was given in the OA on 6.12.97.

7. Now the applicants under the grab of seeking certain clarification have filed this MA. The MA is more lengthier than the OA itself.

8. However, at the time of hearing this MA, the learned counsel contended that the expression "Retrenched" appearing in para-18 of the order in the OA has effectively debarred them from considering them the relief legitimately flowing. The clarification sought for is as to whether their seniority is to be maintained in a separate retrenched live register or in the normal live register based on the seniority on the date of entry and the service subsequently rendered by them.

9. In fact these were not the reliefs claimed by the applicants in the OA. The reliefs claimed by the applicants were directed against the action of the respondents in inviting tenders for entrusting the works of menial nature given to contractors disregarding the directions in OAs 851 to 863 and 867/93. At the time when the applicants filed these OAs



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they were retrenched from service. They were retrenched casual labourers. Hence taking into consideration their status a direction was given to the respondent authorities to maintain a live register for retrenched casual labourers. When that is so the applicants cannot in the MA seek a relief which was not at all claimed by them in the OA. MA is not for enlarging the relief claimed by the applicants in the OA. We feel no necessity has arisen to clarify the direction given in para-18 of the OA.

10. The applicants have relied upon certain decisions of the Hon'ble Supreme Court and other Benches of this Tribunal. Those are not relevant for considering the relief claimed in this MA. As already stated the relief claimed in the OA is all together different from the relief claimed in the MA. Direction has been granted in the OA taking into consideration the reliefs claimed in the OA. In that view of the matter, no felt
clarification is/necessary.

11. Further they submit that the respondents have not implemented the said order. If the respondents have not implemented the directions given in the OA the remedy of the applicant ^{lies} elsewhere other than ~~in~~ this MA.

12. In that view of the matter the MA is dismissed. No costs.

B.S. JAI-PARAMESHWAR
(B.S. JAI-PARAMESHWAR)
Member (Judl.)

17.2.99

Dated : 17/2/99 February, 1999

H.RAJENDRA PRASAD
(H.RAJENDRA PRASAD)
Member (Admn.)

17.2.99
M.S.

sd

1st and IIInd Court.

Copy to:

1. HDHND

Typed By
Compared by

Checked by
Approved by

2. HHRD M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD.

3. HSSDP M(J)

4.D.R.(A)

THE HON'BLE MR. JUSTICE D. H. NASIR:
VICE - CHAIRMAN

5. SPARE

THE HON'BLE H. RAJENDRA BRAGAD
MEMBER (A)

THE HON'BLE R. RANGARAJAN
MEMBER (A)

THE HON'BLE MR. B. S. DAI / PARAMESHWAR
MEMBER (J)

DATED: 12/2/99

ORDER/JUDGMENT

M.A./R.A/C.P.NO.

81/99

IN

R.A.NO:

382 (a)

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS.

~~NOTES~~
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

12 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

22 FEB 1999

HYDERABAD BENCH