

46

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 78/99

DATE OF ORDER : 11.6.1999

Between :-

N.Venkata Ramana

... Applicant

And

1. The Asst.Engineer, Coaxial Cable, Project, Rajahmundry.
2. The Sub Divisional Officer, Phones, Kothagudem.
3. The Telecom District Manager, Khammam.
4. The Chief General Manager, Telecommunication, Doorsanchar Bhavan, Hyderabad.

... Respondents

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Counsel for the Applicant : Shri T.V.V.S.Murthy

Counsel for the Respondents : Shri V.Rajeshwar Rao, CGSC

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CORAM:

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

(Order per Hon'ble Justice Shri D.H.Nasir,
Vice-Chairman).

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(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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The question to be considered in this O.A. is whether the applicant is entitled to be re-engaged and to be granted temporary status, on the ground that he had completed about 2400 days of casual service, with all consequential benefits. The applicant was engaged as casual mazdoor with effect from 1.1.1985, 1250 days of casual service is claimed to have been put in by him at the first instance. Subsequently additional 1,160 days were put in by him from 1.12.1993 to 30.4.1997. Thus after putting in 2400 days of service he was dis-engaged from service unjustly and illegally as alleged by the applicant.

2. Casual Mazdoors similarly placed and dis-engaged earlier, according to the applicant, filed OA Nos.152, 310, 313, 347, 408, 647, 648, 691, 692 and 693 of 1989 and the same were disposed of along with other OAs on 27-3-1991. The Tribunal was pleased to dispose of these applications with a direction to the Respondents to prepare seniority list according to instructions issued by Director General, Telecommunications and to re-engage the applicants in accordance with seniority and they to extend such other benefits as ~~the~~ may be entitled to in accordance with the instructions issued from time to time by Director General by taking into consideration the judgement of the Supreme Court.

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48

3. Further, according to the applicant the temporary status was conferred upon the applicants of the above OAs but he (the present applicant) could not approach the Tribunal because of his utter poverty. However, the respondents did re-engage the applicant as casual mazdoor from 1.12.1993 without granting temporary status. The applicant therefore made several oral representations to the first and second respondent as he did not receive any response. He also submitted a representation to the Respondent No.3 on 1.8.1997 urging him for re-engagement as some of his juniors who sought protection of the Tribunal were re-engaged and temporary status was also granted to them.

4. According to the learned counsel Shri T.V.V.S.Murthy for the applicants, temporary status had been conferred on casual labourers who had rendered continuous service of atleast one year with actual engagement on work for a period of 240 days without reference to availability of regular Group-D posts. However the conferment of temporary status was denied to the applicant inspite of the fact that he was satisfying all the requirements for conferment of temporary status. Shri Murthy further submitted that the applicant was engaged as casual labourer on 1.1.1985 and therefore the first condition stood satisfied. However the condition that he should not be absent for more than 365 days prior to 17.12.1993 remains unanswered. According to the learned counsel this second condition was required to be waived as the applicant was not re-engaged for no fault on his part. Not only that temporary status was denied to him but he was dis-engaged from 1.5.1997, ^{lamented} commented the counsel.

5. Unfortunately, however, the fate of the OA is beset also other appears that the with several infirmities. It L applicant has approached this Tribunal without exhausting the remedies available under the CAT Act. The OA therefore is premature. We may however examine the facts of the case a little more deeply before arriving at this conclusion.

6. The Respondents are assailing the maintainability on the ground of limitation. It is also alleged that the applicant was initially engaged from 1.1.1985 by the Asst.Engineer, Coaxial Cable Project, Rajamundry who was under the control of Chief General Manager, Madras. Later he was engaged with effect from 1.12.1993 to 30.4.1997 by SDO (Phones), Kothagudem which was under the control of Telecom District Manager in AP Telecom Circle. Further according to the Respondents the applicant was one amongst those casual labourers who were dis-engaged owing to the work entrusted to a Contractor on the basis of bidding. The applicant was engaged, as stated earlier, by Asst.Engineer, Coaxial Cable Project, Rajahmundry from 1.1.1985 and continued upto 23.12.1988. The reason why he left the work after 23.12.1988 was not mentioned by the applicant. The re-engagement of casual labourers in 1991 was limited to those casual labourers who were dis-engaged by the Department but the applicant was not dis-engaged by Respondent No.1. He left the work himself in December, 1988 and therefore according to the Respondents, he was not justified in comparing himself

with others who were re-engaged. In fact, according to the Respondents, there was no nexus between his engagement from 1.12.1993 and his earlier engagement upto 1988 by the Respondent No.1 as he worked in two separate circles of the Telecommunications and two separate territorial jurisdictions of the Telecom District.

7. It is also true as submitted by the learned standing counsel for the Respondents that the applicant did not give any reason for his dis-engagement on 23.12.1988. No submission is made by the applicant why he was dis-engaged by the Respondent No.1. As submitted by the learned standing counsel for the Respondents, the applicant himself left the Coaxial Cable Project, Rajahmundry in December, 1988. Even if it is believed that his services were dispensed with by the Respondents orally xxxx xxxx xxxx xxxx xxxx xxxx xxxx xxxx

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without assigning any reason, he can still not claim eligibility for regularisation that because of the guidelines contained in the letter dated 17.12.1993, the relevant extract of which is reproduced below :-

"I am directed to refer to this office order No.269-4/93-STF dated 25th June 1993, wherein orders were issued to extend the temporary status to all these casual mazdoors who were engaged by the Project circles/Electrification circles, during the period 31.3.85 to 22.6.88 and who were still continuing for such works where they were initially engaged and who were not absent for the last more than 365 days counting from the date of issue of the above said orders.

The matter has further been examined in this office and it is decided that all these casual mazdoors who are engaged by the circles during the period from 31.3.85 to 22.6.88 and who are still continuing for such works in the circles where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this order, be brought under the above said scheme."

The main requirement of the above guidelines that the incumbent should still be continuing in service and he should not have

been absent for more than 365 days do not stand satisfied. Moreover it is also not disputed that the project circles were different in his two spells of engagement.

8. In para-5 of the counter affidavit of the reply it is stated that :

It is submitted that the engagement of the applicant by SDO(Phones), Kothagudem (Respondent No.2) from 1.12.1993 to 30.4.97 had no nexus with the earlier engagement of the applicant by Respondent No.1 because if at all the applicant has to be re-engaged he has to be re-engaged in the territorial jurisdiction of the then Telecom District Manager (Presently General Manager, Telecom District) Rajahmundry i.e. in East Godavari Revenue District.

The applicant has dealt with this aspect of the case in para-4 of his rejoinder affidavit as under :-

4. With reference to para-5 of the reply statement :- I was engaged by R-2 from 1-12-1993 taking into consideration my past service. There is no restriction that I should have been re-engaged in the East Godavari District alone. After my re-engagement from 1.12.1993 by R-2 and after having put in about 2400 days total service from 1.12.1993 to 30.4.1997, my dis-engagement from 1.5.1997 without any notice or assigning any reason and entrustment of my work to contract agency is illegal and against the provisions of the I.D.Act and Letter No.TA/LC/1-2/III dated 21.10.1991 as stated at page-2 of the O.A. The Judgements in OA 230/96, 559/96, 382/97, 1238/98 of this Hon'ble Tribunal have to be treated as per incurium and bad in law as they have not taken into consideration the provisions of the I.D.Act, and the latest instructions of the DOT in its letter No.269-4/93-STN.II dt.12.2.99."

Such assertion without being substantiated by any cogent and convincing material does not help the applicant in proving his point.

9. In the above view of the matter as expressed in paragraphs 6, 7 and 8 the applicant does not succeed in establishing the legitimacy of his claim either for reinstatement or for conferment of temporary status and the consequent regularisation.

10. It is further pointed out by the learned Standing Counsel as stated earlier in para-6 that the Telecom District Manager had entrusted all works hitherto done by casual mazdoors to a 'contract agency' after calling for tenders and all casual mazdoors were disengaged. The applicant was one such casual mazdoor. The policy of engaging casual labourers on contract basis has been challenged before this Tribunal in OA 230/96 which was disposed of on 26.6.1996 with the following observations :-

"The circular in question shows that it is intended to replace the casual labour by an agency after calling for competitive quotations for tenders and then awarding contract. Such policy cannot be said to be unreasonable.

Although therefore we are sympathetic to the predicament of the applicants, we are unable to grant any relief to them as none is capable of being granted legally."

The above decision of this Tribunal was also followed in OA 559/96, OA 382/97 and OA 1238/98. There is therefore no reason why the same should not be followed in the present OA.

12. We are also not inclined to dis-agree with the submission made by the Standing Counsel for the Respondents that the question of granting of temporary status was adjudicated in OA 1080/95 in which it was held that those who were currently employed as on 1.10.1989 were only eligible for granting of temporary status and therefore the applicant cannot be considered eligible for grant of temporary status. There is therefore no reason why the Original Application should not be dismissed. Hence the Original Application is dismissed with no order as to costs.

D.H.N.
(D.H.NASIR)
Vice-Chairman

Dated: 11 June, 1999.

By M.A.
11-6-99.

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~~Reversible Case~~
COPY TO:-

1. HONJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

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1ST AND 2ND COURT

TYPED BY COMPARED BY CHECKED BY APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, : HYDERABAD.

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

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

THE HON'BLE MR.R.RANGARAO :
MEMBER (A)

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (J)

ORDER: 11.6.98

~~ORDER / JUDGEMENT~~

~~MR./ RA. / CP NO.~~

in

OA. No. 78/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

O.A. CLOSED.

DISPOSED OF WITH DIRECTIONS

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN.~~

~~ORDERED / REJECTED.~~

~~NO ORDER AS TO COSTS.~~

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
श्रेणी / DESPATCH

25 JUN 1998

हैदराबाद व्यायामीठ
HYDERABAD BENCH

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