

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

O.A.No.714 of 1999

DATE OF DECISION: 16-9-1999.

Between:

1. H.V. Ranga Rao.
2. T. Ravi Prasad.

.....Applicants

A n d

1. The Chairman, Telecom Commission,
New Delhi.
2. The Director of Telecom, New Delhi.
3. The Chief General Manager (Maintenance),
Southern Region, Madras.
4. The Director (Maintenance), Southern Telecom
Sub-Region, Vijayawada.
5. The Sub-Divisional Engineer, Coaxial Maintenance,
Kodad.
6. The Junior Telecom Officer,
(Coaxial Maintenance), Kodad.

.....Respondents

COUNSEL FOR THE APPLICANT : Mr. V.Venkateshwar Rao

COUNSEL FOR THE RESPONDENTS : Mr.V. Rajeshwar Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H. NASIR, VICE CHAIRMAN

: ORDER:

(PER HON'BLE SRI JUSTICE D. H. NASIR, VICE CHAIRMAN)

2. The respondents are sought to be directed to regularize the applicants (two in number) in the Department of Telecommunications and daily wages to be paid to them on par with the Casual Labourers working in the Department with effect from 13-7-1997 and 7-3-1998, (being the respective date of their engagement) with all consequential benefits.

3. The respondents deny the applicants' case that they were engaged by the Department. According to them tenders were called for from approved Contractors for carrying out certain works of comprehensive nature for a limited and specified period in Vijayawada Coaxial Maintenance Division and that the applicants may have been engaged by the Contractor according to the respondents. It is categorically denied by the respondents that the Department had engaged the applicants. Further according to the respondents, the Contractor was awarded specific jobs for specific periods and that the Contract Agreement clearly laid down the specified nature of work to be carried out in a limited period. Therefore, according to the respondents, it was thought expedient in public interest to cause the work to be carried out by awarding contract. Non-existence of any privity between the Department and the applicants is also pleaded by the respondents in their counter affidavit. On these grounds, according to the respondents, the applicants had no locus standi to move the Tribunal for the alleged rights claimed by them against the Department. It is also clarified in the counter affidavit that payment was being made to the Contractor in accordance with the Agreement.

4. It is further contended by the respondents that there was a complete ban on recruitment of Mazdoors in the Department beyond 31-3-1985. However, for execution of certain comprehensive specific works like patrolling of OFC/Coaxial cable route work, cleaning and attending Battery and Power Plant equipment's,

cleaning and dusting of repeaters/Microwave Buildings (External) and such other works were excluded from the Labour Ministry's Prohibitory Orders, for which the Department called for tenders and finalised the same.

5. Short point which arises for our consideration in this OA, is whether the work was of a temporary nature. Ban on recruitment of mazdoors in the Department beyond 31-3-1985, is the main plank of defence. Immediate question, which would therefore arise, is whether the Respondents were justified in getting such work done through Contractors. The answer is 'no'. The ban is for curbing expenditure and long-term liabilities. If the work in any case is done, either departmentally or through Contractors, the object of the so-called "ban" gets defeated, and therefore the Department is not justified in raising this contention. It appears as if this is a 'manufactured' defence and not a genuine defence.

Apart from the same, the above contention gives us a strong reason to believe that the works such as patrolling of OFC//Coaxial cable route work, cleaning and attending Battery and Power Plant equipment's, cleaning and dusting of repeaters/Microwave Buildings (External) was of perennial nature. The ban seems to have been imposed by an order dated 12-2-1999, (Annexure.R-II) filed along with the counter affidavit. However, the nature of work is not specified in the said order for the purpose of ban on recruitment of Casual Labour. Nothing else is urged before the Tribunal by the learned Standing Counsel for the Respondents to render satisfaction that the nature of work as stated in the counter affidavit was reserved or permitted for entrustment to a labour Contractor.

6. The learned Standing Counsel for the Respondents in support of his submissions urged the decision of this Tribunal in OA.No.382 of 1997, decided on 26-12-1997 in the case of R.NARSIMHULU & 13 OTHERS Vs DIVISIONAL ENGINEER, TELECOM, MICROWAVE MAINTENANCE & OTHERS, in which in

Pargraph.13, it is observed that it was brought to the notice by the learned Counsel for the Respondents that the Administrative Tribunal in similar circumstances upheld the action of the Respondents in inviting tenders by relying upon the observations made in OA.No.599 of 1996, decided on 10-12-1997 and the said OA was decided following the decision in OA.No.230 of 1996 and thereafter the Bench in the OA.No.382 of 1997 held that they cannot interfere with the policy of the Department in inviting tenders for the works specified in Annexure.8.

7. It is pertinent to note that the Proceedings dated 12-2-1999, issued by the Assistant Director General appearing at page.12 of the OA, took into consideration the fact that Para.193 of P & T Manual Volume.X which permitted engaging of labour on daily or monthly wages either direct or through Contractor and that the Department of Telecommunications had imposed a ban on recruitment/engagement of casual labourers, vide letter No.269-4/93-STN-II, dated: 22-6-88. After the issue of the said letter a need was felt for amending para.193 of P & T Manual Volume.X. Accordingly, the issue was examined in detail and it had been decided to delete para.193 of P & T Manual Volume.X with immediate effect. Consequent upon the same the powers of all DOT Officers to engage casual laborers either on daily or monthly wages, direct or through Contractors as well as the authority of the Accounts Officers for making payments to the laborers engaged on daily or monthly wages either direct or through Contractor were withdrawn by the said Order dated 12-2-1999. The instructions contained in the said OM, however, did not apply to hiring labourers for works of contingent nature lasting not more than 15 days during exigencies and natural calamities. It is further directed in the said Order that payments to labourers hired during contingencies should be made under Rule 331 of P & T FHB Vol.I. The maximum period for which an individual labourer could be hired during a year should not exceed 60 days.

8. We cannot also ignore the fact that the applicants were contract labourers and were not directly engaged by the department, which is evident from Annexure-III, (at page.14 of the OA), dated 12-4-1999, in which it is certified that Sri T.Ravi Prasad, (Applicant no.2) contract labour who was working in the OFC Station at Telephone Exchange, Nandigama, under Labour Contract, which was entrusted to Bandi Sekhar Rao in his capacity as the Telecom Labour Contractor. Similar certificate in respect of Applicant No.1 appears at Annexure.IV, page.15 of the OA, which is also issued by the same Contractor on the same date.

9. However, as submitted by the learned Counsel for the Applicant Mr.Venkateshwar Rao, the Supreme Court in a ruling favouring lakhs of contract labourers held that they had a right to be absorbed in regular service after working for over 240 days a year in an establishment. According to Mr.Venkateshwar Rao, the Hon'ble Supreme Court had held that it was permissible in the new millennium to decry the cry of the labour force desirous of absorption after working for more than 240 days in an establishment within the meaning of Article 12 of the Constitution.'


10. The Counsel Mr.Venkateshwar Rao also drew the attention of this Tribunal to a case in which the HARYANA STATE ELECTRICITY BOARD, reported in AIR 1999 SC 1160, had engaged 42 Safai Karmacharis seeking to be absorbed permanently in the service of the Board on completion of 240 days of their working in the Plant and that their contention was favoured by the Labour as well as the Punjab and Haryana High Court. This Order was upheld by the Supreme Court by the Bench comprising S.B.MAJMUDAR & UMESH C.BANERJEE.JJ.

11. With the above rulings of the Supreme Court in view hardly any cause survives to accept the contentions raised by the Respondents that the applicants are not eligible to be regularized either because the applicants were contract labourers or because the



work entrusted to them was not of perennial nature, or because they did not satisfy the requirements of the Scheme.

12. With the above situation in view, this OA is allowed to the extent that the applicants if disengaged should be re-engaged forthwith and not in any case later than 31st October, 1999 and on such re-engagement the temporary status be conferred on them effective from the completion of 240 days from their respective date of initial engagement as stated in the first paragraph of this Judgment with all consequential benefits as admissible to temporary workers. If they are not dis-engaged and continuing in service, the same direction with regard to conferment of temporary status and consequential benefits shall hold good. No costs.


(D. H. NASIR)
VICE CHAIRMAN

DATED this the 16th day of SEPTEMBER, 1999

DSN



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17/9/99
IST AND II ND COURT

COPY TO :-

1. HONND ✓
2. HRRN M (A)
3. HBSJP M (J)
4. D.R. (A) ✓
5. SPARE ✓
6. ADVOCATE
7. STANDING COUNSEL

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. R. RANGARAJAN :
MEMBER (ADMN.)

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

* * *

DATE OF ORDER: 16/9/99

MA/RA/CP, NO.

IN

CA. No. 714/99

SMITTED AND INTERIM DIRECTIONS
ISSUED

RECEIVED

CP CLOSED

RA CLOSED

CA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

(11 copies)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

30 SEP 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH