

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order: 11.7.2000

OA 173/96

Bhairu Lal Bunkar S/o of Shri Mangi Lal Bunkar by Caste Bunkar, resident of Plot No. 13, Nahari Ka Naka, Balai Basti, Jaipur, Casual Labour under the office of Assistant Engineer, E-10-B, Bajaj Nagar Exchange, D.M.T., Jaipur.

.... Applicant

Versus

1. Union of India through the Secretary to the Govt., Department of Telecommunication, Govt. of India, New Delhi.
2. Sub- Divisional Engineer (FRS), Bajaj Nagar Exchange, DMT, E-10-B, Jaipur.

.... Respondents

Mr. S.K. Jain, Counsel for the applicant.  
Mr. V.S. Gurjar, Counsel for the respondents.

ORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

ORDER

(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL))

In this application u/s 19 of the Administrative Tribunals Act, applicant makes a prayer to quash and set aside impugned order dated 1.3.96 and to direct the respondent take back the applicant in service with all consequential benefits.

2. In brief, the facts of the case, as stated by the applicant, are that applicant was engaged as Casual labour on 26.9.79 and after completing 10 years as Casual labour, he is entitled to be regularised on the post as per rules but applicant was not regularised and on 24.5.93, an order was passed by which the applicant was separated from his service till the inquiry is not completed against him. The applicant filed OA no. 200/94 which is also pending. It is stated that till then no inquiry was done and vide letter dated 17.2.95, applicant was given

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show-cause notice. Applicant give reply to that show-cause notice vide letter dated 23.2.95. Thereafter impugned order dated 1.3.96 was passed. It is stated that under provision of law the above action has been taken has not been stated either in the show-cause notice nor in the impugned order dated 1.3.96. Therefore, impugned order dated 1.3.96 is altogether illegal, arbitrary and without jurisdiction. It is further stated that applicant have acquired permanent status after completing 10 years of service. Therefore, his services could be disposed with only after holding Departmental inquiry. Ex-parte proceedings is a violation of principles of natural justice. Therefore, order at Annexure A-1 dated 1.3.96 is without any evidence/basis and therefore null & void and is liable to be quashed. Therefore, applicant filed this Original Application for the reliefs, as mentioned above.

3. Reply was filed. In the reply it is stated that order dated 1.3.96 is perfectly legal and valid. The work of the applicant is not satisfactory. Therefore, the applicant was not regularised even/<sup>after</sup> the working of 10 years. It is stated that applicant never given reply of the charges levelled against him nor he attended the office of respondents. Therefore, ex-parte proceedings were taken against him and he was given show-cause notice for termination of his services and after perusal of reply, his services were terminated vide impugned order. It is stated that charges levelled ~~again~~ against the applicant are grave and serious indulging in diverting the telephone lines with STD facility to other subscribers. Therefore, the impugned order of termination was passed and applicant has no case for interference by this Tribunal.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is an admitted fact that status of the applicant was a casual labour when the impugned order was passed. It is settled law that casual labour has no right to the post. He is neither temporary Govt. servant nor a permanent Govt. servant. Protection available under Article 311 of the Constitution of India also not applicable to the casual labour. His tenure is precarious, His tenure is depend on the satisfaction of the employer. A temporary status conferred upon him by the Scheme only confers him those rights which are spelt out in the rules. A casual labour can be regularised only after selection screening. As per scheme framed by the Department, merely long service as casual labour cannot make one a regular hand. In the instant

case, applicant was engaged on work charged daily basis and he was working accordingly on the date of passing of the order dated 24.5.93. Provisions of CCS(CCA) Rules are not applicable in case of Casual labour. Therefore, if any fact finding ~~is~~ inquiry is made against the casual labour, those rules/procedure cannot be/should not be utilised for the purpose of inquiry. If at all any procedure is adopted to inquire into a fact, which can be a basis for satisfaction of employer, employer should be vigilant to give full particulars so that there may not be any violation of principles of natural justice. In this case, basis of termination of the services of the applicant has been that he was indulging himself in diverting STD facilities to other telephone subscribers and to find out that fact, the memorandum of charge was said to have been issued to the applicant and Inquiry Officer was also appointed but it appears that Inquiry Officer has made ex-parte inquiry and as the applicant did not participate in the proceedings, he submitted the report of inquiry and on the basis of that inquiry report, the show-cause notice was given to the applicant for termination of his services and by impugned order dated 1.3.96, the services of the applicant were terminated. The whole exercise done by the respondents was not in accordance with the rules/law/procedure and if at all respondents were desirous to reach the certain conclusion, it was obligatory for the respondents to give full opportunity to the person concerned but in this case respondents have failed to give full opportunity to the applicant and without giving any opportunity of hearing <sup>and</sup> on the basis of ex-parte order, the impugned order dated 1.3.96 was issued, which appears to be arbitrary, illegal and without jurisdiction.

6. In view of the foregoing paragraphs, I allow this Original Application and quash impugned order dated 1.3.96 and direct the respondents to take back the applicant in service within a period of one month from the date of receipt of a copy of this order. In view of the position of the applicant as Casual labour, applicant will not be entitled to any back wages from the date of termination to the date of reinstatement of the applicant in service. No order as to costs.

  
(S.K. Agarwal)  
Member (J)