

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 22.01.2004

OA No.385/2000

Kishore Lal s/o Shri Laxmi Narain r/o House of Sitaramji
Baid, Asad Chowk, Lalsot, District Dausa (Raj.)

.. Applicant

VERSUS

1. Union of India through Principal General Manager (Rural), Telephone Department (Telecom), Jaipur M.I.Road, District, Jaipur.
2. Junior Telephone Officer, Telephone Exchange, Lalsot, District Dausa.
3. Divisional Engineer, Telegraphs (Rural), c/o G.M.T.D., Jaipur

.. Respondents

Mr.H.S.Khandelwal, Counsel for the applicant

Mr.S.K.Agarwal, proxy counsel for Mr. Sanjay Pareek, counsel for the respondents.

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr.A.K.Phandari, Member (Administrative)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this application thereby praying for the following reliefs:-

"(a) That the verbal termination order dated 3.8.2000 passed by the respondent No.2 may kindly be quashed and set aside.

(b) That the applicant be regularised and wages at daily rates with reference to the minimum pay scale for regular Group 'D' official including,

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D.A., H.R.A. and C.C.A. may kindly be allowed for the period of service rendered by the applicant.

- (c) That the benefit in respect of increments may kindly be allowed.
- (d) That leave entitlement on pro rate basis, as per provisions of Scheme of 1989 may kindly be allowed.
- (e) That all the benefits as prescribed in Clause-6 of the scheme of 1989 may kindly be allowed with all consequential benefits.
- (f) That the services of the applicant may kindly be regularised and the applicant may be allowed to regular pay scale alongwith all consequential benefits, as such as promotion etc.
- (g) Any other relief which beneficial to the applicant in circumstances of the case may kindly be allowed."

2. Facts of the case as set out by the applicant in this OA are that the applicant was initially appointed by respondent No.2 in the month of October, 1994 as Group 'D' official on part-time basis at the rate of Rs. 5 per day to perform the duties of filling the water in the office of respondent No.2. After serving for a period of about 3 years, the applicant was appointed as Group 'D' official on daily rate basis w.e.f. 1.8.97 at the rate of Rs. 32 per day. He continued in that capacity till his services were terminated verbally on 3.8.02. It is further stated that during the tenure of the applicant's service the applicant used to maintain a daily diary of the work done by him and got initialled by the Lineman in token of the work done by him. Photocopies of such diary has been

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annexed with this OA as Ann.A1 to A7. The applicant has also placed on record photocopies of the cash memo of petrol pump of Bharat Petroleum, Lalsot as Ann. A8 to A18 to establish that the applicant was also entrusted with the duties of bringing the diesel oil for the generator set. The applicant has also placed on record copy of letter dated 2.6.99 and 7.6.99 (Ann.A18 and A19) on record to show that requisite information was sought in order to examine the case of the applicant for grant of temporary status and regularisation in terms of Casual Labour (granting temporary status and regularisation) scheme of Telecommunication, 1989. The grievance of the applicant is that since he has served with the Department for about 7 years and temporary status has not been conferred on him after expiry of one year and after rendering 3 years of continuous service in terms of the aforesaid scheme. He has filed this OA against the alleged grievance and also against the oral termination ordered w.e.f. 3.8.2000, for the reliefs as stated hereinabove.

3. Notices of this application was given to the respondents who have filed reply. Earlier, the reply was filed by the SDOT in which it has been stated that the applicant was never appointed by the answering respondents in the month of October, 1994 as alleged. He was neither appointed on temporary basis or daily wage basis or part-time basis. The applicant has failed to submit any document to show that he was appointed by the answering respondents. It is further stated that the applicant has placed forged documents before this Tribunal. In reply to the averment made by the applicant that he used to maintain daily diary of the work done by him and got

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signed by the Lineman, it has been categorically stated that the answering respondents contacted the employees whose signatures have been shown in the Anns. A1 to A7. The employees have denied their signatures. In this regard, the respondents have annexed the photocopy of the application of these employees as Ann.R1, R2, R3 and R4.

3.1 When the matter was listed before this Tribunal on 6.2.2003, this Tribunal passed the following order:-

"The learned counsel for the respondents submits that he will file a detailed reply and also check-up whether S.D.O. is competent to file reply and if not a fresh reply will be filed by the competent officier giving parawise reply with supporting documents. Let him also produce relevant documents/files/letters referred to in the various annexures filed by the applicant. Four weeks time is granted as prayed for."

3.2 Pursuant to the aforesaid order, fresh reply has been filed under the signature of DET (R), Dausa. In this reply also, the respondents have categorically stated that the applicant was not appointed by the answering respondents. The applicant was having a Thela, therefore, he was asked to bring the water and diesel for the office generator. He was never engaged as part time or full time worker, hence, he is not liable to grant temporary status or regularisation of his services and as such there is no ~~occasion~~ ^{action} to terminate a service by any order, including verbal order. It is further stated that the applicant never remained as a Govt. servant or a civil servant under the Union, hence, he does not come under the jurisdiction of the Hon'ble Tribunal.

3.3 It is further stated that the applicant filed a

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representation to the respondent No.3. In pursuance of the said representation, the SDE (R&D), Office of the PGMTD, Jaipur sought information from the DET (R) Headquarter, O/o PGMTD, Jaipur. The letter was remained unrepplied. It is further stated that the applicant has failed to submit any document to show that he was appointed by the answering respondents. The facts mentioned by the applicant cannot be relied upon because the same are absolutely false. The applicant has placed forged documents before the Hon'ble Tribunal.

4. The applicant has filed rejoinder in which he has ~~repeatedly~~ reiterated that the diary submitted by the applicant duly verified clearly show that the applicant had actually worked in the office of respondent No.2 who has from time to time entrusted the work.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 Admittedly, the applicant has not placed on record any material to show that he was engaged by the department on full time basis or part-time basis as casual worker. We repeatedly asked the learned counsel for the applicant on what basis or under what law, the applicant has made his claim for regularisation and under what rule his recruitment was made so as to govern his service conditions. Further, whether the name of the applicant was sponsored by the Employment Exchange, as even for engagement on daily wage basis, the same is necessary condition. The learned counsel was not in a position to answer except saying that the applicant has been working for the last 7 years and is entitled for conferment of

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temporary status and regularisation in terms of the aforesaid scheme.

5.2 On the other hand, the respondents have categorically stated that the applicant was never engaged on temporary basis or daily wage basis or part time basis and the applicant has produced forged documents as Ann.Al to A7, the so called daily diary maintained by the applicant for the work done by him and which was initialled by the Lineman and in proof thereof the applicant has placed on record, statement of the Lineman whose signature find mention in these documents as Ann.R1 to R4 to show that their signatures were manipulated by the applicant.

5.3 We have also perused these documents and prima-facie, we are of the view that these documents appears to have been created for the purpose of this case. Be that as it may, the burden to prove the claim is on the applicant. The Apex court in the case of The Range Forest Officer and Anrs. vs. S.T.Hadimani, 2002 (1) SLJ 316 has stated that it is for the workman to prove his claim and the onus cannot be placed on the management. In that case the workman has stated that he has worked for more than 240 days in the year preceding his termination and the said claim was denied by the management. On the basis of the averment made by the claimant, the Tribunal vide its award dated 10th August, 1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he

had worked for 240 days in a year. In that case the Apex Court held that in their opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was for the claimant that he had so worked but his claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wage for 240 days or order or record of appointment or engagement for this period was produced by the workman. As such the award given by the Labour Court was set-aside.

5.4 The ratio as laid down by the Apex Court in the case of Range Forest Officer and anr. vs. S.T.Hadimani (supra) is squarely applicable in this case. The applicant has neither placed on record any appointment order, nor produced any proof of receipt of salary or wages in order to establish that he was engaged by the respondents either on temporary, ^{or} daily wage basis or part time basis. On the contrary, there is categorical denial and specific averment made by the respondents that the applicant was never engaged by them. They have also produced on record photocopies of the application of the employees whose signatures have been manipulated by the applicant, which clearly establish that such documents have been created by the applicant only for the purpose of these proceedings. Be that as it may, since the applicant

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has not established that he was engaged by the respondents either on daily wage basis or part time basis, no relief regarding regularisation can be granted to him. Rather, the material placed on record more particularly cash memo of the petrol pump of Bharat Petroleum, Lalsot (Ann.A8 to A18) lend support to the version of the respondents that the applicant was having a Thela, therefore, he was asked to bring water and diesel for the office generator. Thus, the applicant cannot be termed to be employee of the respondents engaged either on daily wage basis or part time basis, as contended by the applicant.

6. In view of what has been stated above, the present OA is dismissed with no order as to costs.

(A.E.BHANDARI)

Member (A)

(M.L.CHAUHAN)

Member (J)