

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-772/2013**

**Reserved on : 30.08.2018.**

**Pronounced on : 04.10.2018.**

**Hon'ble Ms. Praveen Mahajan, Member (A)**

1. Bharatiya Telecom Employees Union (BSNL)  
Through its General Secretary,  
SVS Subrahmanyam,  
D-14, Doctor Lane,  
Gol Market, New Delhi-110001.
  
2. Satpal Singh Kashyap,  
S/o Sh. Kbool Singh,  
R/o Village Suthiana,  
Greater Noida (UP). .... Applicants

(through Mr. Varun Kumar, Mr. Swatantra Rai with Ms. Pratibha Sinha, Advocate)

**Versus**

1. Union of India,  
Department of Telecommunications  
Through its Secretary,  
Ministry of Communications and I.T.,  
Govt. of India,  
20, Ashoka Road,  
New Delhi-110001.
  
2. The Chairman cum Managing Director,  
BSNL, Bharat Sanchar Bhavan,  
Janpath, New Delhi-110001. .... Respondents

(through Mr. Subhash Gosain, Advocate for R-1 and Mr. Alakh Kumar, Advocate for R-2)

**ORDER**

This O.A. had earlier been dismissed by the Tribunal vide its order dated 08.11.2016. Against the said order, the applicants

approached the Hon'ble High Court of Delhi vide Writ Petition (C)-1283/2017. Hon'ble High Court of Delhi vide its order dated 02.08.2017 remanded the matter back to the Tribunal for hearing the parties.

2. Briefly stated, the applicant is the Trade Union of Bharat Sanchar Nigam Ltd. (BSNL) Employees representing the Group-C and Group-D employees, which is engaged in trade union activities in Bharat Sanchar Nigam Limited having its registered office at Delhi. The applicants in the O.A. are seeking a direction to the respondents to grant them all retiral benefits and pension.

3. The claim of the applicants is that they were appointed as daily wage mazdoors on various dates between 1989 and 1994 on consolidated salary for more than ten years. Though there were regular posts but the respondents have neither regularized their services nor paid them the regular scale of salary, which is highly arbitrary and unjustified. The respondents are regularizing their services by not counting major period of their service for pensionary and retiral benefits.

4. The trade union/Sangh had filed a Petition before the Hon'ble Supreme Court of India, wherein there is a categorical finding stating that "They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work.

Clauses (2) of Article 31 of the Constitution of India which contains one the Directive Principles of State Policy provides that:-

"the state shall, in particular, strive to minimize the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer has agreed to work on such low wages. That they have done because they have no other choice. It is the poverty which driven him to the state. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest rung of the department where the pay scales are the lowest is not tenable."

The applicants aver that as per Casual Labourers (Grant of Temporary Status and Regularization) Scheme, all the benefits, as a result of regularization will be available to the employees from the date(s) from which they have been continuously working on casual or work-charge basis. Even the temporary status has been counted with effect from 1<sup>st</sup> October, 1989 onwards, consequently the service of 10 years or more has not been counted and the applicants have been deprived of the said benefit. The applicants submit that the Hon'ble Supreme Court did not hold in its judgment that the applicants be deprived of such long service for the purpose of retiral benefits and other benefits like promotion etc. Rather the Apex Court

held that those who had already rendered one year service must be considered for regularization. Hence, under the circumstances, the Scheme is arbitrary and unjustified to the extent that it deprived the benefits of regularization to the members (of the association) with effect from the date of their initial appointment on daily wages. It is further emphasized that there is no justification for not granting regularization to the applicants with effect from the dates the applicants have been working on daily wage basis which has been considered as a ground for regularization. The applicants are entitled for various benefits like retiral benefits, promotion, increments and other benefits.

6. The answering respondent, i.e., respondent no.2 in the counter-reply has made preliminary submissions, stating that the sum and substance of applicants' case is for counting of their past service for the purpose of pension and other service benefits from the date of engagement as casual worker *inter alia* on the ground of a judgment of the Hon'ble Apex Court in the case of **Daily Rated Casual Labour employed under P&T Department through Bharatiya Dak Tar Mazdoor Manch v. Union of India & Others**, [AIR 1987 SC 2342], which has been denuded of its status as precedent in the wake of a recent judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka v. Uma**

**Devi and Others**, [(2006) 4 SCC 1]. It is further submitted that the grievance and other averments of the applicants do not make it clear as to whether the relief sought is with reference to the implementation of any rule or statutory provision. The applicants ought to have made it clear as to which rule has not been implemented. In case the relief sought is regarding absence of any statutory provisions, then BSNL has no role to play in this matter as it is only an implementing agency and not a rule making authority insofar as counting of past service of casual labours are concerned. The temporary status and regularization of casual labourers was granted in compliance of the guidelines laid down by the Hon'ble Supreme Court in WP No.373/1986 on regularization of casual labourers.

7. I have gone through the facts of the case and perused the available record. The O.A. filed by the applicants is not very clear since there is an overlap of many issues like non-receiving of promotion, regularization, pensionary benefits etc. by the applicants. These issues were addressed by the Tribunal in OA-772/2013 vide order dated 08.11.2016 and OA was dismissed as being devoid of merit. The said order was challenged by the applicants by way of WP(C)-1283/2017. The Hon'ble High Court of Delhi, while disposing of the said WP(C) on 02.08.2017 observed that:-

"What is pointed out by the counsel for the petitioner is that under the scheme framed in 1989, the members of the Petitioner Association already stood regularized and the issue before the Tribunal was not of regularization but of retiral benefits and pension by counting of past service of casual mazdoors. He further points out that the petitioner had sought to enforce the agreement reached between the petitioner-Union and the management on 6<sup>th</sup> September, 2000. All these aspects have not been dealt with by the Tribunal while passing the impugned order, presumably because the petitioner was not represent."

In view of the observations of the Hon'ble High Court of Delhi, two primary issues urged by the applicants in the O.A. are to be examined, namely:-

- (i) The non-enforcement of agreement between the applicants and the management of 6.9.2000, and
- (ii) Retiral benefits and pension by counting of past service of casual mazdoors.

The two issues are integral to each other since the case of the applicants is that non-adherence to the agreement of 06.09.2000, between the Union and the management has led to denial of retirement benefits and pension, by not counting pass service of casual mazdoors. It is therefore essential to examine the terms of the agreement dated 06.09.2000, available as Annexure A/3.

8. It is seen that various points raised by Employees' Federation on 06.09.2000, have been mentioned at Annexure A-3 of the O.A. The demands of the Federation in respect of various issues, and their status position has been given in the table in the aforesaid Annexure.

8.1 There are only two points which relate to pension. The first one is available at Serial No.1, stating that:-

Sl.	Demands of Federation	Status position
1.	<p><b><u>Pension</u></b></p> <p>a) Govt. pension should be allowed from the consolidated fund of India as per Govt. rules.</p> <p>b) There should not be any provision for option regarding pension after transferring staff from DTS to proposed corporation.</p>	<p>a) The Deptt. is principally agreed. Matter will be taken up with GOM.</p> <p>b) Agreed.</p>

The point raised by the applicants in OA is available under the head of "Pending Issues" at Serial No.6 (c) - stating that:-

<b><u>Pending Issues</u></b>	
Counting of past service of casual mazdoors for pension.	Agreed

There is no elaboration of the course of action demanded by the Union, or/and agreed upon by the respondents.

9. During the course of hearing, both sides could not explain as to what (concrete) decision, if any, was taken regarding counting of past service of casual mazdoors for pensionary purposes, in the aforementioned meeting of 06.09.2000. The learned counsel for the applicants Mr. Varun Kumar stated that the demand of the applicants was/is regarding counting of past service even prior to grant of temporary status, for the purpose of pensionary benefits. He

made a reference to O.M. dated 08.10.2002 of Department of Personnel, Public Grievances and Pensions (Annexure A-5) by which the department has been asked to re-examine the demand of the staff. He also drew my attention to the Resolution passed in All India Conference of BTEU (BSNL) on 15.11.2009 wherein similar issue regarding "counting of past service of casual mazdoors" was taken up for the purpose of promotion and pension. He stated that as per the Scheme on the subject, only 50% of the service rendered in temporary status is to be counted for purpose of retiral benefits. This, he argued, led to rendering of services of almost 10 years or more of the casual mazdoors, not being counted.

10. Per contra, the learned counsel for the respondents Sh. Subhash Gosain, stated that the applicants are being granted retiral benefits as per law laid down by various OMs and judgments delivered by different authorities and Tribunals from time to time. He emphasized that the respondents can only give the retiral benefits in accordance with the Rules on the subject and cannot go beyond the purview of the guidelines & statutory provisions on the subject.

11. As stated earlier, the issues raised by the applicants before the Hon'ble High Court of Delhi are confined to the agreement they had with the respondents on 06.09.2000 and the non implementation of the same, for grant of pensionary benefits by counting of past

service of casual mazdoors. As far as the first point of the so called "agreement" between the Union and the Management is concerned, I find that there is no such agreement available on record except Annexure A-3, discussed in para-9 above. The minutes merely mention that the respondents "agreed" to counting of past service of casual mazdoors for the purpose of pension. It is not explained as to how the past service was to be calculated. Nor is it mentioned that the management 'agreed' to count the service of casual mazdoors (for pension) from the day they joined service. It is not possible to deduce which modalities were demanded or accepted by the respondents. Absence of such details makes it difficult to issue any meaningful directions to the respondents to implement the agreement of 06.09.2000.

12. It is not disputed that the respondents have in place a Scheme for grant of Temporary Status and regularization, for benefit of employees working as casual labourers. The said Scheme lays down counting of 50% of service rendered by the casual employees for the purpose of retiral benefits, after award of temporary status. As per DoT's O.M. No. 27-2/2006-SNG dated 20.10.2006 casual labourers granted temporary status on or before 30.09.2000 and regularized on or after 01.10.2000 will be treated as DOT employees in order to enable them to count 50% service rendered as TSM for pension purposes.

13. The Schemes for grant of temporary status and counting of 50% of service for sake of retiral benefits, are being implemented by the respondents in there present form. The applicants in their O.A. have not been able to show that there has been any deviation to the principle laid down in this Scheme. Though the respondents have been following the provisions of the aforementioned Scheme regarding grant of pension to the applicants by counting 50% of their service after grant of temporary status, this policy, would still not result in giving the benefit of entire service to the casual mazdoors prior to the cut-off date. No details of what exactly transpired on 06.09.2000 or was agreed upon regarding pension of casual mazdoors is available on record. In the absence of detailed minutes, it cannot be inferred as to what formula, different from the present one, was demanded or raised, which the respondents, reportedly, agreed upon.

14. The issue is almost two decades (18 years) old and should have been taken up by way of specific demands by the applicants (Union) with the respondents. In the absence of full details and any fruitful assistance from the applicants, no directions can be issued in this regard. The applicants may seek redressal of their pensionary issues by way of categoric and specific point wise representation to the management, if considered necessary. No intervention of the

Tribunal is possible to the prayer made in the OA in its present form.  
O.A. is dismissed. No costs.

**(Praveen Mahajan)**  
**Member (A)**

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