



DISTRICT : DARJEELING

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

Miscellaneous Application No. 248/2013
Original Application No. 188 of 2013.

Name of the Applicant
with Address.

In the matter of :

Sri Ram Nath Rajbhar,
Son of Late Ram Khelawan Rajbhar,
H/O Anand Barik Road No.3, of
Ramkrishna Colony, Post Office
Pradhannagar, Police Station-Matigara,
District Darjeeling, Pin- 734 003.

Name of the Respondents
with Address.

1. Union of India, Service
through the under Secretary,
Ministry of Communication and
Information Technology, Department
of Telecommunication, 20, Ashoka
Road, Sanchar Bhawan, New Delhi-110 00

2. The Chairman and Managing Director
Bharat Sanchar Nigam Limited, (A
Government of India Enterprise), 102-1
Statesman House, New Delhi, Pin-110 00

3. Bharat Sanchar Nigam Limited
(A Government of India Enterprises),

- Ram Nath Rajbhar

through the Chief General Manager,
Telecom, Bharat Sanchar Nigam Limited,
West Bengal Circle, having his Office
at 1, Council House Street, Kolkata-
700 001 ;

4. The Assistant General Manager (RE)
West Bengal Circle, Bharat Sanchar
Nigam Limited, (A Government of India
Enterprise), 1, Council House Street,
2nd Floor, Kolkata - 700 001 ;

5. The General Manager, Telecom,
Bharat Sanchar Nigam Limited
(A Government of India Enterprise),
Office at Sanchar Shikhar, Ashutosh
Mukherjee Road, Post Office - Siliguri,
District : Darjeeling, Pin- 734 001 ;

6. The Assistant General Manager
(P & A), Siliguri Telecom District,
Bharat Sanchar Nigam Limited,
(A Government of India Enterprise),
Post Office and Police Station -
Siliguri, District- Darjeeling,
Pin - 734 001 ;

- Ram Nath Reddy

7. The Sub-Divisional Engineer (HRD),
Office of the GMT Siliguri, Bharat
Sanchar Nigam Limited, (A Government
of India Enterprise), Office of the
Telecom District Manager, Siliguri,
Post Office and Police Station -
Siliguri, District - Darjeeling,
Pin - 734 001 ;

8. The Chief Accounts Officer,
(Internal Financial adviser)
Office of the G.M. Telecom, Siliguri,
Bharat Sanchar Nigam Limited,
(A Government of India Enterprise),
Post Office and Police Station -
Siliguri, District- Darjeeling,
Pin - 734 001.

No. M.A. 350/00248/2013
O.A. 350/00188/2013

Date of order: 07/09/2017

Present: Hon'ble Mr. S.K. Pattnaik, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Ms. R. Basu, Counsel
Mr. D.K. Mukherjee, Counsel

For the Respondents : Mr. M. Bhattacharjee, Counsel
Mr. T.K. Ghosh, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Heard Ld. Counsel for both sides.

2. The applicant seeks for a direction to the respondent Nos. 4 & 5 to regularize the service of the applicant in the post of Regular Mazdoor as Gr. 'D' staff on and from 31.3.1999 along with release of arrear salary and other ancillary benefits thereof.

3. Admittedly, the applicant was engaged as a Part Time Casual Labour in the then Department of Telecom on and from 15.4.1982, who has not been regularized. The Departmental Promotion Committee (DPC) had recommended his regularization as Regular Mazdoor (RM) in DPC meeting dated 15th October, 1999.

4. In order to decide why the applicant was not regularized despite the recommendation of the Departmental Promotion Committee, it is necessary to peruse and examine the written reply filed by the respondents. The respondents have categorically pleaded that the applicant's case could not be considered for such regularization as no Police Verification (PVR) had been received by the department.

5. The respondents have further pleaded that although the applicant was declared fit for appointment as Regular Mazdoor on adhoc basis and on and from 15.10.1999, the applicant did not approach earlier against the

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alleged inaction on the part of the respondents authorities; rather just on his verge of retirement, the applicant filed the said application on 25.3.2013 praying for an order to treat him as a Regular Mazdoor on and from 15.10.1999, which is hopelessly barred by limitation. It is also the case of the respondents that the present O.A. is not maintainable on the ground of multiplicity of the prayers.

6. The Ld. Counsel for the applicant has fairly admitted that his major prayer is for regularization and other prayers are ancillary.

7. Before delving into the merits of the case it may be stated at the outset that the Tribunal does not act as policy making institution for the Union of India and can exercise jurisdiction only when there is illegality or where there is an infraction of rules and procedures. The present case depends on the factual scenario. The respondents in para 4 of their reply have categorically stated that the applicant was not regularized as Regular Mazdoor (RM) as no PVR of the applicant have been received by the department.

8. The respondents have also in Annexure "R-2" referred to a notification of the Department of Telecommunication dated 23.12.1989, which inter alia states that, " Casual labourers who acquire temporary status under the scheme stated above will not however be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts."

9. It is a well settled principle of governance that regular incumbents are appointed only after completion of requisite formalities, such as availability of complete PVR and adherence to medical examination.

10. It is seen from Annexure "R-12" that the Office of District School Board, Darjeeling, vide their communication dated 15.11.2002, has

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enclosed the verification of C/As of Shri Ram Nath Rajbhar, son of Late Ramkhelan Rajbhar informing thereby that there are no records against the subject with the given particulars, namely, study and date of birth and the VR could not be verified from the relevant school as the subject name has not been found in the school records. Two important documents annexed to "R-2" reveal that while the Bharati Hindi Vidyalaya under the District School Board, Darjeeling had certified in 1965 about one Ram Nath Rajver as having been a student where the date of birth recorded in admission records as 5.3.1953, another certificate dated 16.12.2000 from the same Bharati Hindi Vidyalaya, District : Darjeeling certifies that there is no record of Ram Nath Rajbhar, son of Late Ramkhelan Rajbhar as ever been recorded in the said school. It is interesting to note that the applicant had not pressed the matter of amendment of records as maintained in the school certificate although received in 1965 and placed to authorities as proof of age.

11. It is a matter of settled principle of law that one's identity needs to be clearly established along with date of birth as certified from the institution, which has recorded his name and date of birth accordingly. In the instant case, the name "Rajbhar" does not match or tally with "Rajver", so the identity of the incumbent itself is in question. Such ambiguous identity does not lend itself to a clear identification of the individual who is to be recruited formally by the Government. In this context reliance is placed on **Avtar Singh v. Union of India & ors. [SLP (C) 20525 of 2011]** wherein the Apex Court has held as follows:-

" The whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may ajudge him unsuitable for the post. The verification of antecedents is necessary to find out fitness of incumbent. Information given to the employer by a candidate as to conviction, acquittal or

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arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information."

Further, it has been held in Allahabad High Court in **Mohan Singh v. U.P. Rajya Vidyut Utpadan Ltd. [Special Appeal (Defective) No. 1 of 2012]** that:

"In view of above, the law can be summarized that normally the date of birth entered in the service book is sacrosanct and cannot be altered or changed at the fag end of service or after long lapse of time."

Again in **Uma Devi's case (2006) 4 SCC 1**, the Hon'ble Apex Court had held that the Supreme Court and High Courts should not issue such directions on public employment unless recruitment itself was made regularly.

12. Further it is not understood as to why despite the recommendations of the DPC made on 15.10.1999, the applicant approached this Tribunal in the form of an O.A. i.e. after the expiry of 14 years since the recommendations of the DPC.

13. In such premises, no fault can be found in the action of the respondents in not regularizing the applicant as a Regular Mazdoor in the department of Telecommunications. Furthermore, the O.A. is hopelessly barred by limitation as the applicant had himself delayed in approaching the appropriate forum for regularization of his services.

14. The M.A. seeking arraignment of the Secretary, Ministry of Communication & IT, Government of India is rejected as because the Department of Telecommunication is the primary respondent in the matter.

15. Hence ordered.

(Dr. Nandita Chatterjee)
Administrative Member

(S.K. Pāttnaik)
Judicial Member