

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Transfer Application No. 21 of 2009

(Arising out of Writ Petition No. 3856 of 2008)

Dated: This the 2nd day of January 2019.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Rama Shanker Srivastava son of Late Sartaj Bahadur R/o Village & Post Mau Chhibon, District Chitrakoot.
2. Durga Prasad Gupta son of Sri Ram Lal Gupta, R/o Sabzi Mandi Rajapur District Chitrakoot.
3. Saroj Kumar Prajapati son of Maiku Lal R/o Village Chhiwlaha Post Mau, District Chitrakoot.
4. Suraj Bali Gupta son of Sri Shiv Mangal Prasad @ Khooni Lal R/o Village & Post Chhibon (Mau) District Chitrakoot.

. . . Applicants

By Adv: Sri O.P. Gupta

V E R S U S

- 1) Union of India through Director General Telecom, Bharat Door Sanchar Nigam Ltd., Sanchar Bhawan, New Delhi.
- 2) Assistant Director General (Personal) IV Section, Bharat Door Sanchar Nigam Ltd., Sanchar Bhawan, New Delhi.
- 3) Chief General Manager Telecom, U.P. East Circle Bharat Door Sanchar Nigam Ltd., Lucknow.
- 4) Telecom District Manager, Bharat Door Sanchar Nigam Ltd., Indira Nagar Ltd., Indira Nagar Banda District Banda.

. . . Respondents

By Adv: Shri D.S. Shukla

ORDER

1. The applicants had filed a Civil Misc. Writ Petition No. 3856 of 2008 before Hon'ble Allahabad High Court seeking to quash the order dated 23.09.2004. They have also prayed to direct the respondents to pay the petitioners in the pay scale of Rs. 3200-4000/- per month and to convert the petitioners from part time casual labourers into fulltime casual labourers and also to regularize their services on the post of Telephone Operator Grade "D". The said petition was remitted to this Tribunal in

view of provision of Section 29 (2) of Administrative Tribunals Act 1985 vide order dated 4.8.2009 which has been registered as T.A. No. 21 of 2009.

2. Case of applicants is that they are part time casual labourers under the control of Telecom District Manager, Bharat Door Sanchar Nigam Ltd., Indira Nagar, District Banda, U.P. working in telephone exchanges of rural areas. To convert the part time casual labourers into full time casual labourers, Assistant Director General (Personal IV), , Bharat Door Sanchar Nigam Ltd, New Delhi directed all concerned Officers to send the details of part time casual labourer for conversion to full time casual labourers. For this purpose, Telecom District Manager, Banda (respondent No. 4) vide letter dated 17.08.2001 (Annexure No. 2) directed his subordinates to send the details of such part time casual labourers which similar direction was also issued by Assistant Director General (Personal IV) (respondent No. 1) vide letter dated 24.05.2002 (Annexure No. 3) which was reinforced by letters dated 28.05.2001 and 12/19.08.2002 (Annexure No. 4) of CGM to respondent No. 4.
3. Applicants' further case is that list of 122 part time casual labourers under the control of respondent No. 4 which included the applicants was sent by respondent No. 4 vide letter dated 08.11.2002 (Annexure No.6) to Assistant General Manager Establishment Officer of the CGM Telecom, U.P. East circle Lucknow. However, respondent No. 3 instead of forwarding the list of respondent No. 4 to respondent No. 1 and 2 for approval of conversion, again directed respondent No. 4 to send names of part time casual labourers. It is the case of applicant that till date their names have not been considered. On the other hand, some part time casual labourers in District Hamipur have been converted into full time casual labourers by respondent No. 3.

4. Applicants further aver that their claim for conversion was rejected by respondent No. 3. In this regard, the relevant averments in the O.A are as under:-

"21. That while rejecting the claim of the petitioners it has been observed that no proof of engagement of any casual labourer as mentioned in the representation dated 27.05.2004, has been found available in office record to verify the said fact, the report in this regard was called for whether the applicants had worked under respective SDEs as casual labourer or not, as stated by you in the representation. The report submitted by SDE of Banda Telecom District as well as report submitted by TDM Banda on dated 26.8.2004 reveals and categorically states that applicants were neither engaged nor worked as Casual Labourer under them. Whereas the as per records of the TDM Banda this ground is absolutely falsified, the source of payments made to part time wages has been shown in the head of Temporary Advance is under the signature of A.O.(Cash) which is received by the S.D.E Mau. The payment of petitioner No.1 has been made through payment receipts ACG-17. For kind perusal of this Hon'ble Court a photo copy of the temporary advance dated 05.01.2001 by the Account Officer (Cash) T.D.E (Tel) Banda as payment receipts A.C.G-17 are being collectively filed herewith and marked as Annexure No. 9 to this affidavit.

22. That apart from above, the works of the petitioners has been checked by the authorities time to time. For kind perusal of this Hon'ble Court the photocopy of the inspection note dated 08.05.2001

by D.E. (Tel) Banda in fault Register is being filed herewith and marked as Annexure No.10 to this writ petition.

23. That admittedly the petitioners are working as part time casual labourers under the respondents and thus their names have been sent to the respondent No.3 for conversion of their services into fulltime casual labourers as per policy and directions of the respondents No. 1 and 3 as is clear from the letter dated 8.11.2002 sent by the respondent No.4, thus non consideration of the same would result in gross injustice to the petitioners legitimate claim of regularization and is discriminatory”.

5. Reference may be made to the contents of the impugned order dated 23.09.2004 passed by respondent No. 3 which reads as under:-

“Bharat Sanchar Nigam Limited
O/o Chief General Manager Telecom,
UP (East) Circle, Lucknow 226001.

For kind attention Shri B.N. Singh Advocate No. LC/M-2/58/2004

Dated 23.09.2004

To,

Shri By name (Six)

Petitioners of Writ petition No. 13697 of 2004.

Rama Shankar Srivastava & others Vs. Union of India.

Sub: Implementation of judgment and order dated 5.4.2004 passed by this Hon’ble Court, Allahabad in writ petition No.13697 of 2004- Rama Shankar Srivastava and others Vs. Union of India and others.

In compliance with the judgment and order dated 5.4.2004 passed by the Hon'ble Court, Allahabad in writ petition No.13697 of 2004 and your representation dated 27.5.2004 regarding conversion into full time casual labourer from part time casual labourer thereafter regularization of your services, has been considered and it is submitted as under:-

1. In your representation dated 27.5.2004 you have enclosed document stating therein that you had worked in the Department as part time casual labourer.
2. That admittedly the SDO/SDE, under the circular issued by the Ministry is not competent and have no jurisdiction to keep any part time or full time casual labourer unless & until there is any permission or sanction by the competent authority. That is why letters or certificate issued by such subordinate officers cannot be taken into accounts for conversion of your service from part-time casual labourer into full time casual labourer.
3. It is also to mention here that there is complete ban on engagement of any part time for full time casual labourer vide DOT, New Delhi No. 269-39/84-STN, dated 14.8.1984 and if somebody has kept any person as C/L for part time or full time without any prior approval or sanction by competent authority then that is in contravention of the circular issued from time to time by the Ministry and as such if any engagement or certificate has been issued that cannot be treated to be a valid document and that has no force in the eyes of law.
4. In your representation dated 27.5.2005, you have mentioned that you and others have worked under

SDE, Mau, District Chitrakoot. As per report of the above officer of Banda Telecom District, no part time casual labourer was engaged by any of them. TDM Banda has also reported by that no proof of engagement of any casual labourer as mentioned the representation dated 27.5.2004, has been found available in office record to verify the said fact, the report in this regard was called for whether the applicants had worked under respective SDEs as casual labourer or not, as stated by you in the representation. The report submitted by SDE of Banda Telecom District as well as report submitted by TDM Banda on dated 26.8.2004 reveals and categorically states that applicants were neither engaged for worked as casual labourer under them.

Keeping in view above such facts and as per DOT, New Delhi order, your representation dated 27.5.2004 in compliance with the Hon'ble High Court Allahabad order dated 5.4.2004 passed in writ petition No. 13697 of 2004 Rama Shankar Srivastava and others Vs. Union of India and others has been considered on merit and no proof found for your engagement as part time casual labourer and accordingly your claim for conversion from part time casual labourer into full time casual labourer is not justified. Based on above facts your representation dated 27.5.2004 is hereby rejected.

It has got approval of Chief General Manager, U.P. (East), Telecom Circle, Lucknow.

(V.P. Singh)

Dy. GM (Admn)".

6. The stand of respondents in the counter affidavit is that there was no vacancy of casual labourer in office of Sub division Engineer Telecom, Mau, Chitrakoor/Banda. There is complete denial of the applicants being engaged by the respondents since there was ban to engage any casual labourer in the respondent-department. Regarding the record/documents relied upon by the applicants in their O.A., the bald stand of respondents is that the same are matters of record which need no response. As per letter dated 12.02.1991, there was complete ban to engage part time or full time casual labourers. The scheme for conversion of part time casual labour into full time casual labour was circulated for left out cases for those who were engaged before the ban.
7. Respondents regarding the conversion in Hamirpur district in para No. 18 of the O.A., taken the plea that "The adjoining District Hamirpur is entire different and has no relation with the case of the writ petitioners."
8. Applicants filed rejoinder affidavit and in reply to para No. 4 of the C.A that there is no vacancy of casual labourer in Banda and in para no. 4 of the rejoinder affidavit that:-

"4. That the averments made in paragraph No.4 of the counter affidavit is absolutely false and specific denied. In to it, it is stated there are number of vacancies existing. The petitioner are working as part time casual labour in the Bharat Door Sanchar Nigam Limited, which is under the control of Telecom District Manager, Bharat Door Sanchar Nigam Limited, Indra Nagar, District Banda. The petitioner No.1 was appointed on 01.10.2000, the petitioner No.2 was appointed on 01.08.2000, the petitioner No.3 was appointed on 01.08.1999, the petitioner No.4 was appointed on 01.10.2000 and the

petitioner No.5 was appointed on 01.10.2000. It is noteworthy that the petitioners have represented to the authority of the respondents for conversion of the status from part time casual labour to full time casual labour. Under the order dated 25.08.2000 issued by the Government of India, Department of Telecom Services, Sanchar Bhawan it has been provided that those part time casual labour, who are working less than 4 hours per day and have worked for more than 240 days in the last 12 months be converted into full time casual labours. It was further provided that the U.P. Eastern Circle, where the petitioners are working there was a shortage of Group D staff, which was estimated as 1844. By the Government order dated 16.09.1999, the aforesaid provision was reiterated and again in the U.P. East Circle there was a shortage of Group D staff. True copy of the letter dated 25.02.2009 of the respondent and the government order dated 25.08.2000 and 16.09.1999 are being filed herewith and marked as Annexure RA -01, 02 & 03 to this affidavit.

5. That the averments made in paragraph Nos. 5, 6, 7, 8, 9, 10 and 11 of the counter affidavit are absolutely false and specifically denied. In reply to it, it is stated that the petitioners have been working under the respondent after being appointed by them, this is evident from the letter dated 22.10.2001 to the District Manager, Telecommunication, the attendance register having the name of the petitioners, the letter dated 31.10.2009 apart from the certificate issued on 11.07.2008, the application dated 31.10.2003. True copy of the letter dated 25.02.2009 of the petitioner, the letter dated 22.10.2001 of the respondents, the attendance register having the name of the petitioners, the application dated 31.10.2003 of the respondent and the certificate

dated 11.07.2008 of the petitioner No.4 are being filed herewith and marked as Annexure RA-04, 05,06,07 & 08 to this affidavit”.

9. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record in shape of pleadings and documents attached by either side.
10. The issue in the instant O.A. is whether the applicants are entitled for conversion and for their regularization from part time casual labourers to full time casual labourers in terms of policy decisions of the department as well as the law settled by the courts.
11. The records brings out the following points:
 - I. There are two types of Part time casual: (A) Those who work for less than 4 hours a day and; (B) Those who work for 4 hours or more a day.;
 - II. Two orders of respondents regarding the conversion of Part time casual labourers into full time casual labourers. Order dated 25.08.2000 governs above workers (A) and Order dated 16.09.1999 governs above workers (B);
 - III. The applicants, as per, their pleadings are casual workers who work for 4 hours or more per day and fall in group (B). As per Para No.9 of the O.A: “That in the year 2000 Bharat Sanchar Nigam Ltd., the respondent No. 1 decided for conversion of part time casual labourers working in the department for four hours per day into full time casual labourers on the pay scale of Rs. 3200-4000/- per month.” And para No. 32 of the O.A, “That the petitioners are working sincerely and honestly with full devotion and utmost satisfaction of their superiors and are performing same duty as are being discharged by

regular employees. Petitioners were allowed to continue as part time casual labourers for about 6-7 years”;

- IV. Order dated 16.09.1999 governing the applicants lays down conditions under which the part time casual labourers are to be converted into full time casual labourers;
 - V. Applicants contention that they worked as part time casual labourers has been denied by the respondents;
 - VI. Applicants in support of their contention of being part time casual labourers have placed on record, documents which show that at some time, they were employed as casual workers by the respondents. Regarding the documents, respondents take the plea in their counter affidavit that documents are matters of record and need no response;
 - VII. The documents of the respondents placed on record by the applicants tend to contradict the stand of the respondents;
12. All the above mentioned points, contradict the factual position given in the impugned order dated 23.09.2004. In fact the impugned order does not refer to a number of documents placed on record by applicant and the same have not been taken into account, and which documents were relevant for settlement of the present dispute. Respondent No. 3 ought to take taken into consideration all the documents /policy decisions of its organisation while disposing of the representation of the applicant, which he failed to do so.
13. In fact, it seems that neither party has taken care to place all the relevant documents pertaining to the dispute on record as well as the documents relating to the policy decisions taken by the respondents in different part of the country, though the dispute is of similar nature.

14. In these circumstances, the impugned order dated 23.09.2004 is set aside. Respondent No. 3 is directed to re-consider the representation of the applicants in light of the documents placed on record and which have not been referred to in the impugned order as well as the policy decisions of his organisation. Liberty is given to applicants to file a detailed representation in continuance of the previous representation and place all the relevant documents before respondent No. 3 within a period of 7 days from the date of receipt of the copy of this order. Thereafter, respondents within 3 months from the date of receipt of the detailed representation and documents, if any, filed by applicants shall dispose of the representation by way of a reasoned and speaking order based on factual and legal position governing the issue and inform the applicants about the disposal order. O.A. is accordingly disposed of. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER (J)

Manish/-