

O.A. No.021/00149/2018

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/00149/2018

Date of CAV:24.07.2019.

Date of Order : 14.08.2019.

Between :

M.Rama Guru Murthy, s/o late Venkataiah,
Aged about 60 yrs, Occ:Retd. Telecom Technician,
BSNL, Gr. 'C' (Erstwhile Telecom Mechanic),
O/o Project Vijay, BSNL Bhavan, Adarshnagar,
Hyderabad.

...Applicant

And

1. The Union of India, rep., by its Secretary,
Dept. Of Telecommunications, M/o Communications
& Information Technology, 20, Ashoka Road,
New Delhi-1.

2. The Bharat Sanchar Nigam Limited,
Rep., by its Chairman-cum-Managing Director,
BSNL Corporate Office, Eastern Court Complex,
Janpath, New Delhi-110 001.

3. The Chief General Manager,
Telangana Telecom Circle (BSNL),
Door Sanchar Bhavan, Nampally Station Road,
Abids, Hyderabad-500 001.

4. The Principal General Manager,
Hyderabad Telecom District, BSNL,
BSNL Bhavan, Adarshnagar, Hyderabad.

5. The Assistant General Manager,
O/o Principal General Manager,
Hyderabad Telecom District, BSNL,
BSNL Bhavan, Adarshnagar, Hyderabad.2
... Respondents

Counsel for the Applicant ... Dr.A.Raghu Kumar

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC
... Mrs.B.Geetha, SC for BSNL

CORAM:

THE HON'BLE MR.B.V.SUDHAKAR, MEMBER (ADMN.)

: ORDER :

BY B.V.SUDHAKAR, MEMBER (ADMN.)

2. The OA is filed challenging the action of the respondents in not counting his casual service from 01.08.1978 till the date of his regularization on 01.04.1996 in terms of the CCS (CCA) Rules.

3. The brief facts of the case are that the applicant joined as casual labour in the respondents' Organization on 01.08.1978. The respondents have regularized the services of several casual labourers vide letters dated 20.12.1988 and 12.01.1989. Before issuance of the above two orders, services of the applicant were terminated by order dated 27.06.1987. Aggrieved by the same, applicant approached this Tribunal in O.A.No.7/1988, wherein the termination order was set aside and the applicant was ordered to be reinstated into service with all consequential benefits, vide order dated 18.03.1991. Accordingly, applicant was reinstated on 27.05.1991. Applicant submitted a representation to the

respondents for grant of consequential benefits on his reinstatement, and accordingly applicant's services were regularized on 31.03.1996 as temporary status mazdoor, vide letter dated 06.12.1996. In the meanwhile, Government of India has considered including of 50% of the temporary status service for the purpose of pension in respect of a person engaged as casual labourer with temporary status and regularized as per rules. Applicant retired on 31.05.2017 and his pension plus pensionary benefits were paid for the service rendered from 01.04.1996 to 31.05.2017 stating that he has only completed 21 years, 2 months and 1 day ignoring his services as casual labourer from 01.08.1978 and the fact of his regularization w.e.f. 01.04.1996. Challenging the same, the present OA has been filed.

4. The contentions of the applicant are that the action of the respondents in considering his service as 21 years, 2 months and 1 day as pensionable service is bad in law. Refusing to reckon 50% of the service rendered as casual labourer is illegal. CCS (Pension) Rules support the case of the applicant. The termination order dated 27.06.1987 has been set aside by this Tribunal, vide order dated 18.03.1991 in OA.No.7/1988. Consequently, applicant is entitled for treating the period of service as regular from the date his immediate junior was regularized. In fact, many of his juniors were regularized by the respondents, vide letters dated 20.12.1988 and 12.01.1989.

5. Respondents in their reply statement stated that applicant was engaged as casual labourer w.e.f 01.08.1978. Applicant's services were terminated in view of his involvement in a criminal case, wherein he was finally acquitted. In the meanwhile, the applicant filed OA.No.7/1988 before this Tribunal challenging his termination. As per the orders of this Tribunal, applicant was reinstated on 27.05.1991. On representing, applicant's services were regularized w.e.f. 06.12.1996. Respondents claim that the applicant was never conferred with temporary status. As per rules, casual labourer who worked for a continuous period of 10 years would be considered for conferment of temporary status and those after putting 2 years of service as temporary status casual labourer, would be regularized as regular mazdoor. For conferment of temporary status, there should not be any break in service while working as casual labourer. In the case of the applicant there was a break in service from 27.06.1987 to 26.05.1991 i.e., 3 years, 11 months, and as per rules, any break in service beyond one year cannot be condoned. Besides, applicant never preferred a representation for condonation of break in service. The claim of applicant for benefit of counting of 50% of Casual Mazdoor service from 01.08.1978 to 01.04.1996 for the purpose of pensionary benefits is not in accordance with Department of Telecommunications (DoT) letter dated 07.11.1989. Hence, applicant was not granted the relief sought for.

6. Heard Mr.B.Pavan Kumar, proxy counsel, representing Dr.A.Raghu Kumar, learned counsel for the Applicant and Mrs.K.Rajitha, learned Sr. Standing Counsel for the Respondents. None appeared for BSNL. Perused the pleadings on record.

7 (I) The facts of the case indicate that the applicant joined as casual labourer on 01.08.1978. His services were terminated on 27.06.1987 and later reinstated on 27.05.1991, based on the directions of this Tribunal in O.A.No.7/1988. Respondents claim that there was break in service from 27.06.1987 to 26.05.1991. The period being more than one year, rules do not permit condonation of break in service for the said period.

(II) In O.A.No.7/1988, this Tribunal has observed that the applicant should be reinstated into service with all consequential benefits. Therefore, it implies that the applicant has to be reinstated from the date of his termination. This view is supported by legal advice tendered by the Additional Standing Counsel to the Government in his letter dated 10.04.1991, which reads as under:

“I have perused your letter and judgment in detail. Since the applicant has been removed from service without proper enquiry, the Hon’ble Tribunal has rightly directed the Department to reinstate in service. Therefore, I am of the view, the applicant is entitle to reinstatement into service with all consequential benefits. However, I am further to state that since the applicant is involved in a criminal case before the 5th Metropolitan Magistrate, you can always hold a regular enquiry by giving proper opportunity and pass appropriate orders as per rules in force. This however could be done only after complying the orders of the Hon’ble Tribunal.

It is further stated that it is not a fit case for either filing a review application or an SLP before the Supreme Court. This is for your kind information.”

(III) While reinstating the applicant, as per the legal advice, the respondents issued a letter dated 27.05.1991 directing him to report to DE Cable Construction, Hyderabad with immediate effect. Further, AE (Legal)-I of the respondents' Organization gave a categorical legal opinion after the applicant was acquitted in the criminal case as under:

“The brief facts of the case are as follows:-

1. There were disciplinary proceedings against the casual mazdoor and he was removed from the Muster Roll from 29.6.1987.
2. As a result of the orders passed by the Hon'ble Tribunal, the casual mazdoor was reinstated on 7.6.1991. The department was directed to extend him all consequential benefits. Appeal lied with the Supreme Court but no appeal was preferred and he was reinstated.
3. The Criminal proceedings were concluded in the same matter and the Hon'ble Court declared him as innocent and acquitted him spotless on 28.4.1992. No appeal against this judgment seemed to be pending.
4. Contemplation of further disciplinary action at this point of time i.e. after 5 years of reinstatement in the same matter is detrimental to the departmental interest since such action provides the official as averment of personal vengeance.”

Moreover, in addition, applicant's services were regularized for having completed 10 years of service as temporary status mazdoor, vide memo dated 06.12.1996. Therefore, the submission of respondents that the applicant was never given temporary status is surprising. Thus, as can be seen from the records, applicant has to be reinstated into service from the date of his termination consequent to

the directions of this Tribunal in OA.No.7/1988. By doing so, the period from 27.06.1987 to 26..05.1991, has to be reckoned as deemed service.

(IV) The claim of the respondents that the rules does not permit condonation of service beyond one year, does not stand in view of the judicial order issued by this Tribunal in OA.No.7/1988.

(V) Therefore, based on the above facts, action of the respondents is arbitrary and against the directions of this Tribunal in OA.No.7/1988.

(VI) The OA fully succeeds. Consequently, the respondents are directed to consider the request of the applicant for notional service on par with any of his junior, who was regularized in 1988 w.e.f. 20.12.1988 for the purpose of pension and pensionary benefits in the interest of justice. Applicant is not entitled to any pay for the period from 27.06.1987 to 26..05.1991. Time allowed for implementing the order is three months from the date of receipt of a copy of this Order.

(VII) The OA is allowed accordingly. No order as to costs.

**(B.V.SUDHAKAR)
MEMBER (ADMN.)**

Dated:this the 14th day of August, 2019

DSN.