

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00713/2016

Reserved on 11.09.2019

Date of order : **25th Sept. 2019**

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)

HON'BLE MR. DINESH SHARMA, MEMBER (A)

Smt. Anita Devi, wife of Sri Lal Babu Raut, resident of Village/Mohallah - -Jagjiwan Nagar, Ward No.27, PO – Bettiah, PS – Bettiah, District – West Champaran [Bihar], working as Sweeper, Office of the Telecommunication District Manager, Bharat Sanchar Nigam Limited, Bettiah, District – West Champaran [Bihar].

..... Applicant.

By advocate: Shri M.P.Dixit.

Verses

1. The Chairman and Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi.
2. Additional Director General [Pers.IV], Bharat Sanchar Nigam Limited, Corporate Office, 102B, Statesman House, 148, Barakhambha Road, New Delhi.
3. The Chief General Manager, Telecommunication, Bihar Circle, Bharat Sanchar Nigam Limited, Patna [Bihar].
4. The General Manager [Admn.], Office of Chief General Manager, Telecommunication, Bihar Circle, Bharat Sanchar Nigam Limited, Patna [Bihar].
5. The Telecommunication District Manager, Bharat Sanchar Nigam Limited, Bettiah, District – West Champaran [Bihar].
6. The Divisional Engineer [A&P], Office of Telecommunication District Manager, Bharat Sanchar Nigam Limited, Bettiah, District – west Champaran [Bihar].
7. The Chief Accounts Officer, Office of Telecommunication District Manager, Bharat Sanchar Nigam Limited, Bettiah, District – West Champaran [Bihar].
8. The Senior Accounts Officer, Office of Telecommunication District Manager, Bharat Sanchar Nigam Limited, Bettiah, District –West Champaran [Bihar].

..... Respondents.

By advocate: Shri Radhika Raman

ORDER

JAYESH V. BHAIRAVIA, MEMBER (J)-In the instant OA, the

applicant has prayed for the following reliefs:-

“8[1] That Your Lordships may graciously be pleased to direct/command the respondents to issue order concerning conversion from Pat Time to Full Time in favour of the applicant henceforth in view of their own order as contained in Annexure-A/1, A/2, A/3 and A/4.

8[2] That Your Lordships may further be pleased to direct/command the respondents to grant temporary status and eventual absorption against Group-‘D’ post in favour of the applicant.

8[3] That Your Lordships may further be pleased to direct/command the respondents to grant all consequential benefits including seniority, arrears of pay etc.

8[4] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.”

2. The applicant’s case in short, runs as follows : -

[i] The applicant was initially engaged as Part Time Sweeper in the Department of Telecommunication at Bettiah in the month of May, 1986 and since then she has been continuously working as such.

[ii] The applicant further submitted that she filed several representations before the authorities concerned to convert his engagement as Part Time to Full Time and her grievance for conversion into full time has also been referred by the Telecom District Manager, B.S.N.L., Bettiah to the Circle Office, Patna on 12.01.2005 [Annexure-A/1]. Thereafter, the Circle Office, Patna has sent a letter dated 04.05.2007 [Annexure-A/2] to the Corporate Office, New Delhi stating therein that – “One more left out case for conversion from pat time to full time has been received in this Office. The case relates to Smt. Anita Devi who was initially engaged during May, 1986 and belongs to Bettiah Telecom District of Bihar Circle. Details of the case are given in

the attached proforma.”, which indicates that the applicant is the left out candidate for conversion from part time to full time.

[iii] Vide letter dated 20.09.2013 [Annexure-A/4], the D.E. [A&P], O/o the TDM, Bettiah, again requested the G.M. [Admn.], O/o the Chief General Manager Telecom, Bihar Circle, Patna for conversion of Smt. Anita Devi, Part Time Sweeper into full time sweeper, but no decision has been taken by the respondents, hence the present OA.

3. On the other hand, the respondents have filed their written statement and denied the contentions of the applicant. According to the respondents, the applicant had been working as Part Time Sweeper at Bettiah since May, 1986 for the time being as contingent paid labour and her engagement was terminated/ceased after completion of such work. Further she was used to engage intermittently on need basis only for which suitable wages were paid.

4. The respondents submitted that the Standing Committee meeting of the P&T Board has decided that the existing part-time labourers may be absorbed against the regular vacancies in accordance with instructions issued vide letter dated 09.03.1983 and further it has been decided that in future there will be no further recruitment of part time casual mazdoors in the department, vide letter dated 14.08.1984 [Annexure-R/1]. It is vehemently submitted that in fact the applicant's engagement was purely on need basis and as such as per the letter dated 14.08.1984

of D.G. [P&T], engagement or employment of part time labourers was strictly banned.

5. The respondents submitted that the applicant was not working under BSNL, Bettiah. Moreover, there are no such documents available in BSNL, Bettiah nor any documentary evidence has been annexed at part time worker. Hence, the claim of the applicant is false and fabricated.

6. The respondents submitted that since the applicant worked in the Department intermittently long back and hence there is no need of keeping any record for a long time. However, considering her case sympathetically, the local office Bettiah used to forward her representations for conversion into full time to the higher offices but it was not as per prevailing rules, hence her request was not considered tenable. The respondents further submitted that the applicant was engaged as part time mazdoor in 1986 during the banned period and not against the sanctioned/regular vacancy, therefore, no procedure for appointment was adopted. Therefore, it shows that her appointment was against the instructions of the department, hence cannot be said to be legal. The respondents submitted that in identical and similarly situated casual labourers had approached this Tribunal in OA No. 422, 484 and 515 of 2011 which were dismissed by a common order dated 31.12.2013 this Tribunal and aggrieved by it, the writ petitions were filed being CWJC No. 6443, 6725 and 14867 of 2014 before the Hon'ble High Court, Patna which has been dismissed by a common order dated 07.04.2016 by the Hon'ble High Court [Annexure-R/2].

7. The respondents further submitted that conversion of part time labour into full time or regularization of mazdoor concluded on or before the date of formation of BSNL, i.e. 01.10.2000. All those persons working up to 01.10.2000 [Annexure-R/3] [prior to creation of BSNL] has been granted temporarily status and consequently regularized as per instruction of DOT, New Delhi. Thus, it is not true that the applicant is continuing as Part Time [Annexure-R/3]. It is submitted that though there was no need of keeping the casual labour for a long time nor it was permitted, however, keeping sympathy with the applicant, the local office Bettiah used to forward her representation for conversion into full time. The said application/representation was not in consonance with the terms and conditions stipulated in the letter dated 14.08.1984, and therefore, the same was never accepted not acceded to.

8. It is further contended that vide letter dated 18.10.2014, the Circle Office, Patna was informed that no records for engagement of the applicant was found in Bettiah BSNL [Annexure-R/4].

9. The applicant has filed rejoinder to the written statement and contended that she was working in the Department since May, 1986 and was being paid from contingent fund and she was terminated when she sought for regularization based on the new rulings of the department. The applicant further submitted that her work in the department to clean the office and it is known fact that any office cannot run without sweeper. The applicant further contended that the premises of Telegraph office was the limited area in which part time casual labour was engaged based on the

sweeping area. Since the ban on engagement of part time labour was imposed in BSNL, vide New Delhi letter [Annexure-R/3] and in the light of said letter, the part time casual labourers working under the DTO/CTOs and Telephone Exchanges were converted into full time and subsequently conferred with temporary status. Since the benefit available under the said letter [supra] were given to almost all the part time casual labourers except Bettiah/Darbhanga, hence the applicant could not receive the benefit of regularization, and therefore, the applicant has approached this Tribunal. The counsel for the applicant additionally submitted that the applicant was time to time engaged by the respondents. As such the documentary evidence is available on record. In fact the engagement of the applicant and her continuation of engagement was certified vide letter dated 11.01.2005 and the same was sent to the Circle Office, New Delhi vide letter dated 04.05.2007 by the Bihar Circle, Patna [Annexure-A/6 to A/8 referred].

It is additionally submitted that it is the fact that the applicant was working as Part Time in 1986 though it was in ban period but it was lifted by giving one time exercise, and the said opportunity was not extended to the applicant, and therefore, the applicant was compelled to submit various representation before the authorities. It is submitted that every casual labour was not being employed against the sanctioned post

10. The applicant has relied upon the judgment passed in CWJC No.12126 of 2017 dated 13.11.2017, Sunil Kumar Singh & Ors. vs. The Chairman and Managing Director Bharat Sanchar

Nigam Limited [hereinafter referred to as BSNL] Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi. The relevant portion of the judgment has been referred by the Id. counsel for the applicant, which is extracted below : -

“8. Since these petitioners had acquired the status and had been converted as full time casual labourers then in terms of the circular of 2000 the next logical step for such employees was regularization. However, by trying to now provide a reason that there was no occasion to hire extra hands at the relevant time since there was no shortage of Group-D staffs and that is why their status cannot be converted into full time employee is trying to gaze into some kind of a time machine by the Deputy General Manager (Admn.) after 3 decades.

9. There is nothing reflected from the order contained in Annexure-15 that there are materials or data or facts to show that occasion for such hiring was not there. Merely saying so in the year 2015 that is almost 11 years after conferment of regular casual mazdoor status and after 30 years of such hiring is nothing but a speculative kind of reason provided which obviously makes it extraneous and cannot be accepted as the basis for justification for such rejection of the claim of the petitioners for regularization.

10. After reading Annexure-15, the reason provided by the Deputy General Manager (Admn.), we are satisfied that the respondent authorities have rejected the claim of the petitioners for sake of rejection and reason provided by them is imaginary. When put to the touchstone for testing the rationality of the decision making, it Patna High Court CWJC No.12126 of 2017 dt.13-11-2017 6/7 does not have legs to stand.

11. Since petitioners had themselves been given the status by the notification of the respondent BSNL in the year 2004 of regular casual mazdoor the only things which is required to be done now by them is to apply the yardstick of the scheme which was very much in vogue at the relevant time and extended the benefit of regularization to the petitioners.

12. For the reasons above, we come to a conclusion that the order dated 20.07.2015 suffers from vice of non-application of mind and has been passed without considering the old decisions on the status of the petitioners by the Deputy General Manager (Admn.) himself and, therefore, needs to be interfered with and quashed.

13. For the same set of reason, as these aspects have not been considered by the Tribunal in its adjudication order dated 30.09.2016, which is a subject matter of challenge in the present writ application, the same is also required to be quashed and a direction is issued upon the Chief General Manager, Bihar Circle that he has a duty and obligation to apply the scheme for regularization. The factum of status of petitioners can no longer be opened and commented upon. Regularization seems to be the only option available to them.

14. The Chief General Manager therefore is directed that Patna High Court CWJC No.12126 of 2017 dt.13-11-2017 7/7 a decision on the regularization of the petitioners must be taken within a period of three months from the date of production of a copy of this order.

15. Writ is allowed in terms of the above.”

11. Heard the learned counsel for the parties and gone through the records.

12. From perusal of the materials it is noticed that undisputedly the applicant was engaged as part time casual labour for sweeping work [As Sweeper] since May, 1986. The respondents had introduced Scheme for One Time Relaxation to convert Part Time Casual Labourers into Full Time Casual Labourers, vide Scheme dated 23rd August, 2000 [Annexure-R/3] and thereby one time relaxation was granted to the Part Time Casual Labourers working for less than four hours per day. However, it is noticed that the applications/case of the applicant was left out by the concerned respondents. It is also noticed that similarly placed Part Time Casual Labourers' case has been considered and approved for conversion into Full Time Casual Labourers and also granted temporary status. It is further noticed that, vide letter dated 08.12.2001, the Sub Divisional Engineer, Bettiah submitted the details of the applicant to the TDM, Motihari with a recommendation to convert her status from Part Time to Full Time Casual Labour [Annexure-A/13 and A/14]. It is also noticed that since the case of the applicant was left out by the respondents, the Telecom District Manager, BSNL, Bettiah, vide his letter dated 12th January, 2005 informed the Circle Office, Patna about the said left out case of the applicant and again sent her details in prescribed proforma [Annexure-A/6 and A/7 referred].

Subsequently again the Deputy General Manager [A], BSNL, Bihar Circle, Patna, vide his letter dated 04.05.2007 requested the ADG [Pers.-IV], BSNL, Corporate Office, New Delhi to accord permission for conversion into Full Time Labour in the case of the present applicant [Annexure-A/8 and A/9]. However, the case of the applicant has not been considered, therefore, again the applicant has submitted her representation in the month of April, 2014 and in response thereto, vide letter dated 20.09.2014, the Asstt. G.M., Bihar Circle, Patna requested the T.D.M. BSNL, Bettiah to furnish detail report of engagement of the applicant as Part Time Labour [Annexure-A/11]. In response to the letter dated 20.09.2014, the TDM, Bettiah, West Champaran, vide his letter dated 18.10.2014 informed the AGM [Admn.], Office of CGMT, Bihar Circle, Patna that there is no record found in the office regarding engagement of the applicant as Part Time Labour as also any communication from this office with respect to the case of Smt. Anita Devi. Having noticed this factual matrix, undisputedly, the case of the applicant was recommended for grant of benefit of scheme for conversion from Part Time Casual Labour to Full Time Casual Labour. The stand of the respondents that now in the year 2014, the records of the applicant are not available in the office of Bettiah, is contrary to materials on record in the present.

13. Therefore, this OA is disposed of with directions to the respondents to re-examine the case of the applicant in view of the aforesaid discussions as also the documents/annexure enclosed along with the present OA and pass necessary reasoned and

speaking order within a period of four months from the date of receipt of a copy of the order. No costs.

Sd/-

[Dinesh Sharma]/M[A]

mps

Sd/-

[Jayesh V. Bhairavia]/M[J]